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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-_____ (___)**
Debtors.	:	**(Jointly Administered)**

MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), (m) AND 365, AND FED. R. BANKR. P. 2002, 6004 AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

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General Motors Corporation ("GM") and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors" or the "Company"), submit this Memorandum of Law in Support of Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), (m) and 365, and Fed. R. Bankr. P. 2002, 6004 and 6006, to (i) Approve (a) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances and Other Interests; (b) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c) Other Relief; and (ii) Schedule Sale Approval Hearing (the "363 Motion").[1]

PRELIMINARY STATEMENT

There can be no doubt that the Company's decision to enter into the 363 Transaction represents an exercise of sound and prudent business judgment -- the overriding consideration under section 363(b) -- for that transaction represents the *only* available option to preserve and maximize the value of the assets to be sold; to save GM, a lynchpin of the domestic automotive industry; and to ensure its continued existence and viability. The well-documented financial crisis that has befallen the Company since 2008, and that has threatened not only the Company and its nearly quarter of a million workers, but also the jobs of hundreds of thousands of other United States workers and the viability of thousands of businesses that supply or are otherwise dependent upon the Company, has already necessitated billions of dollars of assistance by the U.S. Government. That assistance, however, which to date has sustained the Company's

[1] Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the 363 Motion; the Affidavit of Frederick A. Henderson Pursuant to Local Bankruptcy Rule 1007-2, sworn to on June 1, 2009 (the "First Day Affidavit" or "Henderson Affidavit"), filed contemporaneously with the 363 Motion; or the proposed Master Sale and Purchase Agreement among the Debtors (the "Sellers") and Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser sponsored by the U.S. Treasury, dated June 1, 2009 (the "MPA").

operations (and, thus, avoided both the Company's and an industry-wide failure), is *not* committed going forward: that is, there will be no additional Government assistance (either inside or outside of chapter 11) *unless* the 363 Transaction is expeditiously approved. And, absent such Governmental assistance, there is no viable alternative at all to preserve the Company's business.

Absent approval of the 363 Transaction, the Company will be forced to liquidate, yielding only a fraction of the value that the assets subject to the sale have as a going concern. A liquidation will result in virtually all of the proceeds going to satisfy, in part or fully, the billions of dollars of secured loans to GM. That scenario will not only result in significantly lesser recoveries by the Company's creditors, but also drastic consequences for its customers, current, and even former, employees, suppliers and dealers -- and, in turn, the overall United States automotive industry and the Midwest and national economies. Chapter 11 -- including section 363(b) -- is designed, and repeatedly has been applied, precisely to avoid this result. As noted in *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723 (Bankr. S.D.N.Y. 1992), the "'fundamental purpose of reorganization is to prevent [the] debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.'" *Id.* at 760 (quoting *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)).

In short, the 363 Transaction -- and *only* the 363 Transaction -- avoids systemic failure and provides a genuine opportunity for the business to survive and thrive in an economically viable entity, and, in the process, to maximize value for all of its stakeholders and stabilize and foster both consumer and market confidence. There simply is *no* other alternative: there is no other purchaser to buy the business; no investor to capitalize the business; no other financing source for the long term; not even another source to provide financing for a chapter 11

case. The Debtors therefore request that the Court approve the 363 Transaction expeditiously and ensure, in the words of President Obama, that "the cars of the future are built where they've always been built -- in Detroit and across the Midwest -- to make America's auto industry in the 21st century what it was in the 20th century -- unsurpassed around the world." Barack H. Obama, U.S. President, Remarks on the American Automotive Industry, at 7 (Mar. 30, 2009).

STATEMENT OF FACTS

The Debtors refer the Court to, and expressly incorporate herein, the factual background set forth in the 363 Motion and the Henderson Affidavit, as well as the supporting declarations of J. Stephen Worth of Evercore Group LLC (the "Worth Declaration"), William C. Repko of Evercore Group LLC (the "Repko Declaration") and Albert A. Koch of AlixPartners, LLP (the "Koch Declaration"), each sworn to on May 31, 2009.

ARGUMENT

I. THE 363 TRANSACTION IS AN EXERCISE OF SOUND BUSINESS JUDGMENT AND SHOULD BE APPROVED UNDER SECTION 363(b)

It is axiomatic that going concern value exceeds liquidation value. Thus, it is in the best interests of all stakeholders that, whenever possible, avoidance of liquidation and preservation of going concern value, and the preservation of a business, jobs and correlated interests, should be the objectives of any bankruptcy case. *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 759-60 (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)). *See also Reading Co. v. Brown*, 391 U.S. 471, 475 (1968) ("[T]he words 'preserving the estate' include the larger objective . . . of operating the debtor's business with a view to rehabilitating it"); *In re Global Serv. Group, LLC*, 316 B.R. 451, 460 (Bankr. S.D.N.Y. 2004) ("[C]hapter 11 is based on the accepted notion that a business is worth more to everyone alive than dead") (citations omitted); *In re WorldCom, Inc.*, 2003 WL 23861928, at *51 (Bankr.

S.D.N.Y. Oct. 31, 2003) (same); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) ("[T]he paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor").

The 363 Transaction achieves the objectives of enhancing value and preserving a business that is a critically important part of the national economy, thereby avoiding liquidation and, thus, comporting with the essential purpose of chapter 11:

> The purpose of a business reorganization case, unlike a liquidation case, is to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders. *The premise of a business reorganization is that assets that are used for production in the industry for which they were designed are more valuable than those same assets sold for scrap*. Often, the return on assets that a business can produce is inadequate to compensate those who have invested in the business. Cash flow problems may develop, and require creditors of the business, both trade creditors and long-term lenders, to wait for payment of their claims. If the business can extend or reduce its debts, it often can be returned to a viable state. *It is more economically efficient to reorganize than to liquidate, because it preserves jobs and assets*.

H.R. Rep. No. 95-595, at 220, *reprinted in*, 1978 U.S.C.C.A.N. 5963, 6179 (emphasis added); *see also* 7 Collier on Bankruptcy ¶ 1100.01 (15th ed. rev. 2008) ("Chapter 11 embodies a policy that it is generally preferable to enable a debtor to continue to operate and to reorganize its business rather than simply to liquidate a troubled business. Continued operation may enable the debtor to preserve any positive difference between the going concern value of the business and the liquidation value. Moreover, continued operation can save the jobs of employees, the tax base of communities, and generally reduce the upheaval that can result from termination of a business").

Against this backdrop, the authority for the 363 Transaction, which enables the Company to sell its major assets as a going concern, rather than simply liquidating them, is clear

in the Bankruptcy Code and under the cases. *See, e.g., Fla. Dep't of Revenue v. Piccadilly Cafeteria, Inc.*, 128 S. Ct. 2326, 2331 n.2 (2008) (recognizing that debtors often sell "substantially all of [their] assets as a going concern" and then "submit[] for confirmation a plan of liquidation . . . providing for the distribution of the proceeds resulting from the sale"). Specifically, section 363(b) authorizes a debtor to sell assets other than in the ordinary course of business by providing, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1); *see also* 11 U.S.C. § 1107(a) (providing that debtors in possession have "all the rights . . . of a trustee"); Fed. R. Bankr. P. 6004(f)(1) (providing that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction").

Although section 363(b) states the general principle that debtors in possession may sell property of the estate outside of the ordinary course of business, it does not set forth a standard for determining when it is appropriate for a court, in an exercise of its sound discretion, to authorize such a sale or other disposition of a debtor's assets. Courts in the Second Circuit (and elsewhere) have required that the decision to sell assets outside the ordinary course of business be based on the sound business judgment of the debtor. *See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 466 (2d Cir. 2007) (holding that an asset sale under section 363(b) "is permissible if the 'judge determining the . . . application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application'") (quoting *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *Consumer News & Bus. Channel P'ship v. Fin. News Network Inc. (In re Fin. News Network Inc.)*, 980 F.2d 165, 169 (2d Cir. 1992) (same); *Official Comm. of Unsecured Creditors of LTV Aerospace &*

Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (same); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (same); *see also In re Lionel*, 722 F.2d at 1069, 1071 (holding that, in considering a section 363(b) motion, "a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code," but must simply find a "good business reason" supporting the proposed transaction).

Nor will courts second-guess a reasonably founded business judgment in the context of section 363(b). As Judge Lifland stated in *Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612 (Bankr. S.D.N.Y. 1986), "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Id.* at 616. When a valid business justification exists, the law vests the debtor's decision to sell or otherwise dispose of assets outside the ordinary course of business with a strong presumption that the debtor's management and directors, in approving the sale or other disposition, "'acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkum*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993); *see also In re Integrated Res.*, 147 B.R. at 656 (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11, especially where the debtor is a Delaware corporation) (quotations omitted). The burden of rebutting this presumption falls to parties opposing the proposed exercise of a debtor's business judgment. *See In re Integrated*

Res., 147 B.R. at 656 (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)). And, that burden is heavy indeed, for the business judgment rule defers to a board decision that can be "attributed to any rational business purpose." *Williams v. Geier*, 671 A.2d 1368, 1378 & n.20 (Del. 1996). Here, under any analysis, it would be irrational *not* to enter into the 363 Transaction.

Just as the decision to engage in a sale or other disposition at all is, in the end, a business judgment, so, too, is the decision regarding the timing of that transaction. *See, e.g.*, *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997) (holding that an early sale is permissible "if a good business purpose exists to support it") (citation omitted). Indeed, circumstances often exist where, and the courts repeatedly have upheld debtors' business judgments that, such a transaction in the earliest days of a chapter 11 case is necessary (and especially, as here, critical) to the ultimate success of the reorganized business. For example, courts frequently approve sales, in a wide range of businesses, where the debtor's assets -- and future prospects -- are rapidly deteriorating. In fact, this Court, on a number of recent occasions, has approved the sale or transfer of all or substantially all of a debtor's assets in the very early stages of a chapter 11 case. *See*, *e.g.*, *In re Lehman Bros. Holdings, Inc.*, 2009 WL 667301, at *8 (S.D.N.Y. Mar. 13, 2009) (affirming bankruptcy court's approval of sale of debtors' investment banking business three days after the filing of sale motion); *see also In re Steve & Barry's Manhattan LLC*, Case. No. 08-12579 (Bankr. S.D.N.Y. Aug. 22, 2008) (order attached hereto as Exhibit A) (approving sale of debtors' entire retail business 45 days after filing); *In re Refco, Inc.*, Case No. 05-60006 (Bankr. S.D.N.Y. Nov. 14, 2005) (order attached hereto as Exhibit B) (approving sale of regulated commodities futures merchant bank 28 days after commencement of bankruptcy case).

Moreover, the Second Circuit has stressed that "perishability" of assets is not the *sine qua non* for approval. *See In re Lionel*, 722 F.2d at 1070 (specifically approving the decision in *In re Sire Plan, Inc.*, 332 F.2d 497, 499 (2d Cir. 1964)). In *In re Sire*, the debtors' sale of their principal asset -- a partially completed hotel -- was approved because, according to the Second Circuit in *Lionel*, "a good business opportunity was presently available, so long as the parties could act quickly." *In re Lionel*, 722 F.2d at 1069. *A fortiori*, approval is appropriate where perishability and timing *are* substantial factors, as the courts so hold. *See, e.g.*, *In re Andy Frain Servs., Inc.*, 798 F.2d 1113, 1128 (7th Cir. 1986) (affirming sale order with respect to substantially all of the debtor's assets where lower court, "under very difficult circumstances, showed great concern for salvaging [the debtor] and protecting the jobs of its numerous employees"); *Ready v. Rice*, 2006 WL 4550188, at *3 (D. Md. Sept. 26, 2006) (the "fast-deteriorating condition" of the debtor's property "called for a prompt sale"); *In re Trans World Airlines, Inc.*, 2001 WL 1820326, at *14 (Bankr. D. Del. Apr. 2, 2001) ("Given TWA's precarious financial history, . . . a rejection or denial of the Sale Motion would have resulted in an immediate and precipitous decline in the financial affairs of TWA with a very high probability, if not certainty, of liquidation"); *see also Piccadilly*, 128 S. Ct. at 2342 ("[O]ne major reason why a transfer may take place before rather than after a plan is confirmed is that the preconfirmation bankruptcy process takes time. . . . And a firm (or its assets) may have more value (say, as a going concern) where a sale takes place quickly. . . . Thus, an immediate sale can often make more revenue available to creditors or for reorganization of the remaining assets") (Breyer, J., dissenting).

The public (and not merely the debtor's) interest in avoiding the enormous impact of the failure of a major corporation -- even when far less dramatic in its systemic impact upon

an entire industry or the national economy than a failure of GM -- also has been appropriately taken into account not only by the boards of directors of chapter 11 debtors, but by courts considering whether to approve proposed sale transactions. As the court observed in *In re Trans World Airlines*:

> [T]here is a substantial public interest in preserving the value of TWA as a going concern and facilitating a smooth sale of substantially all of TWA's assets to American. This includes the preservation of jobs for TWA's 20,000 employees, the economic benefits the continued presence of a major air carrier brings to the St. Louis region, and preserving consumer confidence in purchased TWA tickets American will assume under the sale. I also believe the Sale Order implements the public interest that favors an organized rehabilitation . . . of a financially distressed corporation which lies at the core of chapter 11. I conclude that the alternative to the Sale Order in this case is a free-fall chapter 11 leading to a liquidation with the subsequent substantial disruption of diverse economic relationships and likelihood of material adverse harm to a very broad spectrum of creditor constituencies.

2001 WL 1820326, at *14. The billions of dollars that the Government has provided and the further billions that it is willing to provide to the Company if -- but *only* if -- the 363 Transaction is approved is eloquent and compelling proof of the Government's belief that the Company's business can be rehabilitated, and its recognition of the dire need for and national interest in this transaction.

A. The 363 Transaction Is The Only Alternative To Preserve Value And Obtain The U.S. Government Support Necessary For The Company To Finance Its Operations

As discussed above and at length in the 363 Motion and the Henderson Affidavit, nothing could be more exigent or precarious than the Debtors' current financial posture. Indeed, to say that the 363 Transaction at this time, to be followed by plan confirmation, is a "sound business judgment" would be the quintessential understatement. The Debtors have simply run out of money; they owe billions of dollars that they cannot repay; and, for obvious reasons, they

are therefore completely unable to continue operating their business absent the 363 Transaction. Indeed, since December 2008, the Debtors have relied exclusively on Government funding (more than $19 billion in the aggregate) to prevent the sudden termination of the Company's operations. *See* Henderson Aff. ¶¶ 102-05. But that funding, absent the 363 Transaction, is no longer committed.

In addition, the Company's efforts to find an alternative to the sale have confirmed what was already obvious: there are *no* other lenders or investors willing or able to invest in the Company, whether as debtor in possession financing or otherwise. This is not surprising, given that the U.S. Treasury possesses a first priority security interest in substantially all of GM's unencumbered assets and a junior lien on GM's encumbered assets. *See id.* at ¶ 103. Moreover, the Debtors' obligations to the Government, which were not scheduled to mature until December 30, 2011, have become almost immediately due and payable as a result of the Government's failure to certify the Debtors' restructuring (or "viability") plan by the June 1, 2009 deadline. *See id.* at ¶ 58. Specifically, pursuant to the terms of the loan facilities, GM agreed, on or before March 31, 2009 (which date was later extended to June 1, 2009), to submit to the Auto Task Force a written certification and report detailing the progress it had made in implementing its restructuring efforts and any deviations from its restructuring targets (together with an explanation as to why such deviations did not jeopardize the Company's long-term viability). *See id.* Upon reviewing that report, if the Auto Task Force was unable to conclude that the Company had taken all necessary steps to achieve and sustain its long-term viability, international competitiveness and energy efficiency, advances under the Government loan facilities would become due and payable on the 30th day thereafter. *See id.*

The 363 Transaction is the *only* alternative to a liquidation and, thus, is certainly a good alternative for the Company's stakeholders. And, it simultaneously provides a genuine opportunity to let the Company's business survive and thrive as a viable entity: it is designed to optimize New GM's ability to compete immediately and successfully on a global basis -- the prerequisite for additional billions of dollars of Government financing and related support, as well as the Government's forbearance with respect to the more than $19 billion already extended under (and secured by) the existing facilities. *See* Henderson Aff. ¶¶ 14-15, 74-76 (explaining that the U.S. Government is *not* willing to provide financing in any other scenario but the 363 Transaction). The 363 Transaction ensures continued financing (particularly given the Government's substantial interest in GM) and, thus, permits maximization of the value of the Debtors' assets, while, at the same time, enabling the business to be sold and continue operations without the current financial and operating distress and free of bankruptcy, as part of an immediately viable going concern.

B. The 363 Transaction Is Also Justified Because It Avoids The Dire Consequences Of A Liquidation

The 363 Transaction is critical to the Debtors' ability to curb the rapidly decreasing value of the Purchased Assets and maintain vital integrated relationships with existing and potential customers, current and former employees, suppliers, dealers and partners (the loss of any of which would significantly and likely permanently impair the Company's business and future prospects, even putting aside the impact of the rapid decline in global vehicle sales). *See generally* Henderson Aff. ¶¶ 82-96. For example, a protracted bankruptcy process, among other things, would:

- dramatically and irreversibly erode sales and GM's market share. It will substantially erode customers' confidence in GM's ability to stay in business, provide parts and service over the long-term, ensure the availability of warranty coverage or maintain

acceptable resale values, all of which will result in a significant, precipitous and irreversible decline in GM's sales, global revenues, profitability and cash flow;

- endanger the viability of GM's dealers and suppliers that depend on volume sales to GM, causing systemic failures;

- distract managerial and union employees from the performance of their duties or, worse yet, cause them to seek other job opportunities, while, at the same time, rendering it extremely difficult, if not impossible, to attract new employees;

- lead many of GM's suppliers, dealers and partners (including certain joint-venture partners) to terminate their relationships with GM, require financial assurances or enhanced performance, or refuse to provide trade credit on the same terms as the bankruptcy cases; and

- foreclose GM's ability to obtain debtor in possession financing sufficient to sustain operations during case administration, which likely would force the Debtors' liquidation.

See generally Henderson Aff. ¶¶ 82-96. The 363 Transaction, pursuant to which New GM would continue to operate the Debtors' business freed of any taint of bankruptcy (in exchange for consideration to the Company), is intended to address the foregoing concerns and, among other things, stabilize and foster the dealer and supplier networks that are crucial to the success and restoration of consumer and market confidence. At the same time, the 363 Transaction maximizes the value of the Company's business for the benefit of all of the Debtors' economic stakeholders.

The 363 Transaction makes not just good, but overwhelming business sense, as it: (i) saves one of the largest and most important global businesses from the almost certain risk of a near term liquidation, which would minimize (rather than maximize) the value of the assets -- and which would have extraordinary, if not incalculable, systemic economic and societal consequences not only to the Company's customers, employees, suppliers and dealers, but also to the entire automotive industry, the Midwest and the overall United States economy; (ii) saves countless smaller businesses and their tens (if not hundreds) of thousands of jobs in the process;

and (iii) creates a new entity with the operational and balance sheet flexibility to compete successfully (and, thus, generate substantial value) going forward (with the most fundamental benchmark, as indicated by the Government, being the near term generation of positive cash flow and an adequate return on capital). As Judge Peck observed this past September in approving the sale of Lehman Brothers' North American business within a week of the filing of Lehman Brothers' chapter 11 case:

> I am completely satisfied that I am fulfilling my duty as a United States bankruptcy judge in approving this transaction and in finding that there is no better alternative transaction for these assets, that the consequences of not approving a transaction could prove to be truly disastrous, and those adverse consequences are meaningful to me as I exercise this discretion. The harm to the debtor, its estates, the customers, creditors, generally, the national economy, and the global economy could prove incalculable.
>
> * * *
>
> And so, as to those objectors who say it would be establishing bad precedent to approve this transaction, I say no. This is not bad precedent. To the contrary. It's an extraordinary example of the flexibility that bankruptcy affords under circumstances such as this. It's an example that creative minds working diligently day and night even under the worst of circumstances can create remarkably complicated transactions that preserve value. I am proud to have been part of this process.

In re Lehman Bros. Holdings Inc., Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 19, 2008), Transcript of Sale Approval Hearing, at 250, 252 (excerpts attached hereto as Exhibit C). The same can be said even more strongly here, which, like *Lehman Brothers*, is the extraordinary case where the outcome will have consequences extending far beyond the particular transaction at issue.

C. The Debtors Have Satisfied All Of The Other Section 363(b) Factors

Given the Debtors' sound business justification for the proposed sale, the inquiry turns to whether: (i) adequate and reasonable notice of the sale has been provided to interested

parties; (ii) the purchase price is fair and reasonable; and (iii) the sale has been proposed in good faith. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.),* 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Betty Owens Sch., Inc.*, 1997 WL 188127, at *4 (S.D.N.Y. Apr. 17, 1997); *accord In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Decora Indus., Inc.*, 2002 WL 32332749, at *3 (D. Del. May 20, 2002). *See also* 3 Collier on Bankruptcy ¶ 363.02[3] (15th ed. rev. 2008) ("It is now generally accepted that section 363 allows [sales of substantial assets] in chapter 11, as long as the sale proponent demonstrates a good, sound business justification for conducting the sale before confirmation (other than appeasement of the loudest creditor), that there has been adequate and reasonable notice of the sale, that the sale has been proposed in good faith, and that the purchase price is fair and reasonable. These factors are considered to assure that the interests of all parties in interest are protected and that the sale is not for an illegitimate purpose"). These factors are all satisfied here.

As to the adequacy of notice, the U.S. Supreme Court has repeatedly emphasized the flexibility of the due process requirement. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands"). An "elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Baker v. Latham Sparrowbush Assocs.*, 72 F.3d 246, 254 (2d Cir. 1995) ("If a party receives actual notice that apprises it of the pendency of the action and affords an opportunity to respond, the due process clause is not

offended"); *In re Drexel Burnham Lambert Group Inc.*, 995 F.2d 1138, 1144 (2d Cir. 1993) ("[T]he Due Process Clause requires the best notice practical under the circumstances"). Constitutional requirements of due process will have been satisfied if notice was given with "due regard for the practicalities and peculiarities of the case." *Mullane*, 339 U.S. at 314-15.

Any suggestion that the notice that the Debtors intend to provide here is inadequate, in light of the exigencies of the situation and the well-publicized facts pre-dating the filing, would defy credulity.[2] No trustee, examiner or statutory creditors' committee has been appointed yet in these chapter 11 cases. Accordingly, pursuant to the Debtors' proposed notice procedures, the Debtors intend to serve notice of the 363 Motion, and an opportunity to be heard with respect to the same, on:

- the attorneys for the U.S. Treasury;
- the attorneys for Export Development Canada;
- the attorneys for the agent under the Debtors' prepetiton secured term loan agreement;
- the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement;
- the attorneys for the Creditors Committee (and, if no statutory committee of unsecured creditors has been appointed, the holders of the 50 largest unsecured claims against the Debtors on a consolidated basis);
- the attorneys for the UAW;

[2] For example, in April 2009, as part of its overall restructuring efforts, GM launched a public exchange offer for approximately $27 billion of its unsecured bonds ("Exchange Offer") -- conditioned on the receipt of tenders representing at least 90% of the aggregate principal amount of the outstanding notes -- which was intended to provide a means to support GM's future success, while enabling it to continue operating outside of chapter 11 (and thereby obviate the risk of a potentially precipitous decline in revenues that would result from a prolonged bankruptcy case). *See* Henderson Aff. ¶¶ 71-73. The terms of the Exchange Offer, GM's rationale for launching it and the likely consequences in the event of insufficient tenders (including the commencement of these chapter 11 cases) were set forth in detail in a registration statement on Form S-4 that was filed with the Securities and Exchange Commission (the "SEC") on April 27, 2009 -- and the likelihood of a chapter 11 filing and the 363 Transaction were then emphasized in the filing of an amended registration statement on Form S-4/A that was filed with the SEC on May 14, 2009.

- the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America;

- the U.S. Department of Labor;

- the attorneys for the National Automobile Dealers Association;

- the attorneys for the ad hoc bondholders committee;

- any party who, in the past three years, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the MPA;

- non-Debtor parties to the Assumable Executory Contracts;

- all parties who are known to have asserted any lien, claim, encumbrance or interest in or on the Purchased Assets;

- the SEC;

- the Internal Revenue Service;

- all applicable state attorneys general, local environmental enforcement agencies and local regulatory authorities;

- all applicable state and local taxing authorities;

- the Federal Trade Commission;

- the U.S. Attorney General/Antitrust Division of the Department of Justice;

- the U.S. Environmental Protection Agency and similar state agencies;

- the United States Attorney's Office;

- all dealers with current agreements for the sale or leasing of GM brand vehicles;

- the Office of the United States Trustee for the Southern District of New York;

- all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002; and

- all other known creditors and equity security holders of the Debtors.

In addition, the Debtors propose, pursuant to Bankruptcy Rules 2003(d) and 2002(l), that publication notice with respect to the 363 Motion be effected in the global edition of *The Wall Street Journal*, the national edition of *The New York Times*, the global edition of *The Financial Times*, the national edition of *USA Today*, the *Detroit Free Press/Detroit News*, *Le Journal de Montreal*, the *Montreal Gazette*, *The Globe and Mail* and *The National Post*, as well as on the website of the Debtors' claims and noticing agent, The Garden City Group, Inc., at <http://www.gmcourtdocs. com>.

The Debtors submit that no other or further notice need be given, particularly given the publicity that, for months, has surrounded, among other things, the deterioration of the Company's business and the Company's consideration, in conjunction with the U.S. Treasury and the Auto Task Force, among others, of its strategic options -- not to mention the publicity attendant to the commencement of the Debtors' chapter 11 cases.[3] In fact, given such publicity, it is an absolute certainty (irrespective of the additional notice that the Debtors intend to provide) that the Debtors' largest creditors have already retained counsel and, with the assistance of such counsel and other sophisticated advisors, have long been evaluating the Debtors' financial condition; addressing (and rejecting) their own role as purchasers, investors or financing sources; and evaluating the proposed sale -- all rendering additional notice (particularly in the present circumstances) unnecessary. For the very same reasons, the Debtors also submit that their proposed Sale Procedures to govern the submission of any competing offers based on the MPA are also appropriate and, under the circumstances, will enable the Debtors to realize the maximum value from the sale of the Purchased Assets.

[3] For proof of the same, the Court need only take judicial notice of the media coverage surrounding Chrysler's recent bankruptcy filing, which was preceded and then immediately followed by articles on the first page of virtually every major newspaper across the country, thousands upon thousands of business wires from every major outlet, and lead coverage on every major network and cable news broadcast.

Further, the Debtors have proposed a hearing date on the 363 Motion of June 30, 2009, with an objection deadline 11 days earlier, which affords all parties in interest a 19-day period to review the 363 Motion and the Debtors' related disclosures and evaluate, prepare and file any objections thereto. That notice period easily comports with recent precedent in this Court approving, for example, significantly shorter notice periods of two, three and 12 days. *See, e.g., In re Lehman Bros.*, Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 17, 2008) (order attached hereto as Exhibit D) (allowing two days for objections and permitting oral objections at September 19, 2008 sale approval hearing); *In re BearingPoint, Inc.*, Case No. 09-10691 (Bankr. S.D.N.Y. Apr. 7, 2009) (order attached hereto as Exhibit E) (allowing three days for objections and scheduling sale approval hearing for 10 days later (April 17, 2009)); *In re Chrysler LLC*, Case No. 09-50002 (Bankr. S.D.N.Y. May 7, 2009) (order attached hereto as Exhibit F) (allowing 12 days for objections and scheduling sale approval hearing for eight days later (May 27, 2009)).[4]

As to the sufficiency of the Purchaser's purchase price, there can be no debate that the 363 Transaction will enable the Debtors to realize the greatest value for the Purchased Assets. Simply put, not a single offer, request for information or expression of interest -- with respect to acquiring the Company or its business or providing all or part of the financing necessary for it to survive (either inside or outside of chapter 11) -- has been received from any

[4] *See also In re Haven Eldercare, LLC*, 390 B.R. 762, 769-70 (Bankr. D. Conn. 2008) (under "unique and extraordinary circumstances," cause existed for shortening to two days the 20-day notice period to approve sale to credit bidder where debtors were in "financial extremis," value of assets was deteriorating, debtors were unable to find cash purchaser to bring into auction process, and there was "no credible evidence to support a claim that additional notice might materially enhance the outcome for any . . . constituency"); *Apex Oil Co. v. Vanguard Oil & Serv. Co. (In re Vanguard Oil & Serv. Co.)*, 88 B.R. 576, 580 (E.D.N.Y. 1988) (holding that bankruptcy court acted within its discretion in approving sale despite objection to improper notice where delay risked decreasing value of all assets in estate and appellant failed to demonstrate how it was materially prejudiced by alleged due process violation).

other potential purchaser, equity investor or lender. *See* Worth Aff. ¶¶ 20-24, 30; *see also* Repko Aff. ¶¶ 24-29, 31-35.

Of course, the lack of such interest is not (and, even after the Debtors' requested notice period, cannot be) at all surprising, given the publicity surrounding the Company's (and the entire automotive industry's) poor and continually deteriorating sales and financial performance, its operational and structural challenges (on the labor, product brand, dealership and various other fronts), and the impact of the global recession on the Company and other domestic auto manufacturers -- and GM's outstanding obligation to repay to the U.S. Treasury more than $19 billion of secured loans. The failure of *any* other potential purchaser, investor or financier to come forward over the past several months is compelling support for the 363 Transaction and demonstrates that there is no alternative, as the Company cannot survive any delay in administration. *See, e.g.*, *In re Tempo Tech. Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (dismissing appeal from bankruptcy court's approval of sale of substantially all of chapter 11 debtor's assets and holding that "[w]ithout a sizeable pool of potential buyers, with only one buyer willing to negotiate terms of a purchase, and the [d]ebtor's severe cash flow predicament, the bankruptcy court did not err when it approved the sale," which it agreed was negotiated in good faith; "combined with the [d]ebtor's cash crunch, the lack of other companies engaged in th[e] industry weighed heavily in justifying an expeditious sale . . . as a going concern").

Moreover, even putting aside the complete lack of third-party interest in either purchasing or investing in GM, the consideration being paid by the U.S. Treasury here provides value that dwarfs the value that would be expected to be received in a liquidation (*i.e.*, $6.5 billion to $9.7 billion, after accounting for liquidation costs of $2.0 billion to $2.7 billion (*see* Koch Decl. at 7)) -- which only underscores the fairness of the proposed sale terms. And, while

the Company's secured creditors would receive some distribution in a liquidation -- namely, recoveries ranging from 26.3% to 77.1% for GM's secured bank lenders and 12.7% to 23.7% for the U.S. Treasury -- the Company's unsecured creditors, in contrast to the 363 Transaction, would receive *nothing* in that scenario. *See id.*

In sum, the 363 Transaction is the result of arm's length, good faith negotiations by and between the Debtors and the U.S. Treasury, as sponsor. Moreover, the Company, despite significant efforts, has been unable to identify any viable alternative to the 363 Transaction, either inside or outside of chapter 11, and therefore made the reasonable business judgment to negotiate and sell the Purchased Assets. And, the MPA is the "product of an arm's length transaction," *In re WBQ P'ship*, 189 B.R. 97, 102, 103 (Bankr. E.D. Va. 1995), that encompassed negotiated concessions from the UAW and VEBA representatives to modify, and make significantly less onerous, the CBA and VEBA settlement. *See* Henderson Aff. ¶¶ 17-18, 76; *see also In re Gucci*, 126 F.3d at 390 (holding that good faith is destroyed by "'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders'" -- but not by "hard bargaining" by the purchaser) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *Kabro Assocs. of W. Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (same).

II. THE 363 TRANSACTION SHOULD BE APPROVED FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS

Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property of the estate under section 363(b) "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- applicable nonbankruptcy law permits the sale of such property free and clear of such interest;

- such entity consents;
- such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- such interest is in bona fide dispute; or
- such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). *See In re Smart World Tech. LLC*, 423 F.3d 166, 169 n.3 (2d Cir. 2005) ("Section 363 permits sales of assets free and clear of claims and interests. It thus allows purchasers . . . to acquire assets [from a debtor] without any accompanying liabilities"); *In re Dundee Equity Corp.*, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale of the interest concerned may occur if any one of the conditions of § 363(f) have been met").[5]

Pursuant to the 363 Motion, and in order to permit a viable New GM, the Debtors request that the Court authorize the 363 Transaction free and clear of all liens, claims, encumbrances and other interests, other than the liabilities expressly assumed by the Purchaser, as set forth in the MPA. The 363 Transaction will satisfy section 363(f) because any entities holding an interest in the Purchased Assets will have received notice and have been afforded a sufficient opportunity to object to the requested relief. Any such entity that does not object should be deemed to have consented. As the Seventh Circuit aptly explained in *Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281 (7th Cir. 2002):

> It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one

[5] In addition, section 105(a) of the Bankruptcy Code authorizes bankruptcy courts to "issue any order . . . that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a); and, that authority, separate and apart from section 363(f), extends to the approval of asset sales free and clear of all claims and liabilities. *See, e.g., In re White Motor Corp.*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (holding that the court's power to approve a sale free and clear of tort claims originated from section 105(a), rather than section 363(f), subject only to the limits on the court's power to discharge claims under section 1141).

> of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who *might* have an interest in the bankrupt's assets had to execute a formal consent before they could be sold.

Id. at 285-86 (internal citations omitted) (emphasis in original); *see also In re Enron Corp.*, 2003 WL 21755006, at *2 (Bankr. S.D.N.Y. July 28, 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)); *Hargrave v. Township of Pemberton (In re Tabone, Inc.),* 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same). As such, to the extent that no party holding a lien, claim, encumbrance or other interest objects to the relief requested in the Sale Order, the sale of the Purchased Assets free and clear of all such interests, except for any liabilities expressly assumed by the Purchaser, satisfies section 363(f)(2).

Moreover, to the extent a specific lien, claim, encumbrance or other interest does not satisfy the consent requirement of section 363(f)(2), such lien, claim, encumbrance or other interest satisfies one or more of the other conditions set forth in section 363(f) and will be adequately protected by attachment to the net proceeds of the sale, or interest will be adequately protected by attachment to the net proceeds of the sale, subject to any claims and defenses the Debtors may possess with respect thereto. For example, each of the parties holding liens on the Purchased Assets could be compelled to accept a monetary satisfaction of such interests, satisfying sections 363(f)(5).

In addition, the Purchased Assets may be sold free and clear of all successor liability claims. Notwithstanding reference to the conveyance free and clear of "any interest" in section 363(f), that section has been interpreted to allow the sale of a debtor's assets free and

clear of successor liability claims, as well. *See, e.g.*, *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *see also Am. Living Sys. v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 189-90 (Bankr. N.D. Ga. 1986) (sale pursuant to section 363(f) barred successor liability for product defects claims), *aff'd*, 805 F.2d 1515 (11th Cir. 1986); *Rubinstein v. Alaska Pac. Consortium (In re New English Fish Co.)*, 19 B.R. 323, 328 (Bankr. W.D. Wash. 1982) (sale pursuant to section 363(f) was free and clear of successor liability claims for employment discrimination and civil rights violations).

Accordingly, the Purchased Assets should be transferred to the Purchaser free and clear of all liens, claims, encumbrances and other interests, including rights or claims based on any successor or transferee liability, and other than any liabilities expressly assumed by the Purchaser, with such interests to be transferred and to attach to the net sale proceeds from the Purchased Assets or satisfied as may be agreed upon by the parties.

III. THE 363 TRANSACTION IS NOT A *SUB ROSA* PLAN

The MPA does not dictate the terms of a plan of reorganization, as it does not attempt to dictate or restructure the rights of creditors. Indeed, the courts have made clear that a section 363(b) sale transaction is not objectionable as a *sub rosa* plan based on the fact that the purchaser is to assume some but not all of the debtor's liability, or because some creditors may benefit disproportionately compared with others whose claims are not being assumed by the purchaser. *See, e.g.*, *In re Trans World Airlines, Inc.*, 2001 WL 1820326, at *11 (Bankr. D. Del. Apr. 2, 2001). As explained in *In re Trans World Airlines*:

> [N]othing in section 363 suggests that disparate treatment of creditors, such as is likely to occur here, disqualifies a transaction from court approval. The purpose of a section 363(b) sale is to transform assets . . . into cash in an effort to maximize value. *Distribution of the value generated in accordance with section*

> *1129 and other priority provisions occurs and is intended to occur subsequent to the sale*.
>
> * * *
>
> The treatment of creditors in a section 363(b) context is dictated by the fair market value of those assets of the debtor that the purchaser in its business judgment elects to purchase. A purchaser cannot be told to assume liabilities that do not benefit its purchase objective. *Thus, the disparate treatment of creditors occurs as a consequence of the sale transaction itself and is not an attempt by the debtor to circumvent the distribution scheme of the Code*.

Id. (emphasis added).

Notably, courts in this and other jurisdictions have long considered whether a preconfirmation sale transaction constitutes a *sub rosa* plan of reorganization, and have suggested various factors that aid in that determination -- but *none* of those factors exist here. *See, e.g., Abel v. Shugrue (In re Ionosphere Clubs, Inc.)*, 184 B.R. 648, 654 & n.6 (S.D.N.Y. 1995) (where aspects of transaction dictate terms of plan); *see also Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop, Inc.)*, 119 F.3d 349, 354 (5th Cir. 1997) (settlement disposing of all claims; restriction upon creditors' right to vote; disposition of virtually all assets); *Official Unsecured Creditors' Comm. v. Stern (In a SPM Mfg. Corp.)*, 984 F.2d 1305, 1317 (1st Cir. 1993) (agreement to vote for particular plan); *In re Lehigh Valley Prof'l Sports Clubs, Inc.*, 2000 WL 567905, at *6 (Bankr. E.D. Pa. May 5, 2000) (transactions or agreements fixing terms of plan by securing court's imprimatur on pre-confirmation motions without protections afforded creditors through confirmation process); *In re Marvel Entm't Group, Inc.*, 222 B.R. 243, 251 (D. Del. 1998) (all parties must be given opportunity to litigate details of reorganization plan); *In re Condere Corp.*, 228 B.R. 615, 626-29 (Bankr. S.D. Miss. 1998) (term sheet dictating allocation of sale proceeds among secured and priority claimants; requirement of creditors to cast votes for or dictate terms of any plan; deal

contingent upon concessions by creditors; and requirement of waiver of claims by independent creditors).

Accordingly, while the Debtors recognize that a sale of assets may not be approved where such sale dictates the terms of a plan of reorganization, thereby denying creditors the procedural protections of the plan process, *see Int'l Creditors of Cont'l Air Lines v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1227-28 (5th Cir. 1986); *PBGC v. Braniff Airways Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935, 939 (5th Cir.), *reh'g denied*, 705 F.2d 450 (5th Cir. 1983), that is not what is proposed here. Rather, the MPA simply provides for a sale: the Debtors will sell and assign assets; and the Government, in exchange, will provide consideration consisting of forgiveness of debt, cash (including by financing only an expeditious chapter 11 sale process), assumption of liabilities and stock in New GM. That consideration unquestionably is the highest and best available, and of far more value than the Debtors' refusing to sell and simply liquidating (again, their *only* other alternative). The foundation of the MPA is the creation of New GM, which the Government is willing to create and fund -- in a manner that the Debtors themselves cannot -- so that the nation can retain and strengthen a basic and necessary United States automotive industry. And, in that respect, any payments that are made to the Debtors' creditors in connection with the 363 Transaction (other than payments of Cure Amounts in connection with the assumption and assignment of the Assumable Executory Contracts) will be voluntarily made by New GM.

In addition, the 363 Transaction provides that the Purchaser will enter into new collective bargaining and VEBA agreements.[6] This is essential to the Company's transformation, and, despite extensive efforts, the Company has been unable to reach a

[6] The UAW has made clear that any amended collective bargaining agreement is contingent on the Purchaser providing retiree medical benefits, as contemplated by the new VEBA agreement.

comparable agreement with the UAW. In the event that the 363 Transaction is not approved, it is unclear whether the Debtors (if they even were to survive in chapter 11) would be able to reach an agreement with the UAW that would enable them to emerge from these chapter 11 cases as a viable entity pursuant to a standalone plan -- which, among other things, would be contingent on obtaining (notwithstanding the complete lack of available, non-Governmental sources) several billion dollars in exit financing to refinance the Debtors' secured debt, pay administrative expense claims and fund operations (including substantial capital expenditures). Of course, the biggest risk associated with a standalone plan, as discussed above, is that the Debtors simply would not survive for an extended period of time, with their assets becoming essentially worthless.

Finally, the 363 Transaction, if approved, will facilitate the ultimate development and formulation of a chapter 11 plan for the Debtors and the distribution of the sale consideration and the Debtors' remaining assets, while the Debtors' creditors will be afforded their full protections under the Bankruptcy Code to assert their claims and participate in the plan process. *See In re Naron & Wagner, Chartered*, 88 B.R. 85, 88 (Bankr. D. Md. 1988) (holding that the "sale proposed here is not a *sub rosa* plan because it seeks only to liquidate assets, and the sale will not restructure [the] rights of creditors"); *cf. In re Lion Capital Group*, 49 B.R. 163, 177 (Bankr. S.D.N.Y. 1985) (settlement agreement did not dictate terms of plan of reorganization where it "frees up assets for an estate and permits formulation of a plan"). *See also In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (emphasizing the discretion vested in the court in approving a transaction outside of, but that paves the way for, a plan of reorganization and, thus, "is unquestionably an essential element of [the] ultimate reorganization"); *In re Lionel*, 722 F.2d at 1071 (holding that a debtor may take significant

action, despite an allegation that the action deprives a party in interest of essential protections under chapter 11 (*i.e.*, the safeguards of disclosure, voting, acceptance and confirmation), if there is an articulated business justification); *accord In re Trans World Airlines*, 2001 WL 1820326, at *12 ("It is true, of course, that TWA is converting a group of volatile assets into cash. It may also be true that the value generated is not enough for a dividend to certain groups of unsecured creditors. It does not follow, however, that the sale itself dictates the terms of TWA's future chapter 11 plan. The value generated through the Court approved auction process reflects the market value of TWA's assets and the conversion of the assets into cash is the contemplated result under § 363(b)").

IV. THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IS NECESSARY TO EFFECTUATE THE 363 TRANSACTION

As stated above, to facilitate and effect the sale of the Purchased Assets, the Debtors also seek authority to assume and assign certain contracts and unexpired leases to the Purchaser. Section 365 of the Bankruptcy Code allows the debtor to maximize the value of the its estate by assuming and assigning executory contracts and unexpired leases that benefit the estate and by rejecting those that do not. 11 U.S.C. § 365(a); *see COR Route 5 Co., LLC v. The Penn Traffic Co. (In re The Penn Traffic Co.)*, 524 F.3d 373, 382 (2d Cir. 2008). Section 365 authorizes the proposed assumptions and assignments, provided that any defaults under such contracts and leases are cured and adequate assurance of future performance is provided. *See* 11 U.S.C. § 365(f)(2).

The "business judgment" test is the standard applied by courts in determining whether an executory contract or unexpired lease should be assumed. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures)*, 4 F.3d 1095, 1099 (2d Cir. 1993); *see also*

Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985) ("More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially"). Thus, the assumption of a contract under section 365 should be approved if the court finds that the debtor has exercised its sound business judgment in determining that such assumption is in the best interests of its estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.),* 872 F.2d 36, 40 (3d Cir. 1989); *In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

Section 365(b) requires that a debtor in possession meet certain requirements to assume an executory contract or unexpired lease:

> If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b).[7] The Contract Website sets forth the cure amounts GM believes are required to be paid -- and that New GM will pay -- pursuant to section 365 in connection with the

[7] This section does not apply to a default that is a breach of a provision relating to:

> (A) the insolvency or financial condition of the debtor at any time before the closing of the case;
>
> (B) the commencement of a case under this title;

assumption and cure of the Assumable Executory Contracts ("Cure Amounts"), which the parties to such contracts will have ample opportunity to contest.

Moreover, pursuant to section 365(f)(2), a debtor in possession may assign an executory contract or unexpired lease of nonresidential property if:

> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). The words "adequate assurance of future performance" must be given a "practical, pragmatic construction" based on "the facts of the proposed assumption." *In re Fleming Cos.*, 499 F.3d 300, 307 (3d Cir. 2007); *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance").

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

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> (C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or
>
> (D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

Id. at § 365(b)(2).

financial resources and has expressed a willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid); *see also In re Vitanza*, 1998 WL 808629, *26 (Bankr. E.D. Pa. 1998) ("The test is not one of guaranty but simply whether it appears that the rent will be paid and other lease obligations met").

The Debtors will present facts at the Sale Hearing to demonstrate the financial credibility, willingness and ability of the Purchaser or any successful bidder to perform under the Assumable Executory Contracts. Indeed, the Purchaser is a new entity, free of the enormous debt the Debtors have been forced to operate under, and, thus, with a much stronger balance sheet than the entity with whom the Debtors' counterparties originally contracted. The Sale Hearing thus will provide the Court and other interested parties the opportunity to evaluate the ability of the Purchaser or any other successful bidder to provide adequate assurance of future performance under the Assumable Executory Contracts, as required by section 365(b)(1)(C).[8]

V. THE COURT SHOULD WAIVE OR REDUCE THE PERIODS REQUIRED BY BANKRUPTCY RULES 6004(g) AND 6006(d)

Pursuant to Bankruptcy Rule 6004(g), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 10 days after entry of the order. *See* Fed. R. Bankr. P. 6004(g). Along

[8] Pursuant to the 363 Motion, the Debtors also request that the Sale Order provide that anti-assignment provisions in certain of the Assumable Executory Contracts shall not restrict, limit or prohibit the assumption, assignment and sale of such contracts within the meaning of section 365(f). *See* 11 U.S.C. § 365(f)(1); *see also Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K. Corp.)*, 127 F.3d 904, 910-11 (9th Cir. 1997) ("[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365"). In addition, section 365(f)(3) further prohibits the enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See In re Jamesway Corp.*, 201 B.R. 73, 78 (Bankr. S.D.N.Y. 1996); *see also In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) ("In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions"), *aff'd*, 209 F.3d 291 (3d Cir.), *cert. denied*, 531 U.S. 873 (2000).

these same lines, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for 10 days, unless the Court orders otherwise. *See* Fed. R. Bankr. P. 6006(d).

To preserve the value of the Debtors' estates and limit the costs of administering and preserving the Purchased Assets, it is critical that the Debtors consummate the 363 Transaction. Accordingly, the Debtors request that the Court waive the 10-day stay periods under Rules 6004(g) and 6006(d) or, in the alternative, if an objection to the sale of the Purchased Assets or to the assignment of any Purchased Contract was filed (and later denied), reduce the stay period to the minimum amount of time reasonably required by the objecting party to file any appeal.

CONCLUSION

For the foregoing reasons, as well as those set forth in the 363 Motion, the 363 Transaction should be approved.

Dated: June 1, 2009
New York, New York

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
STEVE & BARRY'S MANHATTAN LLC, et al.,	:	**08-12579 (ALG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004, 6006 AND 9014 (i) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (ii) APPROVING ASSET PURCHASE AGREEMENT; (iii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iv) AUTHORIZING THE CONDUCT OF STORE CLOSING SALES; (v) APPROVING AGENCY AGREEMENTS; AND (vi) GRANTING RELATED RELIEF

Upon the amended motion (the "Motion"), dated July 16, 2008, of Steve & Barry's Manhattan LLC and its debtor affiliates, as debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking:

(I) an order (the "Bidding Procedures Order"), among other things, (A) approving procedures for (i) submitting bids for any or all of the Debtors' assets or businesses, (ii) conducting an auction with respect to any assets or businesses on which the Debtors receive more than one bid; (B) authorizing the Debtors to enter into a "stalking horse" agreement with a bidder or bidders; (C) approving procedures for the assumption and assignment of contracts and leases to any purchaser(s) of the Debtors' assets, and/or to

resolve any objections thereto; and (D) scheduling an auction and a hearing to approve any such sale; and

(II) an order (the "Sale Order"), among other things, (A) authorizing the sale of all or substantially all of the Debtors' assets, free and clear of liens, claims and encumbrances; (B) authorizing the assumption, assignment and sale of the Debtors' contracts and leases; (C) approving either or both of (i) an asset purchase agreement for the sale of all or some of the Debtors' assets, and/or (ii) an agency agreement for the liquidation of all or some of the Debtors' inventory, with the party or parties submitting the highest or otherwise best bids; (D) affording the protections under section 363(m) to the successful bidder(s) as good faith purchasers; (E) authorizing the conduct of store closing sales notwithstanding any restrictions in restrictive documents that may impair the Debtors' ability to conduct store closing sales; and (F) exempting the Debtors' store closing sales from certain federal, state, and local laws, statutes, rules, and ordinances related to store closing and liquidation sales;

and the Court having entered the Bidding Procedures Order on August 5, 2008, among other things, authorizing the Debtors to enter into the following agreements with BH S&B Holdings, LLC (the "Purchaser" and "Agent") and Hilco Merchant Resources, LLC, on behalf of a joint venture composed of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (together, the "Sub-Agent"):

(i) that certain Asset Purchase Agreement dated as of August 4, 2008, among the Debtors, Purchaser and Agent annexed to the Motion (as has been or may

be amended, the "Asset Purchase Agreement") for the Debtors' sale of the Purchased Assets (as defined in the Asset Purchase Agreement) to Purchaser, including without limitation (a) the assumption, assignment and sale, from time to time from the Closing Date (as defined in the Asset Purchase Agreement) through the Designation Deadline (defined in the Asset Purchase Agreement as January 31, 2009, or such later date as the Bankruptcy Court may authorize), of the Purchased Contracts and Purchased Leases (as such terms are defined in the Asset Purchase Agreement) to Purchaser (the "Purchaser Assumed Contracts") and of the Designee Contracts and Designee Leases (as such terms are defined in the Asset Purchase Agreement) to Purchaser's designee (the "Designee Assumed Contracts" and, together with the Purchaser Assumed Contracts, the "Assumed Contracts"), and (b) the right to act as the exclusive agent of the Debtors for the limited purposes of marketing and disposing of the Real Property Leases that have not yet been designated as Purchased Leases, Designee Leases or Excluded Leases from and after the Closing Date through the Applicable Lease Marketing Period (as all such terms are defined in the Asset Purchase Agreement), and thereafter to designate the ultimate assignee of all of the Debtors' right, title and interest in and to such Real Property Leases, all pursuant to and as described in the Asset Purchase Agreement (the "Asset Sale");

(ii) that certain Agency Agreement dated as of August 4, 2008, as has been or may be amended from time to time, between the Debtors and Agent annexed

to the Asset Purchase Agreement as Exhibit D (the "Agency Agreement") for the sale by the Agent of the GOB Assets (as defined in the Asset Purchase Agreement) in store closing sales to be conducted through not later than November 30, 2008 (or such later date as provided in the Agency Agreement) at certain of the Debtors' retail locations, in conjunction with the sale of the Purchased Assets under the Asset Purchase Agreement; and

(iii) a Standby Agency Agreement dated as of August 4, 2008 between the Debtors and Agent annexed to the Asset Purchase Agreement as Exhibit G (as has been or may be amended, the "Standby Agency Agreement" and, together with the Agency Agreement, the "Agency Agreements") for the sale by the Agent of substantially all of the Debtors' inventory and owned furniture, fixtures and equipment in store closing sales to be conducted through not later than November 30, 2008 (or such later date as provided in the Standby Agency Agreement) at all of the Debtors' retail locations, in the event the Asset Purchase Agreement is terminated (the store closing sales under either the Agency Agreement or the Standby Agency Agreement are referred to herein as the "Store Closing Sales"; and the Asset Sale, the Store Closing Sales and all other transactions contemplated by the Asset Purchase Agreement and Agency Agreements are collectively referred to herein as the "Sale");

and an auction having been scheduled for and conducted on August 18, 19 and 20, 2008 (the "Auction") in accordance with the Bidding Procedures Order; and the Debtors having served on August 8, 2008, in accordance with the Bidding Procedures Order, Assignment Schedules and

Adequate Assurance Packages (as such terms are defined in the Bidding Procedures Order) upon each non-Debtor counterparty to the Debtors' executory contracts and unexpired leases which the Debtors may seek to assume and assign (collectively, the "Assumption and Assignment Notices"); and the Debtors having determined that the Asset Purchase Agreement together with the Agency Agreements (collectively, the "Agreements") constitute the highest and best bid for the Purchased Assets and the GOB Assets (collectively, the "Assets"); and a hearing having commenced on August 21, 2008 and as was continued from time to time (the "Sale Approval Hearing") to consider, among other things:

(i) approval of (a) the sale of the Purchased Assets, including the sale of the right to dispose of the GOB Assets, to Purchaser pursuant to the Asset Purchase Agreement, and (b) the sale of the Merchandise and Owned FF&E (as such terms are defined in the Agency Agreements) and other Assets to be sold in the Store Closing Sales (collectively, "Store Closing Assets") by Agent pursuant to the Agency Agreements, in each case, free and clear of all liens, claims, encumbrances, and other Interests (as hereinafter defined), with such Interests to transfer, affix and attach to the Purchase Price (as defined in the Asset Purchase Agreement) and other amounts to be received by the Debtors under the Agreements (the "Sale Proceeds") with the same priority, force and effect, all as more fully set forth herein;

(ii) authorizing the assumption and assignment of the Purchaser Assumed Contracts to Purchaser pursuant to and as provided for in the Asset Purchase Agreement; and

(iii) authorizing the conduct of the Store Closing Sales;

and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) and the General Order M-331 of the Board of Judges of the Southern District of New York for the Guidelines for the Conduct of Asset Sales, dated September 5, 2006 (Bernstein, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"); (ii) counsel for General Electric Capital Corporation ("GECC") and counsel for PrenSB LLC ("PrenSB"), as agents for the Debtors' prepetition secured lenders and participants (collectively, the "Prepetition Secured Lenders"); (iii) all known creditors of the Debtors; (iv) entities who have affirmatively requested notice under Bankruptcy Rule 2002, (v) all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the Assets, (vi) counsel to the official committee of unsecured creditors (the "Committee"), (vii) all parties that have either expressed an interest in purchasing the Assets or who the Debtors believe may express an interest in purchasing the Assets, (viii) all parties to the Debtors' executory contracts and unexpired leases which the Debtors may seek to assume and assign in connection with the Sale, and (ix) all affected federal and local regulatory and taxing authorities, including the Internal Revenue Service; and it appearing that no other or further notice need be provided; and the Court having considered the Motion and the Agreements, the objections thereto, the statements of counsel and any testimony or offer of proof as to the testimony on the record at the Sale Approval Hearing; and the Court having found and

determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein:

NOW, THEREFORE, upon the entire record of the Sale Approval Hearing and this case; and after due deliberation thereon; and good cause appearing therefor, IT IS HEREBY FOUND AND DETERMINED THAT:

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

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Motion or the Agreements, as the case may be.

D. The Court has jurisdiction over the Motion and the proposed Sale pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

E. The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of the Bankruptcy Code, and Rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules.

F. As evidenced by the affidavits of service and publication previously filed with the Court (i) due, proper, timely, adequate and sufficient notice of the Motion, the Sale Approval Hearing, and the proposed Sale (including without limitation the Store Closing Sales and the assumption, assignment and sale of the Purchaser Assumed Contracts), has been provided to all

persons entitled thereto in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, the Bidding Procedures Order, and the Agreements, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Approval Hearing, or the proposed Sale is or shall be required.

G. In accordance with the Assignment Procedures set forth in the Bidding Procedures Order, on August 8, 2008, the Debtors filed and served the Assumption and Assignment Notices upon each non-Debtor counterparty to the Debtors' executory contracts and unexpired leases which the Debtors may seek to assume and assign in connection with the Sale. The service of such Assumption and Assignment Notices was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of the proposed assumption and assignment of the Purchaser Assumed Contracts. Non-debtor counterparties to such Purchaser Assumed Contracts have had a reasonable opportunity to object to the proposed cure amounts and the assumption and assignment of such contracts.

H. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Approval Hearing and (ii) the representations on the record at the Sale Approval Hearing, the Debtors have marketed the Assets and conducted the sale process in compliance with the Bidding Procedures Order, fairly, and with adequate opportunity for interested parties to submit bids.

I. After giving effect to the provisions of the Bankruptcy Code and this Order, each Debtor (i) has full corporate power and authority to execute the Agreements and all other documents contemplated thereby, and the Sale by the Debtors has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate

power and authority necessary to consummate the transactions contemplated by the Agreements, (iii) has taken all corporate action necessary to authorize and approve the Agreements and the consummation by such Debtors of the Sale, and (iv) no consents or approvals, other than those expressly provided for in the Agreements, are required for the Debtors to consummate the Sale.

J. Emergent circumstances and sound business reasons exist for Debtors' Sale of the Assets pursuant to the Agreements. Entry into the Agreements and consummation of the Sale constitute the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates and creditors. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale pursuant to sections 105, 363 and 365 of the Bankruptcy Code. Such business reasons include, but are not limited to, the facts that (a) there is substantial risk of deterioration of the value of the Assets if the Sale is not consummated quickly; (b) the Agreements constitute the highest or best offer for the Assets; (c) the Agreements and the closing thereon will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of the Debtors' business; and (d), unless the Sale is concluded and the Store Closing Sales conducted expeditiously as provided for in Motion and pursuant to the Agreements, creditors' recoveries may be diminished.

K. The Agreements and the Sale contemplated thereby were negotiated and have been and are undertaken by the Debtors, the Purchaser, and the Agent at arms'-length, without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Auction was conducted in accordance with the Bidding Procedures Order, at which the Purchaser and Agent were declared the highest and/or best bidder, was conducted in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser and the

Agent have each proceeded in good faith in all respects in connection with this proceeding in that: (a) the Purchaser and the Agent each recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets and conducting the Store Closing Sales, respectively; (b) the Purchaser and the Agent each complied with the provisions in the Bidding Procedures Order; (c) the Purchaser and the Agent agreed to subject their bid to the competitive bidding procedures set forth in the Bidding Procedures Order; and (d) all payments to be made by the Purchaser and the Agent and other agreements or arrangements that have been or may be entered into by the Purchaser or the Agent in connection with the Sale have been disclosed. As a result of the foregoing, the Debtors, the Purchaser, and the Agent are entitled to the protections of section 363(m) of the Bankruptcy Code.

L. The Debtors conducted the Auction in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The Auction established 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 for the Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity was given to any interested party to make a higher and better offer for the Assets. The Agreements constitute 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 Agreements constitute the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

M. Neither the Debtors, the Purchaser nor the Agent have violated section 363(n) of the Bankruptcy Code by any action or inaction or engaged in any conduct that would cause or permit any of the Agreements or the Sale to be avoided pursuant thereto. Specifically, the

Purchaser and the Agent each have not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders. Steven Shore and Barry Prevor have agreed to participate as investors in the Purchaser, as set forth on the record at the Sale Approval Hearing. Such action does not prevent the Court from finding that the Purchaser is a good faith purchaser and has not violated section 363(n) of the Bankruptcy Code.

N. The consideration provided by the Purchaser and the Agent for the Assets is the highest or otherwise best offer received by the Debtors and is fair and reasonable. The Agreements represent a fair and reasonable offer for the Assets under the circumstances of these chapter 11 cases. No other person or entity or group of entities, other than the Purchaser and Agent, has offered any amount for the Assets that would give greater economic value to the Debtors' estates. A sale of the Assets other than one free and clear of Interests would impact materially and adversely on the Debtors' estates, will yield substantially less value for the Debtors' estates, with less certainty than the available alternatives and thus the alternative would be of substantially less benefit to the estates of the Debtors.

O. Based upon the record of the Sale Approval Hearing, actual written notice of the Sale Approval Hearing, the Motion and the Sale (and a reasonable opportunity to object thereto) has been afforded to all interested persons and entities, including: (i) the U.S. Trustee; (ii) counsel for the agents for the Prepetition Secured Lenders; (iii) all known creditors of the Debtors; (iv) all affected federal and local regulatory and taxing authorities, including the Internal Revenue Service; (v) all parties known to be asserting a lien on any of the Assets; (vi) all counterparties to unexpired real property leases and executory contracts potentially to be assumed and assigned; (vii) all entities known to have expressed an interest in acquiring any of the Assets; (viii) all attorney generals in states in which any of the Debtors does business; and

(ix) all other parties that have filed a notice of appearance and demand for service of papers in the Debtors' chapter 11 cases under Bankruptcy Rule 2002 as of July 15, 2008.

P. Neither the Purchaser nor the Agent has a common identity of incorporators, directors or equity holders with any of the Debtors, and is not an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code; provided, however, that as disclosed in the Declaration of Scott Sozio in Connection with BH S&B Holdings, LLC's Offer to Purchase Substantially All Assets of the Debtors, dated as of August 20, 2008, and at the Sale Approval Hearing, Steven Shore and Barry Prevor, who are equity holders and directors of the Debtors, will hold a significant minority interest in the Purchaser.

Q. The Debtors are the sole and lawful owner of the Assets. The transfer of the Assets pursuant to the Sale to the Purchaser and to the purchasers in the Store Closing Sales will be legal, valid, and effective transfers of the Assets, and will vest the respective purchasers with all right, title, and interest of the Debtors to the Assets (including the claims and causes of action of the estates being transferred pursuant to the Agreements) free and clear of all interests, including, but not limited to, those (A) that purport to give to any party a right or option to effect any forfeiture, modification, right of first offer or refusal, or termination of the Debtors' or the Purchaser's interest in the Assets, or any similar rights, (B) relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Assets prior to the Closing (as defined in the Asset Purchase Agreement), and (C) (i) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of use, hypothecations, easements, servitudes, restrictive covenants, leases, subleases, covenants, rights of way, options, claims (including, without limitation, any and all "claims" as defined in section 101(5) of the Bankruptcy Code), restrictions, encroachments,

encumbrances or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership and (ii) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these cases pursuant to chapter 11 of the Bankruptcy Code, and whether imposed by agreement, understanding, law, equity or otherwise, including but not limited to the liens and security interests (including adequate protection liens and security interests) of the Prepetition Secured Lenders and claims otherwise arising under doctrines of successor liability (collectively, "Interests"), with all such Interests attaching to the Sale Proceeds in the same order of priority and with the same force and effect as such Interests enjoyed with respect to the Assets.

R. The Debtors may sell the Assets free and clear of all Interests of any kind or nature whatsoever 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 Interests in any Assets which did not object, or which withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests in any Assets who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the Sale Proceeds ultimately attributable to the property against or in which they claim an Interest.

S. Subject to entry of this Order, each of the Prepetition Revolver Agent, the Prepetition Term Loan Agent (each as defined in the order of the Court entered on August 5, 2008, approving the Debtors' use of cash collateral (the "Cash Collateral Order")), the Prepetition Secured Lenders and the Committee have consented to the Sale.

T. The Purchaser and the Agent would not have entered into the Agreements, and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Purchased Assets to the Purchaser, the assumption and assignment of the Purchaser Assumed Contracts to the Purchaser and all amounts due to the Agent pursuant to the Agency Agreements were not free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser or the Agent would, or in the future could, be liable for any of the Interests.

U. The Purchaser and the Agent will not consummate the transactions contemplated by the Agreements unless the Agreements specifically provide, and the Bankruptcy Court specifically orders, that none of the Purchaser, the Agent, or the affiliates, members or shareholders of the Purchaser and the Agent will have any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Excluded Liability (as defined in the Asset Purchase Agreement).

V. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts in connection with the consummation of the Sale, and the assumption, assignment and sale of the Assumed Contracts is in the best interests of the Debtors, their estates, and their creditors. The Assumed Contracts being assigned to the Purchaser or its designee, and the Assumed Liabilities being assumed by the Purchaser, are

an integral part of Purchased Assets being purchased under the Asset Purchase Agreement and, accordingly, such assumption, assignment and sale of Assumed Contracts and Assumed Liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

W. The Purchaser has (i) to the extent necessary, cured or provided adequate assurance of cure, of any default existing prior to the date hereof with respect to the Purchaser Assumed Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Purchaser Assumed Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B) and 365(f)(2)(A). The Purchaser has demonstrated adequate assurance of future performance within the meaning of 11 U.S.C. §§ 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B).

X. The Sale constitutes the sale of substantially all of the Debtors' assets to Purchaser. Any license or other contract that by its terms permits assignment of the contract without the non-Debtor counterparty's consent in connection with the sale of substantially all of the Debtors' assets, therefore, is assignable to Purchaser in connection with the Sale.

Y. The Sale must be approved and consummated promptly in order to preserve the viability of the business subject to the Sale as a going concern, to maximize the value of the Debtors' estates. Time is of the essence in consummating the Sale..

ORDERED, ADJUDGED AND DECREED THAT:

General Provisions

1. The Motion is granted, as further described herein.

2. All objections and responses concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Approval Hearing and to the extent any such objection or response was not otherwise withdrawn, waived, or settled, they, and all reservations of rights (except as set forth herein) or relief requested therein, are overruled and denied. The Committee's objections to the Motion hereby are deemed withdrawn.

Approval of the Asset Purchase Agreement

3. The Asset Purchase Agreement, a copy of which is annexed hereto as Exhibit A, and all of the terms and conditions thereof, is approved.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and comply with the terms of the Asset Purchase Agreement, and consummate the Asset Sale, pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement, and to take all further actions as may be reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement, all without cost to the Debtors.

Transfer of Purchased Assets

6. Except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Order, upon Closing and payment of the amounts set forth in Section 3.1(b)(i) of the Asset Purchase Agreement (the "Initial Payment"), pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser, and shall be free and clear of all Interests of any kind or nature whatsoever with all such Interests of any kind or nature whatsoever to attach to the Sale Proceeds in the order of their priority, and with the same validity, force and effect which they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto.

7. The transfer of the Purchased Assets to the Purchaser pursuant to the Asset Purchase Agreement constitutes a legal, valid, and effective transfer of the Purchased Assets, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets free and clear of all Interests of any kind or nature whatsoever.

8. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Interests in the Debtors or the Purchased Assets shall not have 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 all Interests which the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then, upon Closing and payment of the Initial Payment (a) the Debtors are authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets and (b) the Purchaser is authorized to file, register, or otherwise record a

certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Purchased Assets of any kind or nature whatsoever. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Purchased Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

9. Following the Closing Date (as defined in the Asset Purchase Agreement), except as expressly permitted by the Asset Purchase Agreement or by this Order, all persons and entities, including, but not limited to, the Debtors, employees, former employees, all debt security holders, equity security holders, administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, lessors, warehousemen, customs brokers, freight forwarders, carriers and other parties in possession of any of the Purchased Assets at any time, trade creditors and all other creditors, holding Interests of any kind or nature whatsoever against or in the Debtors or in the Debtors' interests in the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' business before the Closing Date or with respect to any Interests arising out of or related to the Sale, shall be and hereby are forever barred, estopped and permanently enjoined from commencing, prosecuting or continuing in any manner any action or other proceeding of any kind relating to or connection with the Debtors, the Purchased Assets, or the operation of the Debtors' business before the Closing Date against

Purchaser, its property, its successors and assigns, alleged or otherwise, its affiliates or such Purchased Assets. Following the Closing Date, no holder of an Interest in the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interest, or any actions that the Debtors may take in their chapter 11 cases.

10. Notwithstanding anything in this Order or the Agreements, the Purchaser's rights to acquire goods pursuant to Section 2.1(c) of the Asset Purchase Agreement shall remain subject to any rights, liens and claims warehousemen, customers brokers, freight forwarders, carriers and shippers may have under applicable non-bankruptcy law with respect to such goods.

11. Subject to the Interests attaching to the Sale Proceeds as provided for in Paragraph 6 of this Order, this Order (a) shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities 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, state, and local officials, and all other persons and entities 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 of the Purchased Assets.

12. On the Closing Date and subject to the Interests attaching to the Sale Proceeds as provided for in Paragraph 6 of this Order, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be

reasonably necessary to release its Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

13. Neither the Purchaser nor its affiliates, successors or assigns shall, as a result of the consummation of the transaction contemplated by the Asset Purchase Agreement: (a) be a successor to the Debtors or their estates; (b) have, de facto or otherwise, merged or consolidated with or into the Debtors or their estates; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Liabilities, the transfer of the Purchased Assets to Purchaser under the Asset Purchase Agreement shall not result in (i) the Purchaser, its affiliates, members, or shareholders as such, or the Purchased Assets, having any liability or responsibility for any claim against the Debtors or against an insider of the Debtors, (ii) the Purchaser, its affiliates, members, or shareholders as such, or the Purchased Assets, having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Excluded Liability, or (iii) Purchaser, its affiliates, members, or shareholders as such, or the Purchased Assets, having any liability or responsibility to the Debtors except as is expressly set forth in the Asset Purchase Agreement. Without limiting the effect or scope of the foregoing, as a result of the closing of the transaction contemplated by the Asset Purchase Agreement, the Purchaser shall have no successor liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to,

liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing, and liabilities under the Worker Adjustment Retraining Notification Act ("WARN Act") or any similar state or local law, or with respect to Equal Employment Opportunity Commission or state-level employee claims arising with respect to any of the Debtors' employees prior to the Closing, or arising after the Closing with respect to any employees that are not Transferred Employees (as defined in the Asset Purchase Agreement) at the time such liability arises.

Assumption, Assignment and Sale
of Assumed Contracts

14. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtors' assumption, assignment and sale to the Purchaser, and the Purchaser's assumption on the terms set forth in the Asset Purchase Agreement, of the Purchaser Assumed Contracts, as modified by the terms of any lease modification, cure, consent and other agreements (the "Lease Assignment Agreements"), is approved, and the requirements of sections 365(b)(1), 365(b)(3) (to the extent applicable) and 365(f)(2) of the Bankruptcy Code with respect thereto are deemed satisfied. The Lease Assignment Agreements hereby are approved and the Purchaser Assumed Contracts are hereby assumed according to their terms, as amended by the Lease Assignment Agreements to the extent applicable.

15. The Debtors are authorized in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser, conditioned and effective upon the Closing of the Sale, the Purchaser Assumed Contracts identified on Exhibit B hereto free and clear of all Interests of any kind or nature whatsoever, and (b) execute and deliver to the

Purchaser such documents or other instruments as may be necessary to assign and transfer the Purchaser Assumed Contracts and Assumed Liabilities to the Purchaser.

16. The Debtors are authorized in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code to assume and assign to the Purchaser free and clear of all Interests of any kind or nature whatsoever any additional Purchaser Assumed Contracts identified by Purchaser following the date of this Order that were listed on the Assumption and Assignment Notices and as to which no objection to Assignment (as opposed to an objection to cure amounts) was timely filed by the counterparty to such contract in accordance with the Bid Procedures Order; provided, that such Assumption and Assignment shall be effective following the provision of notice to such counterparty of such Assumption and Assignment and to Purchaser in accordance with the Assignment Procedures. Any dispute regarding cure amounts that has been preserved by the filing of an objection in accordance with the Bid Procedures Order or cure amounts arising and relating to the period from and after August 18, 2008 shall be resolved in accordance with Paragraph 19 of this Order.

17. Subject to either compliance with the Assignment Procedures set forth in the Bidding Procedures Order or the consent of the non-Debtor party to an Assumed Contract, the Debtors are authorized in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser any Purchaser Assumed Contracts not identified on the Assumption and Assignment Notices, and (b) assume and assign to the Purchaser's designee any Designee Assumed Contracts, in each case free and clear of all Interests of any kind or nature whatsoever, and to execute and deliver to the Purchaser or its designee such documents or other instruments as may be necessary to assign and transfer such Assumed Contracts.

18. (i) With respect to the Purchaser Assumed Contracts identified on Exhibit B hereto, (ii) subject to Paragraph 16 of this Order, with respect to Purchaser Assumed Contracts identified on the Assumption and Assignment Notices but not listed on Exhibit B hereto, and (iii) subject to Paragraph 17 of this Order, with respect to Purchaser Assumed Contracts not identified in the Assumption and Assignment Notices and Designee Assumed Contracts, (a) the Assumed Contracts shall be transferred and assigned to, and following the assumption and assignment shall and shall be deemed valid and binding and remain in full force and effect for the benefit of, the Purchaser or its designee in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts after such assignment to and assumption by the Purchaser or its designee; (b) each such Assumed Contract is an executory contract of the Debtors under section 365 of the Bankruptcy Code; (c) the Debtors may assume each such Assumed Contract in accordance with Section 365 of the Bankruptcy Code; (d) the Debtors may assign each such Assumed Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (e) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Sellers and assignment to the Purchaser or its designee of each such Assumed

Contract have been satisfied and (f) upon (i) Closing, with respect to Purchaser Assumed Contracts identified on Exhibit B, (ii) assumption and assignment, with respect to any additional Purchaser Assumed Contracts identified by Purchaser following the date of this Order, provided such Purchaser Assumed Contracts were listed on the Assumption and Assignment Notices, or (iii) compliance with the Assignment Procedures set forth in the Bidding Procedures Order or the consent of the non-Debtor party to an Assumed Contract, with respect to Purchaser Assumed Contracts not identified on the Assumption and Assignment Notices and Designee Assumed Contracts, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser or its designee, as appropriate, shall be fully and irrevocably vested in all right, title and interest of each such Assumed Contract.

19. If an objection is or has been filed pursuant to the Bidding Procedures Order with respect to the cure amount under any Assumed Contract, the dispute with respect to the cure amount may be resolved consensually, if possible, by the parties, or, if the parties are unable to resolve their dispute, by the Court. During the pendency of a dispute relating to cure amount under an Assumed Contract, at Purchaser's option in its sole discretion, Purchaser may (i) pay the undisputed cure amount and escrow any reasonably disputed cure amount pending agreement of the parties or further order of the Court, in which case the pendency of the dispute relating to the cure amount shall not prevent or delay the assumption or assumption and assignment of such Assumed Contract, or (ii) pay the cure amount as and when either agreed upon by the parties consensually or finally determined by the Court as provided in Section 2.5(f) of the Asset Purchase Agreement, in which case assumption and assignment of the Assumed Contract shall not be effective immediately and, during the interim, in accordance with section 2.5(h) of the Asset Purchase Agreement, Purchaser shall be Debtors' agent-in-fact for the sole

purpose of allowing Purchaser to continue to operate under such contract or lease. If, after determination by the Bankruptcy Court of the cure amount in respect of any Purchased Contract or Purchased Lease, Purchaser exercises its right under Section 2.5(f) of the Asset Purchase Agreement to redesignate such Purchased Contract or Purchased Lease as an Excluded Contract or Excluded Lease, any cure amounts paid by the Purchaser with respect to such Excluded Contract or Excluded Lease shall be returned by the non-Debtor counterparty within three business days of receiving notice of such redesignation.

20. To the extent any license or permit that is necessary for the operation of the business is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, the Purchaser shall apply for and obtain any necessary license or permit promptly after the Closing and such licenses or permits of the Debtors shall remain in place for the Purchaser's benefit until new licenses and permits are obtained.

21. The cure amounts set forth on Exhibit B and any cure amounts once resolved by agreement or by the Court (collectively, the "Cure Amounts") are the true, correct, final and fixed amounts, and only amounts, that are required to be paid upon assumption of the Assumed Contracts pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code (except as otherwise has been or may be agreed to in a signed writing between the Debtors and the lease counterparty) and the Purchaser is directed to pay such amounts under sections 105, 363(b) and 365 of the Bankruptcy Code upon assumption of such Assumed Contracts. The Cure Amounts shall not be subject to further dispute or audit (except as otherwise has been or may be agreed to in a signed writing between the Debtors and the lease counterparty), including any based on performance prior to the time of assumption, assignment and sale, irrespective of whether such Assumed Contract contains an audit clause. The payment of the applicable Cure Amounts (if

any) shall (a) effect a cure of all monetary and nonmonetary defaults existing under the Assumed Contracts as of the date of assumption and assignment, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Contracts by the Debtor, constitute adequate assurance of future performance thereof.

22. Purchaser has demonstrated adequate assurance of future performance with respect to the Purchaser Assumed Contracts and has satisfied the requirements of the Bankruptcy Code, including, without limitation, sections 365(b)(1) and (3) and 365(f)(2)(B) to the extent applicable.

23. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser or its designee as a result of the assumption, assignment and sale of the Assumed Contracts. The validity of the assumption, assignment and sale to the Purchaser or its designee shall not be affected by any dispute between any of the Debtors or their affiliates and another party to an Assumed Contract regarding the payment of any amount, including any cure amount under the Bankruptcy Code.

24. Any party that may have had the right to consent to the assignment of its Assumed Contract is deemed to have consented to such assignment for purposes of Section 365(e)(2)(A)(ii) of the Bankruptcy Code and otherwise if it failed to object to the assumption and assignment.

25. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, each non-Debtor party to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from raising or asserting against the Debtors, the Purchaser, the Purchaser's designees, their affiliates or the property of any of them: (i) any fee, monetary or nonmonetary default,

breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the Assumed Contract existing as of the date of assumption and assignment or arising by reason of the Closing (other than the Cure Amounts or such other amount as has been or may be agreed to in a signed writing between the Debtors and the lease counterparty), including without limitation under any Purchased Lease with respect to any tenant improvement obligations, recoupment rights with respect to tenant improvement payments, rent, percentage rent, common area charges, real estate taxes or utilities or other charges owing under the Purchased Lease (including any amounts owed to the landlord pursuant to any "true-up" provisions with respect to any of the foregoing for any portion of the current lease year which elapsed prior to the Closing), and (ii) any condition to assignment or objection to the assumption and assignment of such non-Debtor party's Assumed Contracts.

26. Except as provided in the Asset Purchase Agreement or this 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 their assets or estates.

Approval of the Agency Agreements

27. The Debtors are hereby authorized and empowered to enter into the Agency Agreements, and the Agency Agreements are each hereby approved, and it is further ordered that all amounts payable to the Agent under the Agency Agreements shall be payable to the Agent without the need for any application of the Agent therefor or a further order of the Court.

28. The Debtors, their officers, employees, and agents and the Agent are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Store Closing Sales, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agency Agreements, and to take all further actions as may be required under the Agency Agreements for the purpose of conveying any liens on the Merchandise and Owned FF&E (as such terms are defined in the Agency Agreements) and other Assets to be sold in the Store Closing Sales (collectively, "Store Closing Assets") pursuant to the applicable Agency Agreements to the Agent, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agency Agreements. The Agent and the Debtors are hereby authorized to take or refrain from taking any and all steps necessary to effectuate, consummate and/or implement the terms of this Order.

29. The Debtors are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Store Closing Sales at the Closing Stores (as defined in the Agency Agreements) identified in accordance with the Agency Agreements.

30. Except as otherwise provided in the Agency Agreements, pursuant to section 363(f) of the Bankruptcy Code, the Assets sold pursuant to the Agency Agreements shall be sold free and clear of any and all Interests, with such Interests attaching to the Sale Proceeds.

31. Except as specified in the Agency Agreements, nothing in this Order or the Agency Agreements and none of the Agent's actions taken in respect of the Store Closing Sales shall be deemed to constitute an assumption by the Agent of any liabilities or obligations of the Debtors, including, without limitation, severance, termination pay, pension, profit sharing or any other employee benefit plans, any collective bargaining or employment agreement, compensation or retiree medical and other benefits and obligations or any obligation, claim or

amount under the WARN Act or COBRA, or any liability to such employees as a joint or successor employer, taxes, Interests, "adequate protection" obligations, mortgage obligations or legal fees incurred by professionals retained in the Debtors' cases, liability to any landlords under the store leases for reimbursement of prior construction work, rent concession, allowances or the like, whether known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated.

Store Closings and the Conduct of the Store Closing Sales

32. Any restrictions in any Restrictive Documents (as defined in this Paragraph) that may impair the Debtors' ability to conduct the Store Closing Sales shall not apply to such sales. Specifically, the Closing Stores will be located on properties that are leased by the Debtors. In certain cases, the contemplated Store Closing Sales may be inconsistent with certain provisions of such leases or other documents with respect to any such leased premises, including (without limitation) reciprocal easement agreements, agreements containing covenants, conditions and restrictions (including, without limitation, "go-dark" provisions and landlord recapture rights), or other similar documents or provisions (collectively, the "Restrictive Leases"). In addition, promotional sales of certain Merchandise bearing licensed trademarks at the contemplated Store Closing Sales may be inconsistent with certain provisions of the Debtors' trademark licenses relating to such Merchandise (the "Restrictive Licenses" and, together with the Restrictive Leases, the "Restrictive Documents").

33. The Closing Stores may "go-dark" during the Store Closing Sales and remain "dark" despite any lease restriction, real estate local act, local law, or ordinance to the contrary, and any "continuous operation" or similar clause in any of the leases (or any lease provision that purports to increase the rent or impose any penalty for going dark) may not be

enforced to hinder or interrupt the Store Closing Sales (and the going dark under such leases shall not be a basis to cancel or terminate the leases).

34. Except as to the States (as to which no injunction shall apply whatsoever), and except as expressly provided for herein or in the Sale Guidelines, no person or entity, including but not limited to any landlord, licensor, creditor, or federal or Local Governmental Unit (as defined below), (i) served with a copy of the Motion or (ii) served with a copy of this Order who does not object pursuant to the provisions of this Order, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion (including the posting of signs) of such Store Closing Sales, and all such parties and persons of every nature and description, including landlords, licensors, creditors, and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, or otherwise impeding, the conduct of the Store Closing Sales and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the Debtors' landlords for the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales or other liquidation sales at the Closing Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein. This Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against the Debtors, the Agent, the landlords or the Store Closing Sales until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances. No Governmental Units (as defined in Bankruptcy Code

section 101(27)) shall be bound by this injunctive provision unless it was either previously served with the Motion or subsequently served with this Order, and has had an opportunity to object as provided in this Order, and failed to timely file an objection.

35. Subject to applicable state and local public health and safety laws (the "Safety Laws"), and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, the "General Laws"), but excluding Liquidation Sale Laws (as defined below), the Debtors and the Agent be, and they hereby are, authorized to take such actions necessary and appropriate to implement the Agency Agreements and to conduct the Store Closing Sales without the necessity of a further order of this Court as provided by the Agency Agreements, including, but not limited to, advertising the Store Closing Sales as provided in the sale guidelines attached to the Agency Agreements (the "Sale Guidelines"), which Sale Guidelines are hereby approved in the forms annexed hereto as Exhibit C.

36. The Store Closing Sales at the Closing Stores shall be conducted by the Debtors and the Agent without the necessity of compliance with any federal, state or local law, statute, regulation, or ordinance, lease provision or licensing requirement affecting store closing, "going out of business", liquidation or auction sales, or establishing licensing or permitting requirements, waiting periods, time limits, or bulk sale restrictions, or affecting advertising, including signs, banners, and posting of signage (collectively, the "Liquidation Sale Laws"), except to the extent set forth in the Sale Guidelines. The Debtors and the Agent shall be entitled to use sign walkers, hang signs and/or interior or exterior banners advertising the Store Closing Sales in accordance with the Sale Guidelines (or as otherwise agreed between the Debtors, the Agent and the respective landlords), including, without limitation, advertising the Store Closing

Sales as “store closing,” “sale on everything” or similar themed sales (to the extent permitted by the applicable Agency Agreement) and by means of media advertising, A-frames, banners, and similar signage, without further consent of any person and without compliance with the Liquidation Sale Laws. Provided that the use of banners and sign walkers is done in a safe and responsible manner, such sign walkers and banners, in and of themselves, shall not be deemed to be in violation of Safety Laws and/or General Laws.

37. Notwithstanding any restrictions in the Agency Agreements on the Agent’s ability to conduct the Store Closing Sales in compliance with applicable laws or store leases and except as otherwise provided in this Order, each and every federal, state or local agency, department or Governmental Unit with regulatory authority over the Store Closing Sales and all newspapers and other advertising media in which the Store Closing Sales is advertised shall consider this Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be required for the conduct of the Store Closing Sales, unless and until there is a further order of this Court.

38. State and/or Local authorities shall not fine, assess, or otherwise penalize the Debtors, the Agent or any of the landlords of the Closing Stores for conducting or advertising the Store Closing Sales in a manner inconsistent with state or Local law; provided, however, that the Store Closing Sales are conducted and advertised in a manner contemplated by this Order, the Sale Guidelines, and the Agency Agreements.

39. As and to the extent set forth in the Agency Agreements, the Debtors and/or the Agent (as the case may be), are authorized and empowered to transfer the Store Closing Assets among the Closing Stores. In addition, following the Closing of the Asset

Purchase Agreement, Purchaser shall have the right to direct the transfer of GOB Assets to be transferred from Closing Stores to such Purchaser's locations as Purchaser and Agent shall agree.

40. Absent further order of this Court, the Agent shall not supplement the Store Closing Sale with augmented merchandise (the "Augmented Merchandise"). The term Augmented Merchandise does not include inventory in the Debtors' distribution centers, their stores, in transit among stores and the distribution centers, or on order by the Debtors.

41. Gift certificates, gift cards, and merchandise credits issued by the Debtors prior to the Sale Commencement Date (as defined in the Agency Agreements) may be accepted and honored by the Agent during the Sale Term as and to the extent provided in the applicable Agency Agreement.

42. Nothing in this Order shall be deemed to bar any Governmental Unit from enforcing Safety Laws and General Laws in the applicable non-bankruptcy forum, subject to the Debtors' or Agent's right to assert that any such laws are not in fact Safety Laws or General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order or otherwise; provided, however, that the Governmental Unit shall in the first instance present the matter to this Court for resolution or request that the Governmental Unit be permitted to proceed with the matter in the applicable non-bankruptcy forum; provided, further, however, that the Governmental Unit shall provide the Debtors and the Agent with reasonable notice and opportunity to cure any such alleged violation absent extenuating circumstances and/or to oppose the relief sought by such Governmental Unit. The Debtors and/or the Agent do not waive the right to argue that the conduct was in compliance with this Order and/or any applicable law, or preempted by applicable law.

43. If there is a dispute (a "Reserved Dispute") over the enforceability of a Liquidation Sale Law, resolution of such Reserved Dispute will take place before this Court, as provided herein and shall only operate prospectively.

44. Any time before the twentieth (20th) day following the service of this Order as provided for above, any Local Governmental Unit may assert a Reserved Dispute by sending a notice explaining the nature of the dispute to Debtors' and Agent's counsel at the applicable addresses set forth in the Agency Agreements. If the Debtors, the Agent and the objecting Local Governmental Unit (as the case may be, the "Objecting Party") are unable to resolve the Reserved Dispute within fifteen (15) days of receipt of the Objecting Party's notice, either party may file a motion with the Court requesting a resolution of the dispute (a "Dispute Resolution Motion"). If such a Dispute Resolution Motion is timely filed, the Debtors and the Agent shall each be entitled to assert that the provisions in question are preempted or otherwise rendered unenforceable by the Bankruptcy Code or applicable federal law and/or that neither the terms of this Order nor the conduct of the Store Closing Sales violates the Liquidation Sale Law. The timely filing of a Dispute Resolution Motion will not affect the finality of this Order or limit or interfere with the ability to conduct or to continue to conduct the Store Closing Sales pursuant to this Order and the Agency Agreements, absent further order of this Court. By timely filing a Dispute Resolution Motion, all Governmental Units shall be entitled to assert any jurisdictional, procedural or substantive argument that it might heretofore have been entitled to raise. Notwithstanding anything in the foregoing, any Local Governmental Unit may assert a Reserved Dispute at any time during the pendency of the Store Closing Sale by filing a Dispute Resolution Motion; provided, however, that the Agent shall be entitled to continue to conduct the Store Closing Sales pending resolution of the Reserved Dispute by an order of the Court.

45. Nothing herein shall be deemed to constitute a ruling on whether any nonbankruptcy state law, regulation, or rule applicable to the Store Closing Sales is preempted by the Bankruptcy Code nor as to whether the automatic stay applies nor is this Order a ruling with respect to whether sovereign immunity applies.

46. Other than as expressly provided for in the Agency Agreements, the Agent shall not be liable for any claims against the Debtors based, in whole or in part, directly or indirectly, on any theory of law or equity. Notwithstanding anything in this Order to the contrary, the term "Agent" shall also mean the "Sub-Agent" as such term is used in the Agency Agreement.

47. The Agent shall not be liable for sales taxes except as expressly provided in the Agency Agreements and the payment of such sale taxes is the responsibility of the Debtors. The Agent shall collect and remit sales taxes as and to the extent provided in the Agency Agreements.

48. All state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms "as is" or "final sales." The Agent shall accept return of any goods that contains a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within the time period prescribed by the Debtors' return policy that was in effect when the merchandise was purchased (except with respect to items purchased during the Store Closing Sales, in which case such items must be returned within twenty-one (21) days of purchase), the consumer must provide a receipt, and the asserted defect must in fact be a "latent" defect.

49. The Debtors, the Agent, and each of their respective officers, employees and agents shall be, and they hereby are, authorized to execute such documents and to do such acts as are necessary or desirable to carry out the Store Closing Sales and effectuate the Agency Agreements and the related actions set forth therein.

50. The Agent shall have the right to use the Closing Stores and all related store services, furniture, fixtures, equipment and other assets of the Debtors as designated in the Agency Agreements for the purpose of conducting the Store Closing Sales, free of any interference of any entity or person, subject to compliance with the Sale Guidelines and this Order.

51. The Purchaser shall grant to the Agent a limited license and right to use until the Sale Termination Date the trade names, logos and customer and mailing lists relating to and used in connection with the operation of the Closing Stores, solely for the purpose of advertising the Store Closing Sales in accordance with the terms of the Agency Agreements and the Sale Guidelines.

52. Subject to the terms of the Agency Agreements, any amounts due to the Agent pursuant to the Agency Agreements shall be free and clear of all Interests and shall be payable to the Agent out of the Proceeds (as defined in the Standby Agency Agreement) without further order of the Court and without the filing with the Court of fee applications.

53. Effective upon Closing and payment of the Initial Payment, Agent and Purchaser are hereby granted pursuant to section 364(c) of the Bankruptcy Code, a first priority security interest in and lien upon the Merchandise (as defined in the Agency Agreements), the Proceeds (as defined in the Agency Agreements), and such other collateral set forth in the Agency Agreements (collectively, the "Collateral") to secure all obligations of the Debtors to

Agent and Purchaser under the Agency Agreements and the Asset Purchase Agreement; provided, however, that (i) such lien shall be junior and subject to valid, preexisting liens and (ii) until payment of the balance of the Remaining Purchase Price, if any (which payments shall be made as provided for in the Asset Purchase Agreement) and Agent's reimbursement of Expenses (as provided for under the Agency Agreements), the security interests granted to the Agent and Purchaser shall remain junior to the liens of the Prepetition Secured Lenders in and to the Collateral to the extent of the unpaid portion of the Remaining Purchase Price and Expenses. The security interest granted to Agent and Purchaser under the Agency Agreements and the Asset Purchase Agreement shall be deemed properly perfected without the need for further filings or documentation.

54. Within three (3) business days of the Debtors' receipt of a notice of the Sale Termination Date for one or more of the Closing Stores pursuant to the Agency Agreements, the Debtors shall electronically file with the Court a notice disclosing the Sale Termination Date, and shall serve a copy of such notice on the affected landlord(s) for the subject Closing Stores; provided, however, such notice shall not serve as a rejection of the lease for such named Closing Store, and the Debtors shall have no obligation to serve such notice on the unaffected landlords or any other party in interest. In the event of an agreement between the Debtors and the Agent to extend the Store Closing Sales at a Closing Store beyond November 30, 2008, the Debtors shall electronically file a notice of such extension, and mail a copy of such notice to the affected landlord, counsel to each agent for the Prepetition Secured Lenders, counsel to the official committee of unsecured creditors, the U.S. Trustee, the attorney general for the state in which the subject Closing Store is located. Absent consent of the affected landlords, the Debtors shall file an expedited motion to extend the Store Closing Sales at the

Closing Stores, which motion shall be filed no later than November 21, 2008 on notice to affected landlords with a hearing to be held on or before November 28, 2008 and the objection deadline with respect thereto to be set at 4 p.m. the day prior to such hearing.

55. The Owned FF&E remaining in the Closing Stores as of the Sale Termination Date may, unless the affected lessor has been previously notified in writing by the Debtors or the Agent to the contrary at least three (3) days prior to the Sale Termination Date, be abandoned at the Closing Stores by the Debtors and/or the Agent; provided, however, that the Debtors shall provide any known third party holding or asserting an Interest in such Owned FF&E, including taxing authorities, with five (5) days' prior notice of such abandonment and if such third party fails to remove such Owned FF&E or to make arrangements to remove such Owned FF&E within such time as is deemed acceptable to the affected landlord prior to the expiration of such five (5) day notice period, such Owned FF&E shall be deemed abandoned by such third party and the affected landlord may dispose of such property without liability to any party; provided, however, that the abandonment of Owned FF&E authorized herein shall not impact the Debtors' obligation to leave the stores in an otherwise broom clean condition.

56. Before any sale or abandonment of computers (including software) and/or cash registers and any other point of sale equipment (collectively, "POS Equipment"), which may contain Personally Identifiable Information, the Debtors shall remove or cause to be removed the Personally Identifiable Information from the POS Equipment.

57. This Order constitutes an authorization of conduct by the Debtors and the Agent and nothing contained herein shall be deemed to constitute a ruling with regard to the sovereign immunity of any State, and the failure of any State to object to the entry of this Order shall not operate as a waiver with respect thereto.

58. To the extent that the disposition of the Debtors' assets would constitute the sale of an interest in a consumer credit transaction that is subject to the Truth in Lending Act or an interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time, then the purchaser shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

59. Nothing in this Order shall (a) alter or affect the Debtors' obligation to comply with section 365(d)(3) of the Bankruptcy Code or (b) alter or modify the rights of any lessor or other counterparty to a lease with the Debtors to file an appropriate motion or otherwise seek appropriate relief if the Debtors fail to comply with section 365(d)(3) of the Bankruptcy Code.

Distribution of Sale Proceeds and Related Provisions

60. The Sale Proceeds shall be distributed as follows: (A) at the Closing (as defined in the Asset Purchase Agreement), first, $2.5 million, less amounts, if any, paid by the Debtors to estate professionals subsequent to the Commencement Date (which $2.5 million shall be free and clear of any and all liens, claims and encumbrances, including the liens and claims of the Prepetition Secured Lenders), shall be distributed to Weil, Gotshal & Manges LLP to be held in escrow on account of the Carve Out (as defined in the Cash Collateral Order); second, $780,000 shall be set aside pursuant to Paragraph 64 of this Order; third, such amount as necessary to permanently reduce the Prepetition Revolver Obligations (other than the Prepetition Participation Obligations) (each as defined in the Cash Collateral Order) until all such obligations, less $1,000,000, are indefeasibly paid in full shall be distributed to GECC; fourth,

the last $1,000,000 of the Prepetition Revolver Obligations (other than the Prepetition Participation Obligations) shall be distributed to an escrow account, subject to existing liens and further order of the Court (the "Creditor Escrow"); fifth, $250,000 of the Prepetition Term Loan Obligations shall be distributed to the Creditor Escrow; and sixth, the remainder of the Initial Payment shall be distributed to holder(s) of the Prepetition Term Loan Obligations to reduce the Prepetition Term Loan Obligations (as defined in the Cash Collateral Order); and (B) after the Closing, first, the remaining Sale Proceeds shall be distributed to holder(s) of the Prepetition Term Loan Obligations to permanently reduce the remainder of the Prepetition Term Loan Obligations until indefeasibly paid in full; and second, any and all remaining Sale Proceeds shall be distributed to the Debtors, subject to existing liens and further order of the Court.

61. As disclosed at the Sale Hearing and as requested by the Purchaser, Steven Shore and Barry Prevor have agreed in good faith to purchase a junior last-out participation for $5 million at the time of the acquisition of the Prepetition Term Loan Obligations by the Purchaser, as set forth in an agreement between Steve Shore and Barry Prevor and Purchaser or an affiliate thereof (the "Participation Agreement"), in the Prepetition Term Loan Obligations (which are being purchased by the Purchaser) in order to facilitate the Sale. Notwithstanding anything in this Order to the contrary, such participation shall not on any basis be subject to attack, challenge, subordination, recharacterization, holdback or setoff by any party in interest (including by any trustee subsequently appointed in these cases) and shall be indefeasibly and timely paid in accordance with the distribution scheme set forth in Paragraph 60 hereof, subject only to the Participation Agreement. Nothing in this Order in any way limits the Committee's rights to Challenge the liens of the Prepetition Junior Participants with respect to the Prepetition Revolver Facility as provided in paragraph 18 of the Cash Collateral Order.

62. The Debtors agree to maintain their D&O Policies provided that within fifteen (15) business days of the Closing, the Prepetition Junior Participants shall pay all remaining outstanding amounts due with respect to director and officer insurance policies.

63. The Purchaser shall make the Transferred Employees available to the Debtors at no cost to the Debtors or their estates for such time and to the extent reasonably necessary to assist the Debtors in performing the tasks on Exhibit D hereto, all to the extent such services do not materially interfere with such Transferred Employee's responsibilities to the Purchaser.

64. There shall be set aside from the Sale Proceeds attributable to any sale located in the applicable jurisdiction of collateral subject to the Tax Authority Liens (as defined in the Cash Collateral Order) an amount equal to the claims (without double counting) of the Tax Authorities (as defined in the Cash Collateral Order and identified on Schedule D thereto, and which for purposes of this Order, shall include Chatham County Tax Commissioner) (as scheduled by the Debtors or as filed by the Tax Authorities) in a segregated account as adequate protection of the interests of the Tax Authorities. The Tax Authority Liens shall attach to such sale proceeds to the same extent and with the same priority as the Tax Authority Liens had on such collateral as of the Commencement Date; provided that the Prepetition Agents' (as defined in the Cash Collateral Order) and Prepetition Secured Lenders' respective liens on such collateral shall continue to the same extent and with the same priority as such liens had on such collateral as of the Commencement Date. Any such segregated funds may not be distributed other than by agreement between the Tax Authorities and the Debtors with the consent of the Prepetition Agents and Prepetition Secured Lenders, or by subsequent order of the Court upon notice and hearing. Nothing herein shall constitute an allowance of the claims of the Tax Authorities, a cap

on the amounts the Tax Authorities may be entitled to receive, or a finding or ruling by this Court that any such Tax Authority Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Statutory Committee, the Prepetition Agents (each as defined in the Cash Collateral Order), and the Prepetition Secured Lenders to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Tax Authority Liens and/or security interests.

65. This Order shall be without prejudice to the respective rights, obligations, and/or claims of the Prepetition Secured Lenders under that certain Intercreditor Agreement dated as of February 1, 2008 (as supplemented by that certain side letter between the Prepetition Revolver Agent and Prepetition Term Loan Agent dated June 20, 2008) between the Prepetition Revolver Agent and Prepetition Term Loan Agent (each as defined in the Cash Collateral Order). Upon Closing, any such rights, obligations, and claims shall be deemed forever waived, barred, and released.

Additional Provisions

66. The Sale includes the transfer of "Personally Identifiable Information" (as defined in Bankruptcy Code section 101(41A)). The U.S. Trustee is directed to appoint a Consumer Privacy Ombudsman under Bankruptcy Code sections 332 and 363(b)(1). The transfer of Personally Identifiable Information shall not be effective until a Consumer Privacy Ombudsman is appointed, issues its findings, and the Court has an opportunity to review the findings and issue any rulings that are appropriate. Pursuant to Section 2.3(c) of the Asset Purchase Agreement, the Purchaser shall cover any and all costs of a Consumer Privacy Ombudsman.

67. In accordance with Section 10.1(g) of the Asset Purchase Agreement, the Debtors are hereby authorized in their discretion and without further order of the Court to transfer the Intellectual Property (as defined in the Asset Purchase Agreement) set forth on Schedule 10.1(g)(ii) thereof to the Licensor (as defined in the Asset Purchase Agreement) in respect of the associated License (as defined in the Asset Purchase Agreement).

68. Nothing in this Order shall be deemed to modify the Debtors' rights to seek Court approval of any extension as may be required pursuant to section 365(d)(4) of the Bankruptcy Code.

69. Effective upon the Auction, the Committee released any and all claims and causes of action in respect of Prepetition Obligations (as defined in the Cash Collateral Order), other than claims or causes of action against the Prepetition Junior Participants or in connection with the Prepetition Participation Obligations. The Challenge Period (as defined in the Cash Collateral Order) is hereby deemed to have expired, and the Challenge Period Termination Date (as defined in the Cash Collateral Order) is hereby deemed to have occurred.

70. The Creditor Escrow and the funds therein shall be property of the Debtors' estates (as such term is defined in section 541 of the Bankruptcy Code).

71. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreements.

72. This Court retains exclusive jurisdiction with regard to all matters, claims, rights, issues or disputes arising from or related to the implementation of this Order and the relief provided for herein and to enforce and implement the terms and provisions of the Agreements, all amendments thereto, any waivers and consents thereunder, and of each of the agreements

executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the Sale Proceeds or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Agreements, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser and Agent against (i) any of the Excluded Liabilities or (ii) any Interests in the Debtors or the Purchased Assets, of any kind or nature whatsoever, attaching to the Sale Proceeds; (f) protect the Debtors, the landlords and/or the Agent from interference with the Store Closing Sales; and (g) resolve any disputes related to the Store Closing Sales or arising under the Agency Agreements or the implementation thereof; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Agreements or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

73. The Purchaser and the Agent each is a party in interest and each of them shall have the ability to appear and be heard on all issues related to or otherwise connected to the Agreements and the conduct of the Store Closing Sales.

74. The transactions contemplated by the Agreements are undertaken by the Purchaser and the Agent in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the sale of the Purchased Assets to the Purchaser (including the assumption, assignment and sale of any of the Assumed Contracts), any term or condition of such sale or the transactions contemplated thereby, or the sale of Store

Closing Assets by Agent in the Store Closing Sales, unless such authorization is duly stayed pending such appeal. In the absence of any person or entity obtaining a stay pending appeal, the Debtors, on the one hand, and the Purchaser and the Agent, on the other hand, are authorized to perform under the Agreements at any time, subject to the terms of the Agreements. The Purchaser is purchasing the Purchased Assets, and the Agent is conducting the Store Closing Sales, in good faith. Therefore, the Purchaser and the Agent shall each be afforded the protections of Bankruptcy Code § 363(m) as to all aspects of the transactions under and pursuant to the Agreements, if this Order or any authorization contained herein is reversed or modified on appeal.

75. The consideration provided by Purchaser and Agent for the Assets under the Agreements (i) is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n), and (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and under the laws of the United States.

76. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Assets in which the Debtors hold an interest hereby are directed to surrender possession of the Assets either to (i) the Debtors before the Closing Date, or (ii) to Purchaser and Agent on the Closing Date.

77. Solely with respect to the objections filed by The Collegiate Licensing Company, Rutgers, The State University of New Jersey and/or Syracuse University ("Licensors") and notwithstanding anything contained in this Order to the contrary, the Licensors' and the licensees' rights as and between each other are preserved, and the Licensors are not deemed to waive any claims against the licensees thereto, or against the Purchaser,

Agent, or Sub-Agent, including, but not limited to, claims relating to, or arising out of, any expiration of one or more of the Licensors, Licenses or applicable law.

78. Any amounts payable by the Debtors under the Agreements or any of the documents delivered by the Debtors in connection with the Agreements, shall be paid in the manner provided in the Agreements without further order of this Court.

79. The terms and provisions of the Agreements (including the Purchaser's acquisition of the estates' causes of action pursuant to Section 2.1(q) of the Asset Purchase Agreement) and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, the Purchaser, the Agent, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an Interest in the Purchased Assets to be sold to the Purchaser pursuant to the Asset Purchase Agreement or in the Store Closing Assets to be sold by the Agent pursuant to the Agency Agreements, notwithstanding any subsequent appointment of any trustee(s), party, entity or other fiduciary under any section of any chapter of the Bankruptcy Code or, as to which trustee(s), party, entity or other fiduciary such terms and provisions likewise shall be binding.

80. Nothing contained in any plan of reorganization or liquidation confirmed in the Debtors' chapter 11 cases or any order of this Court confirming such plans or in any other order in these chapter 11 cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agreements or the terms of this Order.

81. The provisions of this Order and the Agreements and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtors, or which may be entered converting

the Debtors' cases from chapter 11 to chapter 7 of the Bankruptcy Code, and the terms and provisions of the Agreements as well as the rights and interests granted pursuant to this Order and the Agreements shall continue in this or any superseding case and shall be specifically performable and enforceable against and binding upon the Debtors, their estates, the Purchaser, the Agent and their respective successors and permitted assigns, including any trustee, responsible officer or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, and shall not be subject to rejection, revocation or avoidance. Such binding effect is an integral part of this Order. Any trustee appointed in these cases shall be and hereby is authorized and directed to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Agreements, and the Purchaser and the Agent shall be and hereby are authorized to perform under the Agreements upon the appointment of a trustee without the need for further order of this Court.

82. The failure specifically to include any particular provisions of the Agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreements be authorized and approved.

83. The Agreements and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates and is filed on the docket with a statement of the Committee's "support" or no objection.

84. To the extent, if any, anything contained in this Order conflicts with a provision in the Agreements or the Sale Guidelines, this Order shall govern and control.

85. Notwithstanding the provisions of Interim Bankruptcy Rule 6004(h) and Bankruptcy Rule 6006(d), this Order shall not be stayed for ten days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtors, Purchaser and Agent intend to close the Sale as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

86. The provisions of this Order are nonseverable and mutually dependent.

87. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

88. The requirement set forth in Local Bankruptcy Rule 9013-1(b) that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or is otherwise waived.

Dated: August 22, 2008
New York, New York

/s/ Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	Case No. 05-60006 (RDD)
Refco Inc., et al.,	:	(Jointly Administered)
Debtors.	:	

ORDER AUTHORIZING THE DEBTORS TO SELL THE REGULATED COMMODITIES FUTURES MERCHANT BUSINESS AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN RELATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Upon the motion (the "Motion") of the above-captioned debtors and debtors-in-possession (the "Debtors") for entry of an Order (A) Authorizing the Debtors to Establish Notice, Bid and Sale Procedures for the Sale (the "Sale") of its Regulated Commodities Futures Merchant Business and the Assumption and Assignment of Certain Related Executory Contracts and Unexpired Leases (the "Acquired Business") and (B) Setting a Sale Hearing (the "Sale Order"); and the Court having considered the Motion and the "Execution Copy" of the Agreement[1] (annexed hereto), the objections and statements of counsel on the record at the November 10, 2005 hearing (the "Sale Hearing") and the modifications to and clarifications of the proposed Sale presented at the Hearing; and it appearing that the relief request in the Motion, as modified at the Sale Hearing, is in the best interests of the Debtors' bankruptcy estates, their

[1] Headings shall not be construed to affect the substantive rights of parties, but are intended to serve as references only. Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement, dated as of November 13, 2005 by and among Man Financial Inc., as Buyer, and Refco Inc., Refco Group Ltd., LLC, Refco Global Holdings, LLC, Refco Global Futures LLC, Refco LLC, Refco (Singapore) PTE Limited, Refco Canada Co., Refco Overseas Ltd., and certain affiliates of Refco LLC as Sellers (the "Agreement").

creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

A. **Jurisdiction and Venue**. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory predicates**. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, 365 and 1146(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

C. **Procedures Order**. This Court entered an Order (A) Authorizing the Debtors to Establish Notice, Bid and Sale Procedures for the Sale of its Regulated Commodities Futures Merchant Business and the Assumption and Assignment of Certain Related Executory Contracts and Unexpired Leases and (B) Setting a Sale Hearing (the "Bid Procedures Order") on October 26, 2005 and, at the request of the Official Committee of Unsecured Creditors (the "Committee"), an order clarifying certain aspects of the Bid Procedures Order on November 5, 2005 (the "Clarifying Order" and together with the Bid Procedures Order, the "Procedures Order"). The Bid Procedures Order and Clarifying Order have become final and non-appealable orders.

D. **Notice**. As evidenced by the affidavits of service and publication filed with this Court and based on representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale and the

transactions contemplated thereby, including the assumption and assignment of the customer accounts and the other executory contracts and unexpired leases of Refco LLC and the other Sellers to the Buyer (as such terms are defined below), has been provided in accordance with Bankruptcy Code sections 102(1), 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006; (ii) such notice was good, sufficient and appropriate under the circumstances and complied with the Procedures Order; and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale or the transactions contemplated thereby, is or shall be required.

E. **Opportunity to Object**. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been given, in light of the exigent circumstances, to all interested persons and entities, including the following: (i) the Office of the United States Trustee; (ii) the Buyer; (iii) the Committee; (iv) the administrative agent (the "Agent") for the Debtors' prepetition lenders (the "Bank Group"); (v) all entities known to have expressed an interest in acquiring any of the Assets (defined below); (vi) all regulatory authorities or recording offices that have a reasonably known interest in the relief requested in the Motion; (vii) all known creditors of the Debtors and Refco LLC; and (viii) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of the Notice.

F. **Chapter 11 and Chapter 7 Procedures**. The Agreement contemplates the sale of assets (the "Assets") owned by certain of the Debtors and of the non-Debtors Refco LLC ("Refco LLC"), Refco (Singapore) Pte. Ltd. ("Refco Singapore"), Refco Hong Kong Ltd. ("Refco Hong Kong"), Refco Overseas, Ltd. ("ROL"), Refco Taiwan, Ltd. ("Taiwan"), and Refco Canada Co. (collectively, together with other Refco affiliates becoming Sellers pursuant to the Agreement, the "Sellers"), to Man Financial Inc. or its designee (Man Financial Inc. and such

designee collectively, the "Buyer"). The Debtors have represented that if the Court approves the Agreement in these cases, the Debtors intend to cause Refco LLC to file a petition under Chapter 7 of the Bankruptcy Code, and this Order is premised upon such representation. After that petition is filed, the Debtors will file a motion in the Chapter 7 case seeking expedited approval of the sale of assets of Refco LLC pursuant to the Agreement and the transfer of customer accounts consistent with 11 U.S.C. § 766(c) and (d) and 17 C.F.R. Part 190, the Chicago Mercantile Exchange's (the "CME") rules, and the rules, bylaws and other applicable regulations, orders and directives of the New York Mercantile Exchange, Inc. (the "NYMEX Rules").

G. **Free and Clear**. Subject to the terms of this Sale Order, including paragraph 5 hereof, the Debtors may sell the Assets owned by them free and clear of all Interests (as defined herein) because each entity with an Interest in such Assets to be transferred by them on the Closing Date (i) has, subject to the terms and conditions of this Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and, therefore, 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 Interests in the Debtors' Assets who did not object, or who withdrew their objections, to the Sale Motion are deemed, subject to the terms of this Order, to have consented pursuant to Bankruptcy Code section 363(f)(2). All those holders of Interests in the Debtors' Assets, including those who did object, are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale ultimately attributable to the property of the Debtors against or in which they claim an Interest, subject to the terms of such Interests with the same validity, force and effect which they have against such Assets as of the Closing Date, subject to any rights,

claims and defenses the Debtors' estates and Sellers, as applicable, may possess with respect thereto.

H. **Sale in Best Interests**. Good and sufficient reasons for approval of the Agreement and the Sale have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, Sellers, their estates, their creditors and other parties in interest. Without limiting the foregoing, the Court finds that the Debtors' actions to cause Refco LLC and the other non-Debtor Sellers to perform the Agreement are in the best interests of the Debtors and such non-Debtor Sellers.

I. **Business Justification**. The Sellers have demonstrated both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the Sale other than in the ordinary course of business pursuant to Bankruptcy Code section 363(b), in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates and the Assets of the non-Debtor Sellers; the Sale will provide the means for the Sellers to maximize distributions to all of their creditors and for the regulated non-debtor Sellers, including Refco LLC, to protect their customers' accounts and property. Entry of an order approving the Agreement and all the provisions thereof is a necessary condition precedent to the Buyer consummating the transactions contemplated by the Agreement.

J. **Arm's-Length Sale**. The Agreement was negotiated, proposed and entered into by the Sellers and the Buyer without collusion, in good faith and from arm's-length bargaining positions after the conclusion of an open auction in which the Buyer was the winning bidder. The Buyer is not an "insider" of any of the Sellers, as that term is defined in Bankruptcy Code section 101. Neither the Sellers nor the Buyer have engaged in any conduct that would

cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). Specifically, the Buyer has not acted in a collusive manner with any person and the Purchase Price was not controlled by any agreement among bidders.

K. **Good Faith Purchaser**. The Buyer is a good faith purchaser under Bankruptcy Code section 363(m) and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of Bankruptcy Code section 363(m) in closing the transactions contemplated by the Agreement.

L. **Consideration**. The consideration provided by the Buyer to the Sellers under the Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, and (iii) constitutes reasonably equivalent value (as that term is defined in each of the Uniform Fraudulent Transfer Act and Section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

M. **No Intentional Fraudulent Transfer**. 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 state, territory, possession, or the District of Columbia. Neither Buyer nor the Sellers are entering into the transactions contemplated by the Agreement fraudulently.

N. **Free and Clear**. The transfer of the Assets to the Buyer under the Agreement will be a legal, valid, and effective transfer of the Assets, subject to all valid and enforceable Interests in the Assets of the non-Debtor Sellers, and will vest the Buyer with all right, title, and interest of the Debtors to the Assets free and clear of liens, mortgages, security interests, conditional sales or other title retention agreements, pledges, claims, judgments,

demands, Excluded Liabilities, constructive trusts, and encumbrances (including, without limitation, liens, claims, and encumbrances: (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtors' interests in the Assets or the Buyer's interests therein after Buyer's purchase thereof from the Debtors; (ii) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, or (iii) arising under or with respect to environmental laws) (collectively, the "Interests"), with all such non-assumed Interests to attach to the Debtors' interest in the proceeds of the Sale (the "Sale Proceeds") with the same force and effect and in the same order of priority as they had as of the Closing Date, subject to any rights, claims and defenses of the Debtors' estates or Sellers, as applicable, with respect thereto.

O. **Scope of Authorization**. Notwithstanding anything to the contrary herein, the Debtors are not authorized to sell and are not selling any interests in such Assets in which they do not hold an interest, and are authorized to sell and are selling only their interests in the Assets under the Agreement.

P. **Not a Successor**. The Buyer (a) is not a successor to the Sellers or Refco LLC, (b) has not, de facto or otherwise, merged with or into the Debtors or Refco LLC, (c) is not a continuation or substantial continuation of the Debtors or any enterprise of the Debtors or Refco LLC, (d) does not have a common identity of incorporators, directors or equity holders with any of the Debtors or Refco LLC, and (e) is not holding itself out to the public as a continuation of the Sellers.

Q. **Prompt Consummation of Sale**. The Sale must be approved and consummated promptly in order to preserve the viability of the businesses subject to the Sale as

going concerns, to maximize the value of the Debtors' estates and to protect the interests of the customers of the non-Debtor Sellers. The Sale is in contemplation of, and a necessary condition precedent to, a reorganization plan for the Debtors and, accordingly, constitutes a transfer to which Bankruptcy Code section 1146(c) applies.

R. **Additional Asset Sales**. Authority under this Sale Order for the Debtors to enter into and consummate the Initial Closing and Subsequent Closings, as provided in the Agreement, without further Order of the Bankruptcy Court is a necessary condition precedent to Buyer consummating the transactions contemplated by the Agreement.

S. **Contract Assignment in Best Interest**. Subject to the right of any non-Debtor contract party to object to the assumption and assignment of its contract or lease, as provided herein, the Debtors have demonstrated that assuming and assigning certain executory contracts and unexpired leases (the "Contracts") in connection with the Sale is an exercise of their sound business judgment, and that such assumption and assignment is in the best interests of the Debtors' estates.

T. **Cure of Defaults**. The assumption and assignment procedures (the "Assumption and Assignment Procedures") established in this Sale Order provide adequate assurance of cure of any default existing before the date on which any such Contract is assumed and assigned, within the meaning of Bankruptcy Code section 365(b)(1)(A). The Assumption and Assignment Procedures further provide an adequate opportunity for non-Debtor contract parties to object to the proposed assumption and assignment of such Contracts and adequate assurance of compensation to any counterparty to such Contracts for any of their actual pecuniary losses resulting from any default arising prior to the date on which any such Contract is assumed and assigned, within the meaning of Bankruptcy Code section 365(b)(1)(B).

U. **Personally Identifiable Information**. The Sale may include the transfer of "personally identifiable information," as defined in Bankruptcy Code section 101(41A). However, no "consumer privacy ombudsman" need be appointed because the Buyer has agreed to adopt the Sellers' privacy policy. See 11 U.S.C. § 363(b)(1)(A).

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted**. The Motion as modified on the record at the Sale Hearing is GRANTED as provided herein (other than with respect to matters previously addressed by the Procedures Order).

2. **Chapter 7 Case**. The Debtors are authorized to cause Refco LLC to file a Chapter 7 petition and to implement its performance of the Agreement.

3. **Objections Overruled**. Any objections to the entry of this Sale Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits with prejudice.

4. **Approval**. The Agreement and all of the terms and conditions thereof, including, but not limited to, the sale of the Assets, execution of the Transition Services Agreement, and the indemnification provisions in exchange for the purchase price, as set forth in the Agreement, are hereby approved.

i. **Chapter 7 Case**. Before the Debtors and the non-Debtor Sellers consummate the Agreement, Refco LLC shall have commenced a Chapter 7 case, and Refco LLC and the Chapter 7 trustee in such case shall have complied with:

A. The requirements of subchapter IV of Chapter 7 of the Bankruptcy Code necessary for the Sellers to consummate the Agreement;

B. The applicable requirements of the Commodity Exchange Act and Title 17 of the Code of Federal Regulations, including Part 190 --"Bankruptcy;"

C. The applicable requirements of the CME rules; and

D. The applicable requirements of the NYMEX Rules.

ii. **Chapter 7 Sale Order**. Before the Debtors and the non-Debtor Sellers consummate the Agreement, Refco LLC shall have commenced a Chapter 7 case and an order in a form reasonably satisfactory to the Buyer shall have been entered therein that shall provide protections for Buyer comparable to those provided for herein, and shall also provide:

A. That the proposed transfer, under Bankruptcy Code sections 766(c) and (d) and consistent with 17 C.F.R. Part 190, the CME rules, and the NYMEX Rules, of specifically identifiable customer securities, property, or commodity contracts of Refco LLC to the Buyer in accordance with this Agreement is approved;

B. That the transfer referred to in clause "(A)" above may not be avoided, in accordance with Bankruptcy Code section 764(b); and

C. For the assumption and assignment pursuant to Bankruptcy Code section 365 to Buyer, under the Agreement, of any executory contracts or unexpired leases to which Refco LLC is a party.

The foregoing notwithstanding, and without limiting Buyer's rights under the Agreement, nothing in section 4(ii) of this Order shall be construed to specifically direct the Chapter 7 trustee to act in a manner inconsistent with his or her independent fiduciary duty to administer Refco LLC's estate.

5. **Authorization**. Provided the requirements of paragraph 4 above are met, the Debtors are authorized under Bankruptcy Code sections 363(b) and (f) to consummate the Sale, pursuant to and in accordance with the terms and conditions of the Agreement; provided, however, that notwithstanding anything contained in the Agreement or this Order, in no event shall the Debtors transfer or sell to the Buyer (and the term "Assets" herein shall not include) any "securities" (as defined in section 101(49) of the Bankruptcy Code), any "customer property" (as defined in sections 741(4) and 761(10) of the Bankruptcy Code), other similar instruments, futures, forwards and options, or cash, owned or held by, or held on behalf of, directly or indirectly, Refco Capital Markets, Ltd. or Refco Securities LLC, wherever located; and provided further, that nothing contained in this limitation shall constitute a determination or ruling as to any party's rights in such securities, customer property, similar instruments, futures, forwards and options, if any, or cash. Delivery by the Chapter 7 trustee under paragraph 4 hereof of such notice of the assumption and assignment of the customer accounts and the other executory contracts and unexpired leases of Refco LLC, as required by the Commodity Exchange Act and 17 C.F.R. Part 190, the CME rules, and the NYMEX Rules, together with the notice described in paragraph D above shall constitute good and sufficient notice for all purposes of the Bankruptcy Code, including sections 363(f) and 365.

6. **Implementation**. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate and implement, the Agreement, along with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be requested by the Buyer for the purpose of transferring the Assets to the Buyer or as may be necessary or appropriate to the performance of the obligations contemplated by the Agreement, as soon as reasonably possible.

7. **Free and Clear**. Except as expressly permitted or otherwise specifically provided for in the Agreement or this Order, pursuant to Bankruptcy Code sections 363(f) and 105(a), the Debtors' interests in the Assets shall be transferred to the Buyer and, as of the Closing Date, shall be free and clear of (a) all Interests, and (b) all debts arising under, relating to, or in connection with any acts of the Debtors, Excluded Liabilities, claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guaranties, options, rights, contractual commitments, restrictions, set off or recoupment rights, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, claims and encumbrances (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of any of the Debtors' or the Buyer's interests in such Assets, or any similar rights, (ii) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, "Claims"), with all such non-assumed Interests and Claims to attach to the Debtors' interests in the Sale Proceeds, in the order of their priority, with the same validity, force and effect which they have against the Assets as of the Closing Date, subject to any rights, claims and defenses the Debtors' estates and Sellers, as applicable, may possess with respect thereto.

8. **No Liability for Liens or Excluded Liabilities**. Except for the Assumed Liabilities, none of the Buyer or its Affiliates, Members or Shareholders of the Purchased Entities, or the Acquired Assets of the Debtors, will have any liability whatsoever with respect to

Excluded Liabilities or Liens on such Assets arising in respect thereof, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly.

9. **Valid Transfer**. The transfer of the Assets to the Buyer pursuant to the Agreement constitutes a legal, valid and effective transfer of the Debtors' interests in the Assets, and shall vest the Buyer with all right, title and interest of the Debtors' interests in and to the Assets free and clear of all Claims and Interests of any kind or nature whatsoever.

10. **General Assignment**. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Assets or a bill of sale transferring good and marketable title in such Assets to the Buyer. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

11. **Injunction**. Except as expressly permitted by the Agreement or by this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, holding Interests or Claims of any kind or nature whatsoever against or in the Debtors or the Debtors' interests in the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Debtors' businesses before the Closing Date or the transfer of the Debtors' interests in the Assets to the Buyer, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing against the Buyer, its

property, its successors and assigns, its affiliates or the interests of the Debtors in such Assets, such persons' or entities' Interests or Claims. Following the Closing Date, no holder of an Interest in or Claim against the Debtors shall interfere with Buyer's title to or use and enjoyment of the Debtors' interests in the Assets based on or related to such Interests or Claims, and all such Claims and Interests, if any, shall be, and hereby are transferred and attached to the Debtors' interests in the Sale Proceeds as provided in this Sale Order in the order of their priority, with the same validity, force and effect which they have against such Assets as of the Closing Date, subject to any rights, claims and defenses that the Debtors' estates and Sellers, as applicable, may possess with respect thereto.

12. **No Successor Liability**. Except for the Assumed Liabilities, the transfer of the Assets to the Buyer under the Agreement shall not result in (i) the Buyer having any liability or responsibility for any claim against the Debtors or against an insider of the Debtors, or (ii) the Buyer having any liability or responsibility to the Sellers except as is expressly set forth in the Agreement. Without limiting the effect or scope of the foregoing, to the fullest extent permitted by law, the transfer of the Assets from the Sellers to the Buyer does not and will not subject the Buyer or its affiliates, successors or assigns or their respective properties (including the Assets) to any liability for claims (as that term is defined in section 101(5) of the Bankruptcy Code) against the Debtors or the Debtors' interest in such Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither the Buyer nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Assets, to (a) be a successor to the Sellers; (b) have, de facto or otherwise, merged with or into the Sellers; or (c) be a continuation or substantial continuation of the Sellers or any enterprise of the Sellers. Neither

the Buyer nor its affiliates, successors or assigns is acquiring or assuming any liability, warranty or other obligation of the Debtors, including, without limitation, any tax incurred but unpaid by the Debtors before the Closing Date, including, but not limited to, any tax, any fine or penalty relating to a tax, or any addition to a tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in the Agreement.

13. **Authorization to Release Liens**. If any Person that has filed any financing statement, mortgage, mechanic's lien, lis penden or other document or instrument evidencing liens or security interests or other encumbrances ("Liens") with respect to the Debtors' interests in the Assets, shall have failed to deliver to the Debtors and Buyer prior to the Closing, in proper form for filing and executed by the appropriate Person or Persons, termination statements, instruments of satisfaction, releases of all such Liens which such Person has with respect to such Assets then the Debtors are authorized to execute and file such statements, instruments, releases and other documents on behalf of such Person appropriately limited in scope to such Assets, and Buyer is authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens on such Assets as of the Closing Date.

14. **Release of Liens**. This Order is and shall be effective as a determination that all Liens shall be, and are, without further action by any person or entity, released with respect to the Debtors' interests in the Assets as of the Closing Date.

15. **Binding Effect of Sale Order**. This Sale Order shall be binding upon and shall govern the acts of all entities, 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, state and local officials, and all other persons and entities 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 of the Assets.

16. **Exemption from Stamp Taxes**. The transactions contemplated by the Agreement, and the execution, delivery and/or recordation of any and all documents or instruments necessary or desirable to consummate the transactions contemplated by the Agreement shall be, and hereby are, exempt from the imposition and payment of all recording fees and taxes, stamp taxes, and/or sales, transfer or any other similar taxes, pursuant to section 1146(c) of the Bankruptcy Code, provided and on the condition that, the Debtors confirm a chapter 11 plan for which the Sale was a necessary predicate on or before a reasonable period after the closing of the Agreement. The instruments transferring the Assets, and the Other Assets shall contain the following endorsement:

> "Because this instrument has been authorized pursuant to Order of the United States Bankruptcy Court for the Southern District of New York relating to a chapter 11 plan of the grantor, it is exempt from transfer taxes, stamp taxes or similar taxes pursuant to 11 U.S.C. § 1146(c) to the extent provided by such Order."

17. **Assignment of Contracts**. Subject to the terms of the Agreement and this Sale Order, in accordance with Bankruptcy Code sections 363, 365 and 105(a), the Debtors are hereby authorized to assume and assign Contracts, including customer account agreements, to which they are a party to the Buyer in accordance with the following procedures.

18. The Debtors may provide notice, together with the Notice of Assumption and Assignment of, and Amounts Necessary to Cure Defaults under, Contracts and Leases

Proposed to be Assumed and Assigned to Potential Purchaser mailed on November 7, 2005 and November 8, 2005 (an "Assumption Notice") to the counterparty to a Contract which the Debtors seek to assume and assign, which shall include the prepetition cure amount, if any (the "Cure Amount"), asserted by the Debtors with respect to such Contract, and the effective date of such assumption and assignment (the "Assignment Effective Date"). The counterparty to such Contract shall have ten days from the date the Assumption Notice is served to object to the Cure Amount, if any, and to object to the assumption and assignment of the Contract. If the counterparty to the Contract does not file an objection by such deadline, the counterparty to the Contract shall be deemed to consent to (i) the Cure Amount, if any, and (ii) the assumption and assignment of the Contract, and the Contract shall be assumed and assigned as of the Assignment Effective Date. The Debtors shall pay any Cure Amount due on, or as soon as practicable, after the Assignment Effective Date.

19. **Assumption and Cure Objections**. In the event the counterparty to a Contract files an objection to the cure amount or to the assumption and assignment of a Contract, such objection shall be scheduled for a hearing at the convenience of the Court. The Debtors shall request such a hearing date or dates (each, an "Assumption Hearing") from the Court, will provide any objecting party notice of such Assumption Hearing, and will state in the notice whether such Assumption Hearing will be a status conference or an evidentiary hearing. In the event an objection is solely as to the appropriate Cure Amount, the Debtors shall pay the undisputed portion of any Cure Amount upon, or as soon as practicable after, the Assignment Effective Date, the Contract shall be deemed assumed and assigned as of the Assignment Effective Date, and any disputed Cure Amounts shall be reserved pending final determination by

the Court as provided herein.[2] The Debtors shall fund a reserve (the "Cure Reserve") equal to the disputed portion of the Cure Amount, or such other amount as agreed to by the parties or set by the Court. The Debtors and the Contract counterparties shall have 90 days from the date of assumption and assignment to informally resolve the cure dispute. If a resolution cannot be reached within such period, the Debtors shall notice the cure objection for a status conference to be held at the convenience of the Court. The sole source of recovery for a Contract counterparty's cure claim against the Debtors shall be the funds reserved for such Contract in the Cure Reserve. The consent of the Buyer to the procedures set forth in this paragraph and the preceding paragraph shall not affect any claim the Buyer may have under the Agreement relating to or arising out of a failure by the Debtors to effectuate the assumption and assignment of any particular Contract.

20. **Bankruptcy Code Sections 365(b)(1) and 365(f)(2)**. Subject to the consents or Court determinations provided in paragraphs 17-19 hereof, the requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code are hereby deemed satisfied with respect to the Contracts.

21. **Ipso Facto Clauses Ineffective**. Upon Debtors' assignment of the Contracts to the Buyer under the provisions of this Sale Order and any additional order contemplated by paragraphs 17-19 hereof, no default shall exist under any Contract, and no counterparty to any Contract shall be permitted to declare a default by the Buyer under such Contract or otherwise take action against the Buyer as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Contract.

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[2] The Debtors reserve the right to withdraw a request to assume and assign any Contract.

22. **Bankruptcy Code Section 363(n)**. The consideration provided by the Buyer for the Assets under the Agreement is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n).

23. **Good Faith**. The transactions contemplated by the Agreement are undertaken by the Buyer in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyer, unless such authorization is duly stayed pending such appeal. The Buyer is a good faith purchaser of the Assets, and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

24. **Retention of Jurisdiction**. This Court retains jurisdiction to enforce and implement the terms of the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of Assets to the Buyer, (b) protect the Buyer against any of the Excluded Liabilities, (c) resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, and (d) interpret, implement and enforce the provisions of this Sale Order.

25. **Surrender of Possession**. Subject to the requirements of Bankruptcy Code section 365 as to executory contracts and unexpired leases, all entities who on the Closing Date may be, in possession of some or all of the Assets in which a Debtor holds an interest are directed to surrender possession of such Assets or Debtor's interest therein either to (i) the Debtors immediately prior to the Closing Date, or (ii) to the Buyer on the Closing Date.

26. **Administrative Priority Expense**. Any amounts payable by the Debtors under the Agreement or any of the documents delivered by the Debtors in connection with the Agreement shall be paid in the manner provided in the Agreement without further order of this Court, and shall not be discharged, modified or otherwise affected by any reorganization plan of any of the Sellers or Debtors, except by agreement with Buyer, its successors, or assigns. Without limiting the generality of the foregoing, Buyer's indemnities under and to the extent provided in the Agreement are hereby granted a superpriority lien pursuant to Section 364(d) of the Bankruptcy Code on all assets of the Debtors which are Sellers, as well as a superpriority administrative claim against the estates of the Debtors which are Sellers, which superpriority lien and superpriority claim shall (except as hereinafter provided) be senior and prior to all Liens created on property of the Debtors which are Sellers after the date hereof and all claims for expenses of administration of the Debtors which are Sellers under Section 503(b) of the Bankruptcy Code, provided, however, that such superpriority liens and claims shall be subject and subordinate to (i) all valid and perfected Liens existing on the date of commencement of these cases and the Claims secured thereby, as well as any Liens and Claims provided as adequate protection therefor, including, without limitation, all Liens and Claims of the Bank Group, and (ii) any post-petition financing providing new funds to the Debtors. If the order approving the Sale in the Chapter 7 case of Refco LLC referred to in paragraph 4 of this Sale Order provides that Buyer's indemnities are granted a super-priority lien pursuant to section 364(d) of the Bankruptcy Code on the assets of Refco LLC, as well as a super-priority administrative claim against the estate of Refco LLC, which lien and claim shall not be junior to any Lien or Claim against Refco LLC, then the aggregate amount of Buyer's indemnities over and above the escrow holdback shall be limited to the sum of (x) the Purchase Price, to the extent

paid, (y) the $58,000,000 sum of the liquidated damages amounts that are estimates of liquidation costs for certain geographically delimited operations of the Sellers, and (z) an additional $100,000,000 estimate of the aggregate amount of absolute and contingent Assumed Liabilities, it being understood that Sellers shall have the right to seek a further determination from the Court as to the actual amount of such Assumed Liabilities, which shall be used instead of such estimate for this purpose if such actual amount is determined by the Court to be less than such estimate. For avoidance of doubt, any superpriority granted pursuant to the preceding sentence will not adversely affect the priority of the Liens and Claims of the Bank Group in respect of their borrowers, their guarantors or the properties of the respective estates of their borrowers or guarantors, as set forth in the proviso to the second sentence of this paragraph 26.

27. **Binding on Successors**. The terms and provisions of the Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, the Buyer and its respective affiliates, successors and assigns, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) of the Debtors under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

28. **Bulk Sale Laws**. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the Agreement.

29. **Restricted Sale Proceeds**. Each Debtor (and Refco LLC, when it becomes a debtor under the Bankruptcy Code) shall deposit all amounts payable to it under the Agreement (other than amounts to be deposited, if required, in the Escrow Account or the Excepted Account Escrow, as defined in the Agreement) into a segregated investment account (a "Proceeds Account"), and such proceeds shall be invested, subject to the terms of this Order, in

accordance with investment guidelines approved by the Court or guidelines otherwise reasonably acceptable to the Agent, the Committee and the Debtors after notice to the Debtors, the Agent and the Creditors Committee, and a hearing.

30. **Fund Disbursements.** Unless otherwise ordered by the Court or required by the Agreement, none of the Debtors (and Refco LLC, when it becomes a debtor under the Bankruptcy Code) shall make any disbursements of Sale Proceeds, except such Sellers may use the proceeds of Assets sold by them to Buyer to pay allowed administrative expenses incurred by them in the ordinary course of their respective businesses, including any pre-assumption obligations under Bankruptcy Code section 365, and other amounts (including Cure Amounts) to the extent authorized to be paid by order of the Court.

31. **Allocation**. The rights of all parties in interest in respect of the proper allocation among the Sellers of Sale Proceeds and liabilities to Buyer in respect to the Agreement are reserved, as among themselves (and without impairing or affecting in any way Buyer's rights under the Agreement), subject to the further order of the Court. The Debtors shall provide proper notice, including to the Committee and the Agent of any proposed allocation of such proceeds or liabilities, and, in the event of any dispute in respect of any such allocation, the Debtors shall seek a Court order approving such allocation on notice to all parties in interest.

32. **Notice of Certain Transactions**. Except as required by the Agreement, prior to any distribution of Sale Proceeds other than amounts permitted to be paid under paragraph 30 of this Sale Order, or in connection with other matters required to be heard by the Court in these cases, each Debtor and Seller will obtain Court approval on notice to parties in interest, including the Agent and the Committee.

33. **Preservation of Certain Records**. Subject to further order of the Court, the Debtor, the Sellers and the Buyer are hereby ordered to take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, the books and records and any other documentation, including tapes or other audio or digital recordings and data in or retrievable from computers or servers, relating to or reflecting the accounts, property and trading records of the customers of the Debtors or of the non-Debtor Sellers whose accounts are a part of the Assets being sold under the Agreement or are excluded from the definition of "Assets" under paragraph 5 of this Sale Order. In addition, the Debtors and the Committee shall promptly identify reasonable procedures for preserving information in the Sellers' possession related to potential claims that the Debtors may have against third parties, and the Sellers and the Buyer shall maintain and preserve such information, subject to further order of the Court until the consummation of any chapter 11 plan for the Debtors.

34. **Accounting**. The Sellers shall provide to the other Debtors and to the Agent and the Committee a monthly accounting of the cash and cash investments of, and of disbursements by each Seller including without limitation, cash and cash investments maintained in the Proceeds Account.

35. **Sale Proceeds**. Any and all valid and perfected Liens on the Assets of any Debtor that are transferred under the Agreement shall attach to any Sale Proceeds of such Assets immediately upon receipt of such proceeds by such Debtor (or any party acting on such Debtor's behalf) in the order of priority, and with the same validity, force and effect which they have against such Assets as of the Closing Date, subject to any rights, claims and defenses the Debtors' estates or the Sellers, as applicable, may possess with respect thereto, and, in addition to any limitations on the use of such proceeds pursuant to paragraph 30 or any other provision of

this Order, no such proceeds (whether maintained in a Proceeds Account or otherwise) shall be used by the Debtors without the consent of the party or parties claiming an Interest therein or further order of the Court after notice (to all parties that claim an Interest in such proceeds) and hearing, consistent with the requirements of the Bankruptcy Code.

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

37. **Subsequent Plan Provisions**. Nothing contained in any chapter 11 plan confirmed in these cases (a "Plan") or any order confirming any such plan or in any other order in these cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) (a "Subsequent Order") shall alter, conflict with, or derogate from, the provisions of the Agreement or this Order. Notwithstanding any language in any such Plan or Subsequent Order no such Plan or Subsequent Order will be construed to alter, conflict with, or derogate from, the provisions of the Agreement or this Sale Order without the Buyer's express written consent.

38. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreement be authorized and approved in its entirety, provided, however that this Sale Order shall govern if there is any

inconsistency between the Agreement and this Sale Order. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

39. **No Stay of Order**. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and 6006(d), this Sale Order shall not be stayed for ten days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtors and Buyer intend to close the Sale as soon as practicable (subject to the conditions of the Agreement). Therefore, any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay of this Sale Order, or risk its appeal being foreclosed as moot.

Dated: November 14, 2005
New York, New York

/s/ ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

- -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 19, 2008

4:36 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

that we all recognize that we're engaged in something here that's very special. This is the most momentous bankruptcy hearing I've ever sat through either as a lawyer or as a judge. And I'm guessing I'm not alone in that sense.

One could be a theoretical bankruptcy jurist and say transactions such as this should always be subject to more time so that parties can better assess the consequences of the transactions. Bankruptcy Rule 6003 which was enacted recently was designed among other things to slow down activities in the first twenty days of big bankruptcy cases. This is Friday. This case was filed on Monday. What we're doing is unheard of but imperative.

I am completely satisfied that I am fulfilling my duty as a United States bankruptcy judge in approving this transaction and in finding that there is no better or alternative transaction for these assets, that the consequences of not approving a transaction could prove to be truly disastrous. And those adverse consequences are meaningful to me as I exercise this discretion. The harm to the debtor, its estates, the customers, creditors, generally, the national economy and the global economy could prove to be incalculable.

Moreover, it's not just about avoiding harm. Approving the transaction secures whether for ninety days or for a lifelong career employment for 9,000 employees at Lehman, and holds together an operation the value of which is really

someone could argue that there is a similar emergency. It's hard for me to imagine a similar emergency.

And so, as to those objectors who say it would be establishing bad precedent to approve this transaction, I say no. This is not a bad precedent. To the contrary. It's an extraordinary example of the flexibility that bankruptcy affords under circumstances such as this. It's an example that creative minds working diligently day and night even under the worst of circumstances can create remarkably complicated transactions that preserve value. I am proud to have been part of this process.

I'm also satisfied that if everybody stays who needs to comment on the order that some of the legal issues that have been raised during the objection phase of this hearing can be addressed. I note the arguments made by Mr. Bienenstock on behalf of the Walt Disney Company, that I can't do anything that's illegal. And he's right. However, it's not illegal to enter orders that include from time to time language that people dispute or language that may be ambiguous or language that might have been better drafted. I regret to say that I think I do it every day. And most of it's because I enter orders that you draft. So, I don't think it's illegal for me to do something that may lead to an argument in the future as to what the language of the order means.

As far as Mr. Rosner's arguments are concerned and

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
LEHMAN BROTHERS HOLDINGS INC., *et al.*	:	**08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**

ORDER (I) APPROVING THE BREAK-UP FEE AND EXPENSE REIMBURSEMENT, (II) CERTAIN MATTERS RELATING TO COMPETING BIDS, IF ANY, (III) APPROVING THE FORM AND MANNER OF SALE NOTICES AND (IV) SETTING THE SALE HEARING DATE IN CONNECTION WITH THE SALE OF CERTAIN OF THE DEBTORS' ASSETS

Upon the motion, dated September 17, 2008 (the "Motion"),[1] of Lehman Brothers Holdings, Inc. ("LBHI") and LB 745 LLC ("LB 745"), as debtors and debtors-in-possession (collectively, the "Debtors" and, together with their non-debtor affiliates, "Lehman") for orders pursuant to 11 U.S.C. §§ 105, 363, 364(c)(1) and 365 and Fed. R. Bankr. P. (the "Bankruptcy Rules") 2002, 6004, 6006 and 9014 (A) scheduling a final sale hearing (the "Sale Hearing") with respect to that certain Asset Purchase Agreement, dated September 16, 2008 (the "Purchase Agreement"), among the Debtors, Lehman Brothers Inc. ("LBI" and, collectively with the Debtors, the "Seller") and Barclays Capital, Inc. (the "Purchaser"); (B) establishing sales procedures; (C) approving a break-up fee; and (D) authorizing and approving the sale of certain of the Seller's assets (the "Purchased Assets") free and clear of all liens, claims, encumbrances and interests and the assumption and assignment of certain prepetition executory contracts and unexpired leases (the "Contracts") relating to the Purchased Assets to the Purchaser or the Successful Bidder(s); and upon the Court's consideration of the Motion and the record of the

[1] Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Agreement.

Sale Hearing held on September 17, 2008 with respect to procedural matters set forth in the Motion, including the testimony and evidence admitted at the Hearing; and after due deliberation thereon, and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:[2]

A. The Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105, 363, 364(c)(1) and 365 and Fed. R. Bankr. P. ("Bankruptcy Rules") 2002, 6004, 6006, 9006 and 9014. Venue of these cases and the Sale Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The relief requested in the Sale Motion as to the Break-Up Fee and Expense Reimbursement and other matters regarding the sale procedures is in the best interests of the Debtors, their estates, LBI, the stakeholders of the foregoing, and other parties-in-interest; and neither the filing of the Sale Motion nor the contingent intention of LBI to seek or possibly seek relief under the Securities Investor Protection Act of 1970 ("SIPA") or otherwise, to close the Purchase Agreement and get the benefit of the Sale Order (i) subjects, nor shall be deemed to subject, LBI to the jurisdiction of the Court at this time or (ii) constitutes the commencement by LBI as a debtor or debtor-in-possession of any proceeding, whether under SIPA or any other similar law. The Debtors anticipate that, based on the occurrence of certain future contingencies, LBI will be the subject of a proceeding under the SIPA. To the extent that the SIPA Trustee, if appointed, decides to take advantage of the Purchase Agreement and the Sale Order, it will seek an order consistent with the terms hereof.

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[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

C. Good cause exists to shorten the applicable notice periods in Bankruptcy Rules 2002, 6004 and 6006 and the applicable notice periods in the Local Rules.

D. The Debtors' estates will suffer immediate and irreparable harm if the preliminary relief requested in Sale Motion is not granted on an expedited basis consistent with the provisions set forth herein.

E. The notice of the Sale Motion and the Hearing given by the Debtors constitutes due and sufficient notice thereof given the wasting nature of the Purchased Assets and the exigent circumstances relating to this case.

F. The Debtors have articulated good and sufficient reasons for the Court to (i) approve the Break-Up Fee and Expense Reimbursement (each as defined on Exhibit A attached hereto) as provided in the Purchase Agreement and in this Order, (ii) approve certain matters relating to competing bids, if any, (iii) approve the form and manner of notice of the Sale Motion, the Sale Hearing, and the assumption and/or assignment of the Contracts and (iv) set the Sale Hearing.

G. The Break-Up Fee and Expense Reimbursement shall be payable in accordance with the terms, conditions, and limitations of the Purchase Agreement, this Order and Exhibit A and (i) if triggered, shall be deemed an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503 of the Bankruptcy Code, (ii) is of substantial benefit to the Debtors' estates, (iii) is reasonable and appropriate, including in light of the size and nature of the Sale, the wasting nature of the Debtors' assets, and the efforts that have been and will be expended by the Purchaser notwithstanding that the proposed Sale is subject to higher or better Qualified Bids (as defined below) for the Purchased Assets, (iv) has been negotiated by the parties and their respective advisors at arms' length and in good faith and (v) is

necessary to ensure that the Purchaser will continue to pursue its proposed acquisition of the Purchased Assets. The Break-Up Fee and Expense Reimbursement are material inducements for, and conditions of, the Purchaser's entry into the Purchase Agreement. The Purchaser is unwilling to commit to hold open its offer to purchase the Purchased Assets under the terms of the Purchase Agreement unless it is assured of payment of the Break-Up Fee and Expense Reimbursement. Thus, assurance to the Purchaser of payment of the Break-Up Fee and Expense Reimbursement promotes the possibility of competitive bidding. Thus, the Purchaser has provided a benefit to the Debtors' estates by leaving its bid open for a period of time.

H. The matters set forth on Exhibit A attached hereto are reasonable and appropriate and represent the best method for maximizing the realizable value of the Purchased Assets.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The procedures set forth in the Sale Motion and the Break-Up Fee and Expense Reimbursement are approved.

2. All objections filed or asserted in response to the Sale Motion are hereby overruled, to the extent that they relate to the procedures.

The Purchaser's Bid

3. The transaction contemplated by the Purchase Agreement is designated as the "Purchaser's Bid."

Bid Matters

4. The matters set forth on Exhibit A attached hereto and incorporated herein by reference, are hereby approved and shall govern all matters relating to any competing bids to the Purchaser's Bid for the Purchased Assets.

5. If the S ellers do not receive any Qualified Bids, other than the Purchaser's Bid, by the Bid Deadline (as defined on Exhibit A), the Debtors shall seek approval of the Purchaser's Bid pursuant to the Purchase Agreement at the Sale Hearing (as defined below).

6. The failure specifically to include or reference a particular provision of the matters set forth on Exhibit A in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the matters set forth on Exhibit A be authorized and approved in their entirety as modified by this Order.

Sale Hearing

7. The Court shall hold a hearing on September 19, 2008 at 4:00 p.m. (New York time) (the "Sale Hearing") in the United States Bankruptcy Court for the Southern District of New York in the courtroom of the Honorable James M. Peck, at which time the Court shall consider the Sale Motion and approve the Successful Bidder. Objections to the Sale Motion shall be interposed by no later than the conclusion of the Sale Hearing and oral objections will be considered at the Sale Hearing; provided, however, that parties with objections to the Sale Motion shall use reasonable efforts to file a written objection or, where filing a written objection is impracticable, to advise the Debtors' counsel of the nature of the objection as soon as reasonably practicable. The Sale Hearing shall not be adjourned or canceled without prior consent of the Purchaser, the Securities and Exchange Commission (the "SEC"), the Commodity Futures Trading Commission (the "CFTC"), and the Federal Reserve Bank of New York ("FRBNY").

8. The failure of any objecting person or entity to timely file and serve its objection by the Objection Deadline shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the Sale, or the Debtors' consummation and performance of the

Purchase Agreement (including the transfer of the Purchased Assets and the Closing Date Contracts free and clear of liens, claims, and encumbrances).

9. The Sale Hearing may be adjourned by the Debtors with the prior consent of the Purchaser, the SEC, the CFTC, and the FRBNY from time to time without further notice to creditors or parties-in-interest other than by announcement of the adjournment in open court or an entry of an order on the Court's docket.

Break-Up Fee and Expense Reimbursement

10. The Debtors are authorized and shall pay the Break-Up Fee and the Expense Reimbursement upon the occurrence of any Break-Up Fee Event as provided under the Purchase Agreement without further order of the Court; for the avoidance of doubt, LB 745 shall be considered a Seller under the Purchase Agreement for purposes of section 4.6 of the Purchase Agreement only. The Break-Up Fee shall be $100,000,000, and shall be paid by the Debtors no later than two (2) business days after it becomes payable in accordance with the Purchase Agreement and this Order. In addition, the Expense Reimbursement shall be paid by the Debtors no later than five (5) business days after delivery of an invoice to the Debtors, subject to an aggregate cap of $25,000,000 (the "Expense Reimbursement Cap").

11. The Debtors' obligation to pay the Break-Up Fee and Expense Reimbursement, as provided by the Purchase Agreement, this Order and Exhibit A hereto shall be joint and several, shall survive termination of the Purchase Agreement, shall constitute a superpriority administrative priority claim against each of the Debtors pursuant to sections 105(a) and 364(c)(1) of the Bankruptcy Code until paid in accordance with the Purchase Agreement. In the event that the Debtors (or any of their affiliates) receive any proceeds from an Alternate Transaction prior to their payment of the Break-Up Fee or Expense Reimbursement, such proceeds in an amount equal to the unpaid portion of the Break-Up Fee and the Expense

Reimbursement Cap shall be held in trust for the Purchaser until the Break-Up Fee and the Expense Reimbursement are paid in full pursuant to this Order and the Purchase Agreement.

Notice

12. Notice of (a) the Motion, (b) the Sale Hearing and (c) the proposed assumption and/or assignment of the Closing Date Contracts to the Purchaser pursuant to the Purchase Agreement or to a different Successful Bidder shall be good and sufficient, and no other or further notice shall be required, if given as follows:

(a) Notice of Sale Hearing. Within one (1) day after entry of this Order (the "Mailing Date"), the Debtors (or their agent) shall make a copy of this Order (including Exhibit A to this Order) (the "Sale Notice"), the Sale Motion, the Purchase Agreement and the proposed Sale Approval Order (as defined in the Sale Motion) available and shall provide notice of the Sale in a form which is reasonably acceptable to the Purchaser by email, facsimile, federal express or other overnight delivery service, upon (i) the Office of the United States Trustee, (ii) counsel for the Purchaser, (iii) counsel for the Creditors' Committee, (iv) the Company's thirty largest creditors, (iv) Rock-Forty-Ninth LLC, (v) all entities known to have asserted any lien, claim, interest or encumbrance in or upon the Purchased Assets, (vi) all non-Debtor parties to Closing Date Contracts, (vii) the United States Attorney's office, (viii) the United States Department of Justice, (ix) the SEC, (x) the FRBNY, (xi) the Securities Investor Protection Corporation, (xii) the Internal Revenue Service, (xiii) the CFTC, and (xiv) all persons who have filed a notice of appearance in these cases.

(b) Assumption, Assignment and Cure Notice. At least one (1) day prior to the Sale Hearing, the Debtors shall file with this Court and serve on each non-Debtor party to a Contract by federal express, or other overnight delivery service, a notice of assumption, assignment and cure in a form reasonably acceptable to the Purchaser (the "Assumption, Assignment and Cure Notice"). The Assumption, Assignment and Cure Notice shall state that parties to Contracts may find out whether their contract is proposed for assumption and assignment to Purchaser under the Purchase Agreement by visiting http://chapter11.epiqsystems.com/lehman (the "Website"). If the Contract is one which the Purchaser designates for assumption and assignment at the closing (a "Closing Date Contract"), the Debtors will compute the appropriate cure amount (the "Cure Amount") for such Closing Date Contract and will list such Cure Amounts on the Website. If the Contract is one which the Purchaser designates for assumption and assignment within the 60 days after the Closing (a "Designated Contract"), the Debtors will file a motion for approval of procedures reasonably satisfactory to the Purchaser with respect to Designated Contracts at a later date.

(c) Any non-Debtor party to a Closing Date Contract shall file and serve on the Notice Parties any objections to (i) the proposed assumption and assignment to the Purchaser (and must state in its objection, with specificity, the legal and factual basis of its objection) and (ii) if applicable, the proposed Cure Amount (and must state in its objection, with specificity,

what Cure Amount is required with appropriate documentation in support thereof), no later than the Sale Hearing. If no objection is timely received, (x) the non-Debtor party to the Closing Date Contract shall be deemed to have consented to the assumption and assignment of the Closing Date Contract to the Purchaser and shall be forever barred from asserting any objection with regard to such assumption and assignment, and (y) any Cure Amount identified pursuant to the Assumption, Assignment and Cure Notice shall be controlling, notwithstanding anything to the contrary in any Closing Date Contract, or any other document, and the non-Debtor party to a Closing Date Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Closing Date Contract against the Debtors or the Purchaser, or the property of any of them.

(d) Successful Competing Bidder Other Than Purchaser. If a Successful Bidder other than the Purchaser is declared by the Debtors' Board of Directors, then no later than one (1) business day after that declaration, the Debtors shall send a subsequent Assumption, Assignment and Cure Notice to each non-Debtor party to an Contract identifying the Successful Competing Bidder.

13. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York
September 17, 2008

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
BEARINGPOINT, INC., et al.,	:	**09 - 10691 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO SECTIONS 363(b), (f), AND (m), 365 AND 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004, 6006, AND 9014 (i) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (ii) AUTHORIZING THE DEBTORS TO ENTER INTO A STALKING HORSE AGREEMENT IN CONNECTION THEREWITH, (iii) APPROVING THE PAYMENT OF STALKING HORSE PROTECTIONS, (iv) APPROVING THE STALKING HORSE AGREEMENT, (v) AUTHORIZING THE DEBTORS TO SELL CERTAIN OF THE THEIR ASSETS, (vi) SETTING RELATED AUCTION AND HEARING DATES, (vii) AUTHORIZING THE DEBTORS TO ENTER INTO AN ALLOCATION AGREEMENT, AND (viii) APPROVING PROCEDURES RELATED TO ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND APPROVING THE FORM AND MANNER THEREOF

Upon the motion (the "***Motion***"), dated March 23, 2009, of BearingPoint, Inc. ("***BearingPoint***") and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "***Debtors***"), pursuant to sections 105, 363 and 365 of chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), for (i) approval of procedures (the "***Bidding Procedures***") in connection with the sale of BearingPoint's public services industry group, in whole or in part (the "***Bid Assets***"), (ii) authorization to enter into a Stalking Horse Agreement (as defined below) in connection therewith, (iii) approval of the payment of Stalking Horse Protections (as defined below), and (iv) the setting of related auction and sale hearing dates, all as more fully described in the Motion; and the Court having held on April 1, 2009 and April 2, 2009 a hearing to consider the relief requested herein (the "***Bidding***

Procedures Hearing") with the appearances of all interested parties noted in the record of the Bidding Procedures Hearing; and upon the record of the Hearing, and all of the proceedings before the Court, the Court finds and determines the following:

FOUND AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 of the United States District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have provided due and proper notice of the Motion and Hearing to the Notice Parties[1] in accordance with the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures, dated March 5, 2009 [Docket No. 117], and no further notice is necessary. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the Bidding Procedures and Stalking Horse Protections (as defined below)) has been afforded to all interested persons and entities, including but not limited to the Notice Parties.

C. The Debtors' proposed notice of the Bidding Procedures, the Auction and the hearing to approve any sale of the Debtors' Bid Assets (the "***Sale Approval Hearing***") is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

[1] Capitalized terms used, but not defined, herein shall have the meaning ascribed to them in the Motion.

D. The Bidding Procedures substantially in the form attached hereto as Exhibit A are fair, reasonable, and appropriate and are designed to maximize the recovery from any sale of the Debtors' Bid Assets (the "***Sale***"). The Bidding Procedures were negotiated in good faith between the Debtors and the Stalking Horse Bidder (as defined below).

E. The Debtors have demonstrated a compelling and sound business justification for authorization to (i) enter into the agreement, as amended as of April 3, 2009 which amendment shall be filed with the Court, (the "***Stalking Horse Agreement***") with Deloitte LLP ("***Deloitte***" or the "***Stalking Horse Bidder***"), attached as Exhibit C to the Motion, for the sale of the Bid Assets and (ii) pay the fee (the "***Break-Up Fee***") and expense reimbursement (the "***Expense Reimbursement***," and together with the Break-Up Fee, the "***Stalking Horse Protections***"), under the terms and conditions set forth in Section 7 of the Stalking Horse Agreement, as approved by this Order.

F. The Stalking Horse Protections, as approved by this Order, are fair and reasonable and provide a benefit to the Debtors' estates and creditors.

G. The Debtors' payment of either or both (i) the Break-Up Fee and/or (ii) the Expense Reimbursement, under this Order and upon the conditions set forth in Section 7 of the Stalking Horse Agreement is (a) an actual and necessary cost of preserving the Debtors' estates, within the meaning of section 503(b) and 507(a) of the Bankruptcy Code, (b) of substantial benefit to the Debtors' estates and creditors and all parties in interest herein, (c) reasonable and appropriate and (d) material inducements for, and conditions necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed agreement to undertake any Sale.

H. On or about April 6, 2009, the Debtors will serve notice of the Auction and the Sale Approval Hearing (the "***Sale Notice***") on (i) the Notice Parties in accordance with the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures, dated March 5, 2009 [Docket No. 117], and (ii) all interested bidders for the Bid Assets that have executed confidentiality agreements.

I. Entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties-in-interest herein.

J. The findings and conclusions set forth herein and as supplemented by the Court's decision at the conclusion of the Hearing on April 2, 2009 constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

K. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Bidding Procedures attached hereto as Exhibit A are APPROVED, fully incorporated into this Order and the Debtors are authorized and directed to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

2. The objections of the Official Committee of Unsecured Creditors, Law Debenture Trust Company of New York, as Indenture Trustee and any other objections to the

Motion or the relief requested therein that have not been withdrawn, waived, settled, or specifically addressed in this Order or on the record at the conclusion of the hearing on April 2, 2009, and all reservations of rights included in such objections, are overruled in all respects on the merits.

3. The form of Sale Notice attached to the Motion as Exhibit E is approved.

4. Service of the Sale Notice on the Notice Parties in the manner described herein and in the Motion constitutes good and sufficient notice of the Auction and the Sale Approval Hearing. No other or further notice is required.

5. To constitute a "***Qualified Bid***," a bid (other than the Stalking Horse Agreement) must be received by the Bid Deadline (as defined in the Bidding Procedures) and comply with the applicable provisions of the Bidding Procedures; provided, however, that if any such Qualified Bid is conditioned upon the assumption and assignment of Contracts (as defined below) or Leases (as defined below), then such offeror must identify such Contracts and/or Leases to be assumed and assigned and provide evidence of its ability to provide adequate assurance of future performance of such Contracts or Leases along with such Qualified Bid (an "***Adequate Assurance Package***"). The Stalking Horse Agreement is a Qualified Bid. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

6. The Auction shall be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 on **April 15, 2009 at 10:00 a.m. (Eastern Time)**.

7. Objection Deadline to Sale Order(s). Objections to the relief sought in the Sale Order shall be in writing, filed and served in accordance with the Case Management Order #2, so as to be actually received by (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New

York, New York 10153, (Attn: Marcia L. Goldstein, Esq. and Alfredo R. Pérez , Esq.), as counsel to the Debtors, (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall St., 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), (iii) Paul, Hastings, Janofsky & Walker LLP, Park Avenue Tower, 75 East 55th Street, First Floor, New York, New York 10022 (Attn: Luc Despins, Esq. and Leslie A. Plaskon, Esq.), as counsel for Wells Fargo Bank, N.A., the administrative agent for the Debtors' prepetition secured lenders (the "***Agent***"), (iv) Bingham McCutchen LLP, 299 Park Avenue, New York, New York 10022 (Attn: Jeffrey Sabin, Esq., Neil W. Townsend, Esq. and Sabin Willett, Esq.), as counsel for the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the "***Creditors' Committee***"), (v) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Robert T. Schmidt, Esq. and Thomas E. Molner, Esq.), as counsel to the Stalking Horse Bidder, and (vi) all parties on the Master Service List pursuant to the Case Management Order #2 (collectively, the "***Objection Notice Parties***") by **April 10, 2009 at 12:00 p.m. (Eastern Time)** by the Objection Notice Parties; provided, however, that objections as to the Auction or the selection of the highest or otherwise best bid shall be in writing, filed and served in accordance with the Case Management Order #2, so as to be actually received by the Objection Notice Parties by **April 16, 2009 at 12:00 p.m. (Eastern Time)**.

8. The Sale Approval Hearing shall be held in the United States Bankruptcy Court for the Southern District of New York, Courtroom 621, One Bowling Green, New York, NY 10004, on **April 17, 2009 at 9:00 a.m. (Eastern Time)** or such other date and time that the Court may later direct; provided, however, that the Sale Approval Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open Court or on the Court's docket.

9. April 2, 2009 at 8:00 p.m. shall be deemed the date of entry of the Bidding Procedures Order for the purpose of section 3.06 of the Stalking Horse Agreement.

10. As soon as practicable upon entry of this Order, to the extent that such actions have not already been taken, the Debtors shall: (a) post a complete copy of the Stalking Horse Agreement, including all schedules, exhibits and amendments thereto except exhibits 2.12(r), 6.01(e)(1), 6.01(e)(2), and 6.01(e)(3) in the Debtors' virtual data room; and (b) notify any employee who has signed an agreement for future employment with the Stalking Horse Bidder (a "***Future Employment Agreement***") that such employee is not bound by the Future Employment Agreement until a Sale to the Stalking Horse Bidder is approved by the Court and closes and the Future Employment Agreement does not prevent the employee from engaging in discussions about future employment with other potential bidders for the Bid Assets.

11. As soon as practicable after the conclusion of the Auction, but no later than before the Sale Approval Hearing, the Debtors shall file a final form of order approving the Sale as agreed upon between the Debtors and the Successful Bidder(s).

12. Stalking Horse Agreement. The Debtors are authorized to enter into the Stalking Horse Agreement.

13. The Stalking Horse Bidder shall be entitled to receive the Expense Reimbursement and/or the Break-Up Fee in accordance with the terms and conditions of the Stalking Horse Agreement, provided, however that under no circumstances will the Stalking Horse Bidder receive the Break-Up Fee if it is the Successful Bidder and the transaction contemplated by the Stalking Horse Agreement closes. The Expense Reimbursement and Break-Up Fee, once earned in accordance with Section 7 of the Stalking Horse Agreement, shall (i) be administrative expenses in the Debtors' chapter 11 cases pursuant to sections 503(b), 507(a)(1)

and 507(b) of the Bankruptcy Code until paid to the Stalking Horse Bidder, provided, however, that (A) all such amounts shall have the priority and be paid solely in the manner set forth in Section 7 of the Stalking Horse Agreement and (B) payment of the Expense Reimbursement shall be subject to the Objection Rights as defined below.

14. In the event that an Expense Reimbursement is to be paid pursuant to the Stalking Horse Agreement, the Debtors and/or the Stalking Horse Bidder shall provide the Creditors Committee and Agent with the documentation supporting the expenses that make up the Expense Reimbursement and an itemized statement as to the amount requested (subject to redaction for confidentiality and privilege) (the "***Expense Reimbursement Documentation***"). Upon their receipt of the Expense Reimbursement Documentation, the Creditors Committee and the Agent shall have five days to object to any portion of the requested Expense Reimbursement on the basis that such expenses are not payable pursuant to the terms of the Stalking Horse Agreement (the "***Objection Rights***"). If no objection is filed within five days of receipt of the Expense Reimbursement Documentation, the requested Expense Reimbursement shall be paid pursuant to the terms of the Stalking Horse Agreement. If an objection is filed by the Creditors Committee or the Agent within five days of their receipt of the Expense Reimbursement Documentation (an "***Objection***"), the Debtors shall pay that portion of the Expense Reimbursement not subject to the Objection pursuant to the terms of the Stalking Horse Agreement. The Court will decide any Objection, after the Debtors and the Stalking Horse Bidder have been provided an opportunity to respond to same.

15. Assignment Procedures. The assignment procedures set forth in the Motion (the "***Assignment Procedures***") are hereby approved. As soon as practicable after the date this Order is entered, the Debtors will file with the Court an assignment schedule (the

"***Assignment Schedule***") identifying the Contracts and Leases that will be assumed and assigned pursuant to the Stalking Horse Agreement, under seal, and in the form and substance reasonably acceptable to the Stalking Horse Bidder. The Assignment Schedule may be supplemented at the request of the Stalking Horse Bidder. The Debtors will serve each of the non-debtor counterparties to the Contracts and Leases a notice, which shall be in form and substance reasonably acceptable to the Stalking Horse Bidder (the "***Notice of Assignment and Cure***"), by first class mail, that will include (i) the title of the Contract or Lease to be assumed, (ii) the name of the counterparty to the Contract or Lease, (iii) any applicable cure amounts, (iv) the identity of the assignee, and (v) the deadline by which any such Contract or Lease counterparty must object.

16. Any objections to the assumption and/or assignment of any Contract or Lease identified on the Notice of Assignment and Cure, including to the cure amount set forth on such notice, must be in writing, filed with the Court, and be actually received by the Notice Parties in accordance with the Case Management Order #2 no later than ten (10) days after the Assignment Schedule is mailed to the affected party (the "***Assignment and Cure Objection Deadline***"), and must set forth a specific default under the Contract or Lease and claim a specific monetary amount that differs from the amount, if any, specified by the Debtors in the Notice of Assignment of Cure.

17. Resolution of Objections to Assumption and/or Assignment of Contracts and Leases. If no objections are received by the Assignment and Cure Objection Deadline, then the assumption and assignment are authorized and the cure amounts set forth on the Notice of Assignment and Cure shall be binding upon the nondebtor party to the Contract or Lease for all purposes and will constitute a final determination of total cure amounts required to be paid to the contract or lease counterparty in connection with any potential assignment of such Contract or

Lease to the Successful Bidder. In addition, each non-debtor party to such unexpired Contract or Lease shall be forever barred from objecting to the cure information set forth in the Notice of Assignment and Cure, including, without limitation, the right to assert any additional cure or other amounts with respect to the Contract or Lease arising or relating to any period prior to such assumption or assignment. If no objections to the assumption or assumption and assignment are received by the Assignment and Cure Objection Deadline, counsel for the Debtors may submit to the Court a declaration of no objection and a form of order (collectively, the "***Declaration of No Objection***") granting the requested assumption and/or assignment of the Contract or Lease, and serve such Declaration of No Objection on the counterparty to the Contract or Lease. The order approving such assumption and/or assignment may then be entered by the Court twenty-four (24) hours after the Declaration of No Objection is filed.

18. If a timely objection is received and such objection cannot otherwise be resolved by the parties, the Court may hear such objection at a later date set by the Court. The pendency of a dispute relating to cure amounts will not prevent or delay the assumption and assignment of any Contracts or Leases. If an objection is filed only with respect to the cure amount listed on the Notice of Assignment and Cure, the Debtors may file a Declaration of No Objection as to assumption and assignment only and the dispute with respect to the cure amount will be resolved consensually, if possible, or, if the parties are unable to resolve their dispute, before the Court. The Debtors intend to cooperate with the counterparties to Contracts or Leases to attempt to reconcile any difference in a particular cure amount.

19. Nothing in Paragraphs 15 through 18 of this Order shall interfere with the applicability of the Anti-Assignment Act, 41 U.S.C. § 15 (the "***Act***") or otherwise affect the rights of the United States under the Act.

20. No agreement entered into by the Debtors concerning the allocation of the proceeds of the Sale to the assets purchased shall be binding on the Creditors' Committee, the Court or any other person not party to such agreement. The Court shall retain final authority to resolve any dispute as to the allocation of proceeds of the sale for the purposes of (a) the distribution of such proceeds to the creditors' of the Debtors; and (b) the attachment of liens to such proceeds, and the rights of all parties with respect to these issues are expressly reserved.

21. Notwithstanding Bankruptcy Rules 6004, 6006 or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

22. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

24. This Court shall retain jurisdiction over any matters related to or arising from the implementation or interpretation of this Order. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

Dated: New York, New York
April 7, 2009

s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "***Bidding Procedures***") to be employed in connection with an auction (the "***Auction***") for the sale (the "***Sale***") of (i) the assets included in the Stalking Horse Agreement (as defined below) (the "***Deloitte Bid Assets***") between Deloitte LLP ("***Deloitte***" or the "***Stalking Horse Bidder***") and BearingPoint, Inc. ("***BE***," and together with its debtor and non-debtor affiliates, "***BearingPoint***"); or (ii) all or any portion of the Deloitte Bid Assets plus any of the Debtors' assets not included in the Stalking Horse Agreement (together with the Deloitte Bid Assets, the "***Bid Assets***"). At a hearing following the Auction (the "***Sale Approval Hearing***"), the Debtors will seek entry of an order (the "***Sale Order***") from the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***") authorizing and approving the Sale to the Qualified Bidder (as defined below) that the Debtors[1] determine to have made the highest or otherwise best bid (the "***Successful Bidder***").

Assets to be Sold

By Motion dated March 23, 2009, the Debtors have requested authority to sell the Bid Assets, which are comprised in whole or in part of assets of BearingPoint's public services industry group. Except as otherwise provided in definitive documentation with respect to the Sale, all of the Debtors' rights, title and interest in and to any Bid Assets sold in connection with, or as a result of, the Sale shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and against in accordance with section 363 of the Bankruptcy Code.

The Bidding Process

After consultation with the Agent and the Creditors' Committee, the Debtors shall: (i) determine whether any person is a Qualified Bidder (as defined below); (ii) provide reasonable assistance to Interested Parties in conducting their due diligence investigations subject to the provisions below; (iii) receive offers from proposed bidders; and (iv) negotiate any offers made to purchase the Bid Assets. Any person who wishes to participate in the Auction must be a Qualified Bidder. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind to any person who has not executed a confidentiality agreement as provided for below. Notwithstanding the foregoing or anything else in these Bidding Procedures, the Stalking Horse Bidder is hereby deemed to be a Qualified Bidder for all

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Debtors' *Motion for Orders pursuant to Sections 363(b), (f), and (m), 365 and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014 For (i) Approval of Procedures in Connection with the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (ii) Authorization to Enter Into a Stalking Horse Agreement in Connection Therewith, (iii) Approval of the Payment of Stalking Horse Protections, (iv) Approval of the Stalking Horse Agreement, (v) Authorization to Sell Certain of the Debtors' Assets, (vi) the Setting of Related Auction and Hearing Dates, (vii) Authorization to Enter into an Allocation Agreement, (viii) Approval of Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases and Form and Manner Thereof.*

purposes and at all times, and the bid embodied in the Stalking Horse Agreement (including any subsequent bids at the Auction) is hereby deemed to be a Qualified Bid (as defined herein) for the Bid Assets, for all purposes and at all times.

BE has entered into an agreement as amended (the "***Stalking Horse Agreement***") with Deloitte for the sale of the Deloitte Bid Assets, as described in the Motion and the Stalking Horse Agreement. The Stalking Horse Agreement is attached as Exhibit E to the Motion and has been filed on the main docket of these cases. Pursuant to the Stalking Horse Agreement and these Bidding Procedures, the Debtors have agreed to provide the Stalking Horse Bidder with the following bid protections: (i) a breakup fee in the amount of $10,500,000 (the "***Breakup Fee***"); and (ii) reimbursement of reasonable, documented out of pocket costs and expenses (including fees and expenses of counsel, financial advisors and other professionals and consultants, and Deloitte's share of the HSR Act filing fee) incurred by the Stalking Horse Bidder in connection with the Stalking Horse Agreement and the transactions contemplated thereby, in an amount not to exceed $1,500,000 (the "***Expense Reimbursement***"); provided, however, that in certain circumstances as set forth in the Stalking Horse Agreement where the Breakup Fee is not due and owing, the amount of the Expense Reimbursement may be up to $12,000,000. The Breakup Fee and the Expense Reimbursement will be paid as, when and to the extent provided in the Stalking Horse Agreement, and as approved by the Bankruptcy Court in the bidding procedures order.

To facilitate the Auction and assist the Debtors and other interested parties in assessing the terms of each bid, those prospective bidders who are interested in bidding on the Bid Assets must utilize the Stalking Horse Agreement and the Schedules and Exhibits thereto to prepare their bids and mark all proposed changes to such agreement and schedules as part of their bid.

Bid Deadline

Any person or entity wanting to participate in the Auction, other than the Stalking Horse Bidder, must submit a Qualified Bid (as defined below) for the Bid Assets on or before **April 13, 2009 at 4:00 p.m. (Eastern Time)** (the "***Bid Deadline***") in writing to (i) Greenhill & Co., LLC, 300 Park Avenue, New York, NY 10022 (Attn: Dhiren Shah, Bradley A. Robins, and Birger Kuno Berendes), investment bankers and financial advisors to the Debtors, and (ii) Paul, Hastings, Janofsky & Walker LLP, Park Avenue Tower, 75 East 55th Street, First Floor, New York, New York 10022 (Attn: Luc Despins, Esq. and Leslie A. Plaskon, Esq.), attorneys to the Agent. The Debtors shall deliver to the Stalking Horse Bidder and to counsel for the Creditors' Committee, Bingham McCutchen LLP, 399 Parke Avenue, New York, NY 10022 (Attn: Jeffrey Sabin, Esq. and Neil Townsend, Esq.) copies of all bids submitted to them for the purchase of any of their assets, in each case substantially contemporaneously with the Debtors' receipt thereof.

Qualified Bids

To qualify as a "Qualified Bidder" with respect to bids on the Bid Assets, a bidder must submit a "Qualified Bid" (as described below) by the Bid Deadline and: (i) offer to purchase the Bid Assets and assume some or all of the Assumed Liabilities (as defined in the

Stalking Horse Agreement); (ii) provide a copy of the Qualified Bidder's proposed Asset Purchase Agreement and the Schedules and Exhibits thereto, which shall be modified by the Qualified Bidder from the form of the Stalking Horse Agreement only to the extent necessary to reflect proposed changes, together with a marked copy of the Stalking Horse Agreement and Schedules and Exhibits thereto reflecting such changes; (iii) must not subject its bid to any conditions less favorable to the Debtors than those provided for in the Stalking Horse Agreement; (iv) agree to not revoke its bid until the closing of a purchase of the Bid Assets by the Successful Bidder and agree to serve as a Backup Bidder (as defined below); (v) stipulate or otherwise provide evidence that such Qualified Bidder's submission, execution, delivery and closing of the marked up versions of the Stalking Horse Agreement and the Schedules and Exhibits thereto has been authorized and approved by the Qualified Bidder's board of directors (or comparable governing body); (vi) state that such Qualified Bidder is financially capable of consummating the transactions contemplated by the Stalking Horse Agreement, and otherwise provide such other information that will allow the Debtors and their advisors to make a reasonable determination as to the Qualified Bidder's ability to consummate the transactions contemplated by the Stalking Horse Agreement, including the Adequate Assurance Package (as defined below); (vii) not seek any transaction or breakup fee, expense reimbursement, or similar type of payment; and (viii) be accompanied by a Good Faith Deposit (as defined below).

A Qualified Bid with respect to the Bid Assets is one that: (i) is a proposal determined by the Debtors, in the good faith opinion of its board of directors, as the case may be, after consultation with the Debtors' investment bankers and financial advisors, the Agent, and counsel to the Creditors' Committee not to be materially more burdensome or conditional than the terms of the Stalking Horse Agreement and one that has a value greater than or equal to the sum of (x) the value, as reasonably determined by the Debtors' financial advisor, of the Stalking Horse Agreement plus (y) Twelve Million Dollars ($12,000,000) (i.e., the sum of the Breakup Fee and the maximum amount (in certain circumstances) of the Expense Reimbursement) plus (z) at least Two Million Five Hundred Thousand Dollars ($2,500,000); and (ii) is accompanied by such Qualified Bidder's Good Faith Deposit (by means of a certified bank check from a U.S. bank or by wire transfer of immediately available funds).

Overbids above the initial $2,500,000 bid increment will be at the Debtors' discretion.

If no timely Qualified Bid is submitted, the Debtors shall not hold the Auction, and instead shall request at the Sale Approval Hearing that the Bankruptcy Court approve the sale of the Bid Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement.

All Qualified Bids will be considered but the Debtors reserve the right to reject any and all bids other than the highest or otherwise best bid. Bids will be evaluated on numerous grounds.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Bid Assets that are the subject of

the Auction prior to making any such bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Bid Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, the asset purchase agreement with such Successful Bidder.

Good Faith Deposits

In addition to all other provisions hereof, in order to become a Qualified Bidder, all Bidders will be required to submit a good faith deposit (the "***Good Faith Deposit***") with the Debtors on or before the Bid Deadline. Such Good Faith Deposits shall be equal to five percent (5%) of the Qualified Bidder's proposed purchase price and should be payable to an Escrow Agent to be designated by the Debtors. Good Faith Deposits of all Qualified Bidders shall be held in a separate interest-bearing account for the Debtors' benefit until consummation of a transaction involving any other bidder for the Bid Assets. If a Successful Bidder fails to consummate an approved sale of the Bid Assets because of a breach or failure to perform on the part of such Successful Bidder, such bidder's deposit will be held by the Debtor subject to a ruling by the Bankruptcy Court that the Debtor should be permitted to retain such deposit on account of any damages caused by such bidder's breach. All other deposits will be returned promptly after the closing of the sale of the Bid Assets to the Successful Bidder (or, in the case of Deloitte, in accordance with the terms of the Stalking Horse Agreement). Notwithstanding anything herein to the contrary, the terms under which Deloitte provided a Good Faith Deposit and the terms of its use, release and return to Deloitte shall be governed by the Stalking Horse Agreement.

Due Diligence

The Debtors may afford any potential bidder the opportunity to conduct a reasonable due diligence review in the manner determined by the Debtors in their discretion. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline.

The Debtors either have provided or intend to use reasonable efforts to provide to all parties that have either expressed an interest in purchasing the Bid Assets or who the Debtors believe may have a legitimate interest in purchasing the Bid Assets (each an "***Interested Party***" and, collectively, the "***Interested Parties***"), certain information in connection with the proposed Sale, including, among other things, these proposed Bidding Procedures and the Stalking Horse Agreement, but the failure to deliver any such information to any Interested Parties shall not affect the validity, effectiveness or finality of the Auction or this sale process. Should any Interested Party desire additional or further information, such Interested Party will be required to enter into a confidentiality agreement satisfactory to the Debtors in their business judgment. Upon execution of the confidentiality agreement, the Interested Party will be given access (through a virtual data room or otherwise the "***Data Room***") to various financial data and other relevant and confidential information, subject to the Debtors right to exclude such access for competitive concerns. The Debtors may also permit Interested Parties who have entered

confidentiality agreements satisfactory to the Debtors to have reasonable access to employees to discuss the terms of future employment, and no prior agreements between any such employees and the Stalking Horse Bidder shall prevent any such discussions; provided, however, that no employee shall enter into any agreement for future employment with an Interested Party prior to the closing of the Sale that would prevent such employee from engaging in discussions with other Interested Parties or accepting offers of employment from any Successful Bidder.

The Auction

In the event that the Debtors timely receive more than one Qualified Bid, the Debtors shall conduct an Auction. The Auction will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 on **April 15, 2009, commencing at 10:00 a.m. (prevailing Eastern Time)** to determine the highest or otherwise best bid with respect to the Bid Assets. Any bidder submitting a Qualified Bid may appear and submit its highest or best bid at the Auction. The Auction may be adjourned by announcement at the Auction without further notice.

Auction Procedures

By 5:00 p.m. on the day preceding the start of the Auction, the Debtors will give all Qualified Bidders a copy of what they believe to be the highest or otherwise best Qualified Bid and will inform each Qualified Bidder who has expressed its intent to participate in the Auction the identity of all Qualified Bidders that may participate in the Auction. Only Qualified Bidders are eligible to participate in the Auction. The following parties shall be permitted to attend the Auction: (i) the Creditors' Committee and their respective counsel and advisors;(ii) the Agent and its professionals; and (iii) the Prepetition Secured Lenders and their professionals. Bidding at the Auction shall begin initially with the highest or otherwise best bid announced by the Debtors, after consultation with the Agent and consultation with the Creditors' Committee, and shall subsequently continue in such minimum increments as the Debtors determine after consultation with the Agent and the Creditors' Committee.

Bidding will continue with respect to the Auction until the Debtors (after consultation with the Agent and consultation with the Creditors' Committee) determine that they have received the highest or otherwise best bid for the Bid Assets. Any subsequent bids by Deloitte will be credited with the full amount of the Breakup Fee and the Expense Reimbursement. After the Debtors so determine, the Auction will be closed. The bidding at the Auction will be transcribed by a court reporter. Each Qualified Bidder shall be required to confirm that it has not engaged in any collusive behavior with respect to the bidding, the Auction or the Sale.

The Debtors, after consultation with the Agent (at the direction of the required Prepetition Secured Lenders) and the Creditors' Committee, will then determine and announce which Qualified Bid has been determined to be the highest or otherwise best bid. In determining which Qualified Bid is the Successful Bid, the Debtors will consider, at each stage of the Auction, the net economic effect upon the Debtors' estates after the payment of the Breakup Fee or Expense Reimbursement, if applicable; provided, however, that economic considerations shall

not be the sole criteria upon which the Debtors may base their decision and the Debtors shall take into account all factors they believe to be relevant in an exercise of their business judgment.

Breakup Fee and Expense Reimbursement

In the event that the Stalking Horse Agreement is terminated under the circumstances described in the Stalking Horse Agreement to the extent approved in the bidding procedures order, the Debtors shall promptly, and in any event within one (1) Business Day, pay the Stalking Horse Bidder the Breakup Fee and the Expense Reimbursement as, when and to the extent provided in the Stalking Horse Agreement as approved by the bidding procedures order.

The Debtors' obligation to pay the Breakup Fee and the Expense Reimbursement shall be the joint and several obligation of the Debtors, shall survive termination of the Stalking Horse Agreement, dismissal or conversion of any of the Bankruptcy Cases, and confirmation of any plan of reorganization or liquidation, and shall constitute an administrative expense of the Debtors under Sections 503(b) and 507(a) of the Bankruptcy Code.

Adequate Assurance Package

If any Qualified Bid other than the Stalking Horse Bid requires the assumption and assignment of Contracts, then such offeror must identify such Contracts to be assumed and assigned and provide evidence of its ability to provide adequate assurance of future performance of such Contracts along with the Qualified Bid (an "***Adequate Assurance Package***").

Reservation Of Rights

a. Determination of Highest and Best Bid

The Debtors reserve the right to: (i) determine in their reasonable discretion (after consultation with the Agent and the Creditors' Committee), which bid is the highest or best bid; and (ii) reject at any time prior to entry of a Court order approving an offer other than the Stalking Horse Bid, without liability, any offer that the Debtors in their reasonable discretion (after consultation with the Agent and the Creditors' Committee) deem to be (w) inadequate or insufficient, (x) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or procedures set forth therein or herein, (y) not a Qualified Bid, or (z) contrary to the best interests of the Debtors and their estates.

The selection of a Successful Bidder shall be within the reasonable business judgment of the Debtors (after consultation with the Agent (at the direction of the required Prepetition Secured Lenders) and the Creditors' Committee) and subject to the approval of the Bankruptcy Court. Economic considerations shall not be the sole criteria upon which the Debtors may base their decision. The presentation of a particular bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of the bid. The Debtors will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Approval Hearing. At or before the Sale Approval Hearing, the Debtors, after consultation with the Agent and the Creditors' Committee, may impose such other terms and conditions on the

Qualified Bidders, other than the Stalking Horse Bidder, as the Debtors may determine to be in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

b. Modification of Bidding Procedures

The Debtors, in consultation with the Agent and the Creditors' Committee, reserve the right to (i) extend the deadlines set forth in these Bidding Procedures and/or adjourn the Auction and/or the Sale Approval Hearing in open court without further notice, (ii) withdraw any asset(s) (the "***Withdrawn Assets***") from the Sale at any time prior to or during the Auction to make subsequent attempts to market the same, and to request separate hearing(s) by this Court to approve the sale(s) of some or all of the Withdrawn Assets, (iii) reject any or all bids if, in the Debtors' reasonable business judgment, no bid is for a fair and adequate price, and (iv) seek approval of any separate agreement to sell some or all of the Withdrawn Assets at the Sale Approval Hearing, and (v) modify the Auction and the Bidding Procedures set forth herein, as may be determined to be in the best interests of the Debtors' estates or creditors; provided however, that no such action by the Debtors pursuant to this paragraph shall effect the economic interests, timing or other benefits to Deloitte under the Stalking Horse Agreement. Any such modification shall be announced prior to the start of the Auction. The Auction, the Bidding Procedures and all bids are subject to such other terms and conditions as are announced by the Debtors during the course of the Auction.

c. Closing with Stalking Horse or Backup Bidder

If for any reason the entity or entities that submit(s) the highest or otherwise best bid(s) fails to consummate the purchase of the Bid Assets, or any part thereof, the offeror of the second highest or best bid will automatically be deemed to have submitted the highest or best bid (the "***Backup Bidder***") and to the extent the Debtors consent (after consultation with the Agent (at the direction of the required Prepetition Secured Lenders) and the Creditors' Committee), the Debtors and such offeror are authorized to effect the sale of the Bid Assets to such offeror(s) as soon as is commercially reasonable. If such failure to consummate the purchase is the result of a breach by the winning offeror, the Debtors reserve the right to seek all available damages from the defaulting offeror, including, but not limited to, with respect to the Good Faith Deposit. To the extent the Stalking Horse Bidder has terminated the Stalking Horse Agreement as provided therein, the Stalking Horse Bidder shall not be obligated to be a Backup Bidder.

d. Debtors' Secured Creditors

Nothing in these Bid Procedures shall or shall be deemed to (i) amend or modify the Interim Cash Collateral Stipulation, or the rights and remedies of the parties therunder or under applicable bankruptcy law, or (ii) except for their consent to the Stalking Horse Agreement or a topping bid thereunder, constitute the consent of the secured lenders to any other sale or disposition of their respective collateral. All rights under section 363(k) of the Bankruptcy Code are preserved; provided, however, that (i) if the secured lenders exercise such rights, the Stalking Horse Bidders shall be entitled to the Breakup Fee and the Expense Reimbursement pursuant to the Stalking Horse Agreement as approved by the bidding procedures order, and (ii) the secured lenders shall not have the right to (x) assign any such rights, (y) transfer or otherwise assign any interest in or any economic benefit from any such

rights to any person or entity, or (z) exercise any such rights in connection with or in anticipation of any transfer, disposal or other assignment of any of the Bid Assets or any interest therein.

Sale Approval Hearing

The Sale Approval Hearing will be held on **April 17, 2009 at 9:00 a.m**. at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, before the Honorable Robert E. Gerber, United States Bankruptcy Judge. The Sale Approval Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open Court or on the Court's docket.

Dated: April 3, 2009

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Chrysler LLC, *et al.*,	:	Case No. 09-50002 (AJG)
Debtors.	:	(Jointly Administered)

ORDER, PURSUANT TO SECTIONS 105, 363 AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 6006, (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE DEBTORS TO PROVIDE CERTAIN BID PROTECTIONS, (C) SCHEDULING A FINAL HEARING APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF

This matter coming before the Court on the motion (the "Motion")[1] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking, pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") and Rules 2002-1, 6004-1, 6006-1 and 9006-1(b) of the Local Rules for the United States Bankruptcy Court of the Southern District of New York (the "Local Bankruptcy Rules"), entry of (i) an order (a) approving bidding procedures attached hereto as Exhibit A (the "Bidding Procedures") for the sale of substantially all of the Debtors' tangible, intangible and operating assets, defined as the "Purchased Assets" in Section 2.06 of the Purchase Agreement, including the Designated Agreements (as defined below), the assets related to the research, design, manufacturing, production, assembly and distribution of passenger cars, trucks and other

[1] Capitalized terms used but not defined herein have the meanings given to such terms in the Motion and all Exhibits thereto.

vehicles (including prototypes) under brand names that include Chrysler, Jeep® and Dodge (the "CarCo Business"), certain of the facilities related thereto and all rights including intellectual property rights, trade secrets, customer lists, domain names, books and records, software and other assets used in or necessary to the operation of the CarCo Business or related thereto (collectively, as defined in the Purchase Agreement, the "Purchased Assets") to the Purchaser (as defined below) and (b) scheduling a final hearing on the sale of the Purchased Assets and the approval of the UAW Retiree Settlement Agreement (the "Sale Hearing") and approving the form and manner of notice thereof; and (ii) after the Sale Hearing, an order (the "Sale Order") (a) authorizing the sale of the Purchased Assets, free and clear all liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), encumbrances, rights, remedies, restrictions, interests, liabilities, and contractual commitments of any kind or nature whatsoever, whether arising before or after the Petition Date, whether at law or in equity, including all rights or claims based on any successor or transferee liability, all environmental claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Purchased Assets to the Purchaser or to be excused from accepting performance by the Purchaser or performing for the benefit of the Purchaser under any Assumed Agreement and all rights at law or in equity, excluding any Designated Agreement, all as more specifically set forth and defined in the Sale Motion and the proposed order approving the Sale Transaction (as so defined therein, "Claims") to the Successful Bidder (as such term is defined in the Bidding Procedures), (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases constituting part of the Purchased Assets and related procedures and (c) granting certain related relief, including approval of the UAW Retiree Settlement Agreement; the Court having conducted a hearing on the Motion on May 1, 4 and 5, 2009 (the "Bidding

Procedures Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Motion; the Court having reviewed and considered (i) the Motion and the exhibits thereto, (ii) the Bidding Procedures attached to hereto as Exhibit A, (iii) all objections to the Bidding Procedures, (iv) the Affidavit of Ronald L. Kolka filed in support of the Debtors' first day papers (Docket No. 23), (v) the Declaration of Scott R. Garberding (Docket No. 49), (vi) the Declaration of Peter Grady (Docket No. 50), (vii) the Declaration of Frank Ewasyshyn (Docket No. 48), (viii) the Declaration of Robert Manzo (Docket No. 52), (ix) the Declaration of Tom W. LaSorda (Docket No. 51), (x) the Declaration of Bradley A. Robbins (Docket No. 173), (xi) the Declaration of James J. Arrigo (Docket No. 53), (xii) the Declaration of John Schendon (Docket No. 54), (xiii) the Supplemental Declaration of Robert Manzo (Docket No. 197) (xiv) the testimony provided at the Bidding Procedures Hearing by the aforementioned Declarants and Affiant, (xv) the Sale Notice attached hereto as Exhibit B, (xvi) the Publication Notice attached hereto as Exhibit C, (xvii) the Assignment Notice attached hereto as Exhibit D, (xviii) the UAW Retiree Notices attached hereto as Exhibit E and (ix) the arguments of counsel made, and the evidence proffered or adduced, at the Bidding Procedures Hearing; and it appearing that the relief requested in the Motion is reasonable and in the best interests of the Debtors' bankruptcy estates, their creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing;

IT IS HEREBY FOUND AND DETERMINED THAT:

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

B. As of the Petition Date, the CarCo Business has been idled and the Debtors have advised the Court that they believe they lack the financing and liquidity to reopen

and restart the CarCo Business for the production of 2010 vehicles unless a sale is consummated. The Sale Transaction is a multi-party arrangement that provides the financial wherewithal and the technical expertise to implement accelerated changes in the Debtors' production platform so as to reopen their domestic manufacturing facilities and domestic assembly plants in time to permit the production of 2010 vehicles.

C. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates, creditors, employees, retirees and other parties in interest and stakeholders will be served by, this Court granting certain of the relief requested in the Motion relating to that certain Master Transaction Agreement, dated as of April 30, 2009 (the "Purchase Agreement"),[2] between and among Fiat S.p.A ("Fiat"), New CarCo Acquisition LLC (the "Purchaser"), a Delaware limited liability formed by Fiat, and Chrysler LLC and its Debtor subsidiaries, which, together with certain ancillary agreements, contemplates a set of related transactions (collectively, the "Sale Transaction") for the sale of the Purchased Assets to the Purchaser and, in connection therewith, approval of the UAW Retiree Settlement Agreement, including approval of: (1) the Bidding Procedures, including the minimum overbid amount of $100 million; (2) the procedures described below (the "Contract Procedures") for the determination of the amounts necessary to cure defaults under the Designated Agreements (the "Cure Costs") and to address any other disputes in connection with the assumption and assignment of the Designated Agreements pursuant to section 365 of the Bankruptcy Code; (3) the Breakup Fee described below and (4) the form, timing and manner of notice of the proposed sale, the Bidding Procedures, the Contract Procedures and the other matters described

[2] A copy of the Purchase Agreement, without its voluminous exhibits and schedules, is attached as Exhibit A to the Motion.

herein, including the form of notice of the proposed sale attached hereto as Exhibit B (the "Sale Notice"), the form of publication notice of the sale attached hereto as Exhibit C (the "Publication Notice"), the form of notice of the proposed assumption and assignment of the Designated Agreements attached hereto as Exhibit D (the "Assignment Notice") and the form of (i) special notice to Debtors' retirees represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") and (ii) Cover Letter to UAW-Represented Retirees (as defined below) describing the proposed sale and the UAW Retiree Settlement Agreement, attached hereto collectively as Exhibit E (collectively, the "UAW Retiree Notices").

D. Under the Purchase Agreement, Fiat is entitled to a fee in the amount of $35 million solely in the event that a bidder other than the Purchaser is selected as the Successful Bidder (as defined in the Bidding Procedures) for the Purchased Assets (the "Breakup Fee"). Other than the payment of the Breakup Fee, Fiat is not entitled to any other fees, expenses or compensation in the event that a bidder other than the Purchaser is selected as the Successful Bidder in the auction process described below. The payment of the Breakup Fee, as set forth herein, is an essential inducement and condition relating to the Purchaser's and Fiat's entry into, and continuing obligations under, the Purchase Agreement. The Breakup Fee (1) if triggered, shall be deemed to be an actual and necessary cost and expense of preserving these estates; (2) is reasonable and appropriate in light of the size and nature of the proposed transaction, the necessity to quickly consummate a sale for the Debtors and the considerable efforts and resources that have been and will be expended by the Purchaser pending the Sale Hearing; (3) has been negotiated by the parties and their respective advisors at arms' length and in good faith; and (4) is necessary to ensure that the Purchaser and Fiat will continue to pursue the

closing of the Sale. The Breakup Fee represents less than 1.75% of the cash portion of the purchase price to be paid by the Purchaser, is comparable to similar fees authorized in comparable transactions in this District, represents approximately 35% of the minimum excess value that would be realized by the Debtors' estates from a qualifying overbid under the Bidding Procedures and is commensurate to the benefit conferred by the Purchaser and Fiat upon the estates.

E. The Purchaser and the Debtors are relying on their mutual performance of their obligations set forth in Articles V, VI and VII of the Purchase Agreement, subject for the avoidance of doubt to the Debtors' right under Section 5.18 of the Purchase Agreement, to the extent these obligations relate to the period prior to the termination of the Purchase Agreement or the Closing Date (as defined in the Purchase Agreement and hereafter the "Closing Date"), whichever shall first occur. The Purchaser and the Debtors have entered into the Purchase Agreement expecting all parties to perform these obligations to provide the each other with reasonable assurances that they will be in the position to consummate the transactions contemplated by the Purchase Agreement in the event that the Purchaser is selected as the Successful Bidder.

F. Under the circumstances, and particularly in light of the extensive prior marketing of the Purchased Assets, the Bidding Procedures constitute a reasonable, sufficient, adequate and proper means to provide potential competing bidders with an opportunity to submit and pursue higher and better offers for all or substantially all of the Purchased Assets.

G. The Purchased Assets are "wasting assets" that will not retain going concern value over an extended period of time. Given the wasting nature of the Purchased Assets, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in

the Motion is not granted on an expedited basis consistent with the provisions set forth herein and the Purchase Agreement.

H. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates and stakeholders will be served by, this Court scheduling a Sale Hearing on an expedited basis to consider granting the remaining relief requested in the Motion, including approval of the Sale Transaction and the transfer of the Purchased Assets to the Purchaser (or another Successful Bidder) free and clear of all Claims, pursuant to section 363(f) of the Bankruptcy Code.

I. The Sale Notice is reasonably calculated to provide parties in interest with proper notice of the potential sale of the Purchased Assets, the related Bidding Procedures, the Sale Hearing, the structure of the Sale Transaction and related implications on interested parties, including, without limitation, creditors, customers, suppliers and current and former employees.

J. The Assignment Notice is reasonably calculated to provide all counterparties to the Designated Agreements with proper notice of the potential assumption and assignment of their executory contracts or unexpired leases, any Cure Costs relating thereto and the Contract Procedures.

K. Publication of the Publication Notice as set forth herein is reasonably calculated to provide all potential warranty claimants and all unknown creditors and parties not otherwise required to be served with a copy of the Sale Notice pursuant to this Order with proper notice of the potential sale of the Purchased Assets, the related Bidding Procedures and the Sale Hearing.

L. The UAW Retiree Notices are reasonably calculated to provide the Debtors' retirees and surviving spouses represented by the UAW, including members of

the "Class" as defined in the UAW Retiree Settlement Agreement (collectively, the "UAW-Represented Retirees") proper notice of the potential sale of the Purchased Assets, the related Bidding Procedures, the Sale Hearing, the structure of the Sale Transaction, including, but not limited to, (1) the sale of the Purchased Assets free and clear of any interest the UAW or UAW-Represented Retirees may have in such Purchased Assets, (2) the UAW CBA Assignment and (3) the UAW Retiree Settlement Agreement.

M. The Motion and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the Guidelines for the Conduct of Asset Sales adopted by this Court pursuant to General Order M-331.

N. The Sale Transaction includes the transfer of "Personally Identifiable Information" (as defined in section 101(41A) of the Bankruptcy Code). The transfer of Personally Identifiable Information shall not be effective until a Consumer Privacy Ombudsman is appointed, issues its findings and the Court has an opportunity to review the findings and issue any rulings that are appropriate.

O. Due, sufficient and adequate notice of the relief granted herein has been given to parties in interest.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth herein.

2. All objections to the relief requested in this Motion that have not been withdrawn, waived or settled as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court or the terms of this Order, are overruled except as otherwise set forth herein.

3. The Bidding Procedures, which are attached hereto as Exhibit A and incorporated herein by reference, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the Purchased Assets.

4. The failure specifically to include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety.

5. Any person wishing to submit a higher or better offer for the Purchased Assets, or any portion thereof, must do so in accordance with the terms of the Bidding Procedures.

6. The deadline for submitting a Qualified Bid (as such term is defined in the Bidding Procedures) shall be May 20, 2009 for all Potential Bidders (the "Bidding Deadline"), as further described in the Bidding Procedures.

7. The deadline for objecting to the approval of the Sale Transaction (other than an objection to the proposed assumption and assignment of the Designated Agreements or to any proposed Cure Costs), including the sale of the Purchased Assets free and clear of all Claims pursuant to section 363(f) of the Bankruptcy Code and approval of the UAW Retiree Settlement Agreement shall be May 19, 2009 at 4:00 p.m. (Eastern Time) (the "Objection Deadline") for all parties in interest, including, but not limited to the Debtors' prepetition senior secured lenders (the "Senior Secured Lenders"), the UAW and the official committee of unsecured creditors appointed in these cases (the "Creditors' Committee"); provided, however, that if a determination is made at the Sale Hearing that the Successful Bidder (as such term is

defined in the Bidding Procedures) is a bidder other than the Purchaser, parties in interest may object solely to such determination at the Sale Hearing.

8. The Purchaser shall constitute a Qualified Bidder (as defined in the Bidding Procedures) for all purposes and in all respects with regard to the Bidding Procedures.

9. As further described in the Bidding Procedures, if more than one Qualified Bid is timely received, a Court-supervised auction may be conducted at the outset of the Sale Hearing to determine the Successful Bidder.

10. The Court shall conduct the Sale Hearing on May 27, 2009 at 10:00 a.m. (Eastern Time) at which time the Court will consider approval of the Sale Transaction to the Successful Bidder and approval of the UAW Retiree Settlement Agreement. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing; provided, however, that the Sale Hearing shall not be deemed to have been held until it is substantially complete.

11. The Debtors are hereby authorized to conduct the Sale Transaction (or other similar transaction, if the Successful Bidder is a party other than the Purchaser) without the necessity of complying with any state or local bulk transfer laws or requirements.

12. The Sale Notice, the Publication Notice and the UAW Retiree Notices, substantially in the forms of Exhibit B, Exhibit C and Exhibit E to this Order, are hereby approved.

13. The manner of notice of the proposed sale, the Bidding Procedures and the Sale Hearing and approval of the UAW Retiree Settlement Agreement at such Sale Hearing as set forth in this paragraph 13 are approved in all respects. In particular, no other or further notice

of the proposed sale, the Bidding Procedures, the Sale Hearing and approval of the UAW Retiree Settlement Agreement at such Sale Hearing shall be required except as follows:

(a) within two business days after entry of this Order (the "Mailing Deadline"), the Debtors shall serve the Sale Notice by first-class mail, postage prepaid upon: (i) counsel to the U.S. Treasury; (ii) counsel to the UAW; (iii) counsel to the Purchaser; (iv) counsel to the administrative agent for the Senior Secured Lenders; (v) any party that, in the past year, expressed in writing to the Debtors an interest in acquiring the Purchased Assets, directly or through a merger or alliance; (vi) non-Debtor counterparties to all Designated Agreements; (vii) all parties who are known to assert Claims upon the Assets; (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; (x) all applicable state attorneys general, local environmental enforcement agencies and local regulatory authorities; (xi) all applicable state and local taxing authorities; (xii) the U.S. Trustee; (xiii) Federal Trade Commission; (xiv) United States Attorney General/Antitrust Division of Department of Justice; (xv) the U.S. Environmental Protection Agency and similar state agencies; (xvi) United States Attorney's Office; (xvii) the entities set forth in the Special Service List and the General Service List established in these cases; (xviii) counsel to Cerberus; (xix) counsel to Daimler; (xx) counsel to Export Development Canada; (xxi) all entities that have requested notice in these chapter 11 cases under Bankruptcy Rule 2002; and (xxii) any other party identified on the creditor matrix in these cases.

(b) On the Mailing Deadline, or as soon as practicable thereafter, the Debtors shall submit the Publication Notice to be published one time in the national edition of *USA Today*, *The Wall Street Journal* and *The New York Times*, as well as the Worldwide Edition of *The Financial Times*.

(c) On the Mailing Deadline, or as soon as practicable thereafter, the Debtors shall cause the Publication Notice to be published on the website of the Debtors' claims and noticing agent, Epiq Bankruptcy Solutions, LLC, at http://www.chryslerrestructuring.com.

(d) On the Mailing Deadline, the Debtors shall serve the UAW Retiree Notices on all UAW-Represented Retirees by first-class mail, postage prepaid. In addition, on the Mailing Date, or as soon as practicable thereafter, the Debtors shall cause this Order, the Sale Motion, the Purchase Agreement, the UAW Retiree Settlement Agreement (including its exhibits) and that certain Equity Recapture Agreement executed in connection with the UAW Retiree Settlement Agreement to be posted on the website of the Debtors' claims and noticing agent, Epiq Bankruptcy Solutions, LLC, at http://www.chryslerrestructuring.com (together with the mailing of the UAW Retiree Notices as set forth in this subparagraph, "Notice to UAW-Represented Retirees").

14. The manner of notice of the proposed sale, the Bidding Procedures, the Sale Hearing and approval of the UAW Retiree Settlement Agreement, including the Notice to

UAW-Represented Retirees is approved in all respects. In particular, no other or further notice of the proposed sale, the Bidding Procedures, the Sale Hearing or approval of the UAW Retiree Settlement Agreement shall be required other than effectuating the Notice to UAW-Represented Retirees approved herein.

15. To be considered, any objection to the Sale Transaction (other than an objection to the proposed assumption and assignment of the Designated Agreements or to any proposed Cure Costs), including any objection to approval of the UAW Retiree Settlement Agreement, must (a) comply with the Bankruptcy Rules and the Local Bankruptcy Rules and (b) be made in writing and filed with this Court and served upon the following parties (collectively, the "Notice Parties") so as to be received by the Objection Deadline: (i) the Debtors, c/o Chrysler LLC, 1000 Chrysler Drive, CIMS# 485-14-96, Auburn Hills, Michigan 48326-2766 (Attn: Holly E. Leese, Esq.); (ii) Jones Day, counsel to the Debtors, 222 East 41st Street, New York, New York 10017 (Attn: Corinne Ball, Esq. and Nathan Lebioda, Esq.) and 1420 Peachtree Street, N.E., Suite 800, Atlanta, Georgia 30309-3053 (Attn: Jeffrey B. Ellman, Esq.); (iii) Capstone Advisory Group, LLC, Park 80 West, Plaza 1, Plaza Level, Saddle Brook, NJ 07663 (Attn: Robert Manzo); (iv) Kramer Levin Naftalis & Frankel LLP, counsel to the Creditors' Committee, 1177 Avenue of the Americas New York, New York 10036 (Attn: Thomas M. Mayer, Esq. and Kenneth H. Eckstein, Esq.); (v) Simpson Thacher & Bartlett LLP, counsel to the administrative agent for the Senior Secured Lenders, 425 Lexington Avenue, New York, New York 10017 (Attn: Peter Pantaleo, Esq. and David Eisenberg, Esq.); (vi) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Brian S. Masumoto, Esq.); (vii) the U.S. Treasury, 1500 Pennsylvania Avenue NW, Room 2312 Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (viii) United States Attorney's Office,

Southern District of New York, Civil Division, Tax & Bankruptcy Unit, 86 Chambers Street, 3rd Floor, New York, New York 10007 and Cadwalader, Wickersham & Taft LLP, Of counsel to the Presidential Task Force on the Auto Industry, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (ix) Vedder Price, P.C., counsel to Export Development Canada, 1633 Broadway, 47th Floor New York, New York 10019 (Attn: Michael J. Edelman, Esq.); (x) the Purchaser and Fiat, c/o Fiat S.p.A, Via Nizza n. 250, 10125 Torino, Italy (Attn: Chief Executive Officer); (xi) Sullivan & Cromwell LLP, counsel to the Purchaser and Fiat, 125 Broad Street, New York, New York 10004 (Attn: Scott D. Miller, Esq. and Andrew Dietderich, Esq.) and 1888 Century Park East, 21st Floor, Los Angeles, CA 90067 (Attn: Hydee R. Feldstein, Esq.); (xii) International Union, UAW, 8000 East Jefferson Avenue, Detroit, Michigan 48214 (Attn: Daniel Sherrick, Esq.); (xiii) Cleary Gottlieb Steen & Hamilton LLP, counsel to the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (xiv) Cohen, Weiss and Simon LLP, counsel to the UAW, 330 W. 42nd St., New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (xv) Togut, Segal & Segal, LLP, conflicts counsel to the Debtors, One Penn Plaza, New York, New York 10119 (Attn: Albert Togut, Esq.); and (xvi) counsel to any other statutory committees appointed in these cases.

16. The failure of any objecting person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or the consummation and performance of the sale of the Purchased Assets contemplated by the Purchase Agreement or a Marked Agreement (as defined in the Bidding Procedures), if any (including the transfer free and clear of all Claims of each of the Purchased Assets transferred as part of the Sale Transaction) or to the approval of the UAW Retiree Settlement Agreement.

17. The Minimum Overbid Purchase Price and Breakup Fee as set forth in the Purchase Agreement are hereby approved. If Fiat or the Purchaser becomes entitled to receive the Breakup Fee in accordance with the terms of the Purchase Agreement, (a) the Debtors' obligation to pay the Breakup Fee under the Purchase Agreement shall be a joint and several obligation of the Debtors and shall survive termination of the Purchase Agreement; (b) Fiat or the Purchaser (as applicable) shall be, and hereby is, granted an allowed administrative claim in the Debtors' chapter 11 cases in an amount equal to the Breakup Fee, pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code and have priority over and be senior to all other claims against the Debtors to the extent of the proceeds realized from the sale of the Purchased Assets to a Successful Bidder other than the Purchaser; (c) such Breakup Fee shall be payable immediately on the third business day following entry of an order approving a Successful Bidder other than the Purchaser or Fiat on the conditions and in accordance with the terms of the Purchase Agreement; and (d) the Debtors are authorized and directed to pay the Breakup Fee to Fiat immediately upon its becoming due without further order of this Court.

18. Other than Fiat's right to the Breakup Fee, no person or entity, shall be entitled to any expense reimbursement, break-up fees, "topping," termination or other similar fee or payment in connection with the Bidding Procedures.

19. The following procedures (the "Contract Procedures") shall govern the assumption and assignment of Designated Agreements in connection with the sale of the Purchased Assets to the Purchaser:[3]

[3] If a party other than the Purchaser is the Successful Bidder, or if a transaction other than the Sale Transaction is consummated for the sale of a substantial portion of the Debtors' operating assets, then these Contract Procedures may be modified if necessary by further order of this Court.

(a) Initial Contract Designations. Not fewer than 13 days prior to the Sale Hearing, the Debtors shall file with this Court and shall serve on each non-debtor counterparty to an executory contract or unexpired lease with any of the Debtors (each, a "Non-Debtor Counterparty") that the Debtors may assume and assign to the Purchaser (the "Initial Designated Agreements"), by overnight delivery service, a notice of assumption and assignment of executory contracts and unexpired leases in substantially the form of the Assignment Notice attached hereto as Exhibit D. The Debtors shall attach to the Assignment Notice a list identifying the Non-Debtor Counterparties to the Initial Designated Agreements and the corresponding Cure Costs under the Initial Designated Agreements as of April 30, 2009; provided that such Assignment Notice shall in no way limit such Non-Debtor Counterparty's entitlement to Cure Costs accruing during the period after April 30, 2009. In addition, the Debtors shall serve a copy of the Assignment Notice on a Non-Debtor Counterparty's counsel of record in these chapter 11 cases as of the date of the Assignment Notice ("Counsel of Record").

(b) Information in Assignment Notice. For each Designated Agreement, on the Assignment Notice, the Debtors shall either (i) indicate the proposed Cure Costs relating to such Designated Agreement or (ii) provide an amount representing the proposed Cure Costs for multiple Designated Agreements with the same Non-Debtor Counterparty, subject, upon request, to providing greater detail to a Non-Debtor Counterparty to identify on a contract-by-contract basis the proposed applicable Cure Costs to the extent reasonably available. On an Assignment Notice, Designated Agreements may be listed individually or in groups of agreements with the Non-Debtor Counterparty, as long as the Non-Debtor Counterparty is provided with sufficient information to identify the contracts to be assumed. The Assignment Notice also may identify any additional proposed terms or conditions of assumption and assignment.

(c) Additional Contract Designations. In accordance with Section 2.10 of the Purchase Agreement, the Debtors may, at the Purchaser's request or with the Purchaser's consent, designate, up to the Agreement Designation Deadline, additional executory contracts and unexpired leases as agreements to be assumed by the Debtors and assigned to the Purchaser pursuant to the Purchase Agreement (the "Additional Designated Agreements" and, together with the Initial Designated Agreements, the "Designated Agreements"). As used herein the "Agreement Designation Deadline" means, as applicable, (i) 30 days after the Closing Date with respect to the Dealer Agreements (as defined below), (ii) 60 days after the Closing Date for executory contracts and unexpired leases with the Debtors' production suppliers and (iii) 90 days after the Closing Date for all other agreements. Upon determining that a specific executory contract or unexpired lease, or a group thereof, are Additional Designated Agreements, the Debtors, at the Purchaser's request, shall serve an Assignment Notice on each of the Non-Debtor Counterparties to such Additional Designated Agreements and their Counsel of Record, indicating (i) that the notice recipient is a Non-Debtor Counterparty to one or more executory contracts or unexpired leases with the Debtors that the Debtors intend to assume and assign to the Purchaser and (ii) the corresponding Cure Cost under the Additional Designated Agreements as of April 30, 2009; provided that such Assignment Notice shall in no way limit such Non-Debtor Counterparty's entitlement to Cure Costs accruing during the period after April 30, 2009.

(d) Purchaser Confirmation Notice. Prior to the Closing Date and no later than June 12, 2009 (the "Pre-Closing Deadline"), the Purchaser shall serve on all applicable Non-Debtor Counterparties a notice indicating those Designated Agreements with respect to which the Purchaser has made a final determination to take assignment of a Designated Agreement (a "Confirmation Notice"), subject only to Cure Costs not being established in an amount greater than the amounts in the Assignment Notice unless otherwise agreed upon in writing by the Purchaser. Designated Agreements listed on a Confirmation Notice are referred to as "Confirmed Agreements." The Purchaser may serve additional Confirmation Notices at any time through the Agreement Designation Deadline. Until a Designated Agreement is listed on a Confirmation Notice, it shall not be considered to be either assumed or assigned and shall remain subject to assumption, rejection or redesignation hereunder.

(e) UAW and GMAC Agreements. Contingent upon the approval of the sale of the Purchased Assets to the Purchaser and concurrently with the consummation of the sale of the Purchased Assets (without prejudice to the conditions thereto set forth in the Purchase Agreement), (i) each of the UAW CBA Assignment and the GMAC MAFA Documents (as such term is defined in the Bidding Procedures attached hereto as Exhibit A) shall be deemed to be Confirmed Agreements as to which no Assignment Notice or Confirmation Notice shall be sent, (ii) the Debtors shall assign to Purchaser, and Purchaser shall be deemed to have assumed, each such agreement as of the Closing Date, and each non-Debtor party to each such agreement shall be deemed to have consented to such assumption and assignment and (iii) the Court order approving such sale shall reflect such assumption and assignment.

(f) Direct Dealer Agreements. Certain executory dealer agreements will be identified as Designated Agreements to be assumed and assigned. Although most U.S. dealers have entered into standard uniform dealership agreements in the form of the Chrysler Corporation Sales and Service Agreement (the "Sales and Service Agreement"), some dealers are party to older agreements in the form of the Chrysler Direct Dealer Agreement (each, a "Direct Dealer Agreement"). If a Direct Dealer Agreement is identified as a Designated Agreement pursuant to the procedures above, then such Direct Dealer Agreement will only be assumed and assigned to the Purchaser if the counterparty to the Direct Dealer Agreement first agrees to modify such Direct Dealer Agreement and restate it in the form of the Sales and Service Agreement (each such modified Direct Dealer Agreement and Sales and Service Agreement, a "Dealer Agreement"). If the counterparty and the Debtors do not so modify and restate such Direct Dealer Agreement in the form of the Sales and Service Agreement, then notwithstanding any other provisions of these Contract Procedures, such Direct Dealer Agreement will not be assumed and assigned pursuant to these Contract Procedures.

(g) Section 365 Objections. Objections, if any ("Section 365 Objections"), to the proposed Cure Costs, or to the proposed assumption and assignment of the Designated Agreements, including, but not limited to, objections related to adequate assurance of future performance or objections relating to whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code, must be in

writing and filed with this Court and served on the Notice Parties so as to be received no later than ten days after service of an Assignment Notice (the "Section 365 Objection Deadline"). Where a Non-Debtor Counterparty to a Designated Agreement files a Section 365 Objection meeting the requirements of this subparagraph (g), objecting to the assumption by the Debtors and assignment to the Purchaser of such Designated Agreement (the "Disputed Designation") and/or asserting a cure amount higher than the proposed Cure Costs listed on the Assignment Notice (the "Disputed Cure Costs"), the Debtors, the Purchaser and the Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention.

(h) Section 365 Hearing. If any of the Debtors, the Non-Debtor Counterparty or the Purchaser determine that the objection cannot be resolved without judicial intervention, then the determination of the assumption and assignment of the Disputed Designation and/or the amount to be paid under section 365 of the Bankruptcy Code with respect to the Disputed Cure Costs will be determined by the Court at an omnibus hearing established for such purpose that is on a date not less than ten days after the service of such objection or such other date as determined by the Court (a "Section 365 Hearing"), unless the Debtors, the Purchaser and the Non-Debtor Counterparty to the Designated Agreement in dispute agree otherwise. Unless otherwise agreed by the parties, the Section 365 Hearing to consider objections relating to the Initial Designated Agreements shall be conducted on June 4, 2009 at 10:00 a.m., Eastern Time. If the Court determines at a Section 365 Hearing that the Designated Agreement cannot be assumed and assigned, or establishes Cure Costs that the Purchaser is not willing to pay, then such executory contract or unexpired lease shall no longer be considered a Designated Agreement.

(i) Consent to Assumption and Assignment. Any Non-Debtor Counterparty to a Designated Agreement who fails to file timely Section 365 Objection to the proposed Cure Costs or the proposed assumption and assignment of a Designated Agreement by the Section 365 Objection Deadline is deemed to have consented to such Cure Costs and the assumption and assignment of such Designated Agreement, and such party shall be forever barred from objecting to the Cure Costs or such assumption and assignment and from asserting any additional cure or other amounts against the Debtors, their estates or the Purchaser.

(j) Resolution of Assumption/Assignment Issues. If the Non-Debtor Counterparty to a Designated Agreement fails to timely assert a Section 365 Objection as described in subparagraph (g) above, or upon the resolution of any timely Section 365 Objection by agreement of the parties or order of the Court approving an assumption and assignment, such Designated Agreement shall be deemed to be assumed by the Debtors and assigned to the Purchaser and the proposed Cure Cost related to such Designated Agreement shall be established and approved in all respects, subject to the conditions set forth in subparagraph (k) below.

(k) Conditions on Assumption and Assignment. The Debtors' decision to assume and assign the Designated Agreements is subject to Court approval and consummation of the Sale Transaction. Accordingly, subject to the satisfaction of conditions in subparagraph (j) above to address any cure or assignment disputes, the

Debtors shall be deemed to have assumed and assigned to the Purchaser each of the Designated Agreements as of the date of and effective only upon the Closing Date, and absent such closing, each of the Designated Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to subsequent assumption or rejection by the Debtors under the Bankruptcy Code. Assumption and assignment of the Designated Agreements also is subject to the Purchaser's rights set forth in subparagraphs (c) and (d) above. The Purchaser shall have no rights in and to a particular Designated Agreement until such time as the particular Designated Agreement has been identified by the Purchaser as a Confirmed Agreement and is assumed and assigned in accordance with the procedures set forth herein. Once assumed and assigned as a Confirmed Agreement under these Contract Procedures, a Designated Agreement is not subject to rejection under section 365 of the Bankruptcy Code.

(l) Pre-Closing Assurance Letters. From and after the Pre-Closing Deadline through the Closing Date, with respect to any Designated Agreement not listed in a Confirmation Notice that is a production supply contract or a dealer contract with respect to which the Non-Debtor Counterparty has determined that it must incur costs after the Pre-Closing Deadline to remain in a position to perform in accordance with the Designated Agreement upon assumption by the Purchaser, the Non-Debtor Counterparty may send a letter to the Debtors and to the Purchaser describing such additional costs under such agreement and seeking assurance of the Purchaser's intentions with respect to such agreement (an "Assurance Letter"). In response to an Assurance Letter, the Purchaser may either (i) provide a Confirmation Notice to the Non-Debtor Counterparty; (ii) elect not to deliver a Confirmation Notice at such time but to provide the Non-Debtor Counterparty with assurances that the Purchaser will advance the costs of any ongoing performance by the Non-Debtor Counterparty pending a final determination to assume the underlying Designated Agreement (such advances to be reflected by an appropriate credit against future payments to the Non-Debtor Counterparty under the Designated Agreement only in the event that such Designated Agreement becomes a Confirmed Agreement); or (iii) elect not to deliver a Confirmation Notice at such time but to agree in writing that the Non-Debtor Counterparty may temporarily suspend performance during this period without penalty (and, if applicable, upon assumption and assignment to the Purchaser, toll or delay subsequent deliveries as may be reasonably required to reflect the suspension of performance during such period). If no response to an Assurance Letter is received within five business days, the Non-Debtor Counterparty may temporarily suspend performance of the agreement pursuant to clause (iii) above. Any disputes relating to the foregoing shall be heard by the Bankruptcy Court. For purposes of this paragraph, the Debtors and the Purchaser shall be contacted at the addresses identified in paragraph 15 above.

(m) Post-Closing Assurances. From and after the Closing Date through the applicable Agreement Designation Deadline, Non-Debtor Counterparties may serve a written request on the Debtors and the Purchaser for a final determination of the assumption or rejection of its executory contracts and unexpired leases. Absent a favorable response within ten days, the Non-Debtor Counterparty may file a motion to compel assumption or rejection of such agreement, which may be heard on ten days' notice, subject to the Court's availability; provided, however, that in the event that a

Non-Debtor Counterparty believes that it requires a more expeditious decision regarding assumption or rejection of its executory contract or unexpired lease, such Non-Debtor Counterparty shall be free to seek expedited relief from the Court, without regard to the ten-day periods referenced herein but subject to the legal standards and requirements applicable to requests for expedited consideration, provided further that in such event the counterparty shall give as much advance notice as reasonably practicable under the circumstances to the Debtors and the Purchaser. For purposes of this paragraph, the Debtors and the Purchaser shall be contacted at the addresses identified in paragraph 15 above.

(n) Cure Payments. Except as may otherwise be agreed to by the parties to a Designated Agreement, the defaults under the Designated Agreements that must be cured in accordance with section 365(b) of the Bankruptcy Code shall be cured as follows: the Purchaser shall pay all Cure Costs relating to an assumed executory contract or unexpired lease within ten days after the later of (i) the Closing Date, (ii) the date on which such executory contract or unexpired lease is deemed assumed and assigned, in accordance with subparagraph (k) of these Contract Procedures or (iii) with respect to Dispute Cure Costs, the date the amount thereof is finally determined.

(o) Rights Pending Assumption or Rejection. Nothing in these Contract Procedures limits, restricts or expands the rights of parties to executory contracts and unexpired leases pending assumption or rejection, including any rights to seek further relief from the Bankruptcy Court (including motions to compel a prompt final decision on assumption or rejection), or the rights of other parties in response to such requests.

(p) Filing of Final List of Confirmed Agreements. As soon as reasonably practicable after the Agreement Designation Deadline, the Debtors shall file with the Court a final schedule indicating all Confirmed Agreements and the proposed Cure Costs relating to each Confirmed Agreement scheduled therein.

20. Subject to the Debtors' rights under Section 5.18 of the Purchase Agreement, the Debtors are authorized to and directed to comply with their obligations and undertakings in Articles V, VI and VII of the Purchase Agreement until the earlier of the termination of the Purchase Agreement or the Closing Date. Furthermore, except with respect to the requirement pursuant to this Order that the Purchaser assume all GMAC MAFA Documents (as such term is defined in the Bidding Procedures attached hereto as Exhibit A) upon consummation of the sale of the Purchased Assets, nothing in this Order alters or amends the terms and conditions of, or the rights and obligations of the non-Debtor parties to, the Purchase Agreement, provided that all contracts that have not become Confirmed Contracts as of the

Closing Date shall constitute "Excluded Contracts" for purposes of the Purchase Agreement (without any requirement to update the Company Disclosure Letter) until such time, if any, as such contracts subsequently have become Confirmed Contracts in accordance herewith.

21. The U.S. Trustee is directed to appoint a Consumer Privacy Ombudsman pursuant to sections 332 and 363(b)(1) of the Bankruptcy Code as soon as practicable.

22. Unless expressly set forth herein all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

23. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

24. The Debtors are authorized and empowered to take such steps, expend such sums of money and do such other things as may be necessary to implement and effect the terms and requirements established and relief granted in this Order.

25. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: New York, New York
May 7, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE