

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

IN RE:	§	
	§	Chapter 11
	§	
AMERICAN LAFRANCE, LLC,	§	Case No. 08-10178 (BLS)
	§	
Debtor.	§	Hearing Date & Time: April 9, 2008 at 10:00 a.m.
	§	Objection Deadline: April 2, 2008 at 4:00 p.m.

**DEBTOR’S MOTION FOR AN ORDER PURSUANT TO
11 U.S.C. §§ 105, 363, AND 365 AND RULES 2002, 6004, 6006, AND 9014 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE (A) AUTHORIZING THE SALE
OF SUBSTANTIALLY ALL OF ITS ASSETS; (B) APPROVING AN ASSET PURCHASE
AGREEMENT, SUBJECT TO HIGHER AND/OR BETTER OFFERS; (C) APPROVING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF**

American LaFrance, LLC (“ALF” or “Debtor”) hereby moves (the “Motion”) this Court to enter an order pursuant to 11 U.S.C. §§ 105, 363, and 365 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (A) authorizing the sale of substantially all of its assets (collectively, the “Assets”), free and clear of Liens, Claims, Encumbrances, and Interests¹ subject to higher and/or better offers for all or portions of the Assets (the “Asset Sale”); (B) approving that certain Asset Purchase Agreement (the “Agreement”)² by and between ALF and Patriarch Partners Agency Services, LLC or its assignee(s) (“Patriarch” or “Buyer”), subject to higher and better offers; (C) approving the assumption and assignment of certain executory contracts and unexpired leases (the “Designated Contracts”) pursuant to the Agreement; and (D) granting related relief. In support of this Motion, ALF states as follows:

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement as defined below.

² A copy of the Agreement is attached hereto as Exhibit A.



I.
PRELIMINARY STATEMENT

1. The Debtor's primary goal in this Chapter 11 case is to confirm the Plan of Reorganization of American LaFrance, LLC (the "Plan"), which is being filed contemporaneously herewith. The relief requested herein is an alternative transaction to the Plan. Debtor has obtained preliminary scheduling with respect to the Plan and this Motion, which both are scheduled to be heard by the Court on April 9, 2008, at 10:00 a.m. (Eastern Time). If the Plan is not confirmed, the Debtor intends to pursue approval of this Motion.

II.
JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter concerns the administration of this bankruptcy estate; accordingly, this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are 11 U.S.C. §§ 105, 363, and 365 (11 U.S.C. § 101 et. seq., the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III.
BACKGROUND

A. General Procedural Background

3. On January 28, 2008 (the "Petition Date") ALF filed its *Statement of Background Information* with this Court. This *Statement of Background Information* is incorporated by reference herein.

B. Facts Related To The Sale

4. As set forth in more detail in the *Statement of Background Information*, several factors have caused ALF to experience a rapidly declining cash balance and eventual lack of cash liquidity. ALF began to address these challenges by proactively reducing overall marketing costs,

focusing marketing expenses on the marketing channels that resulted in sales with the largest gross margins, reducing general and administrative expenses, and improving collection efforts. Unfortunately, these measures did not provide enough immediate cash liquidity to increase inventory to levels necessary to fulfill orders for the most popular products.

5. ALF is close to exhausting its cash resources and does not believe that it can continue in business unless it receives a cash infusion of approximately \$50,000,000.00, which the Buyer has agreed to provide pursuant to the terms of the *Debtor In Possession Financing Amendment to Credit Agreement* (the “DIP Financing”).³ Although the DIP Financing should allow ALF to continue operating its business, ALF believes that the most viable solution to its liquidity crises that will also preserve value of the assets and business is an asset sale pursuant to section 363 of the Bankruptcy Code.

6. Contemporaneously herewith, ALF filed its *Motion For Order (A) Approving Bid Procedures Relating To Sale Of Substantially All Of The Debtor’s Assets; (B) Scheduling A Hearing To Consider The Sale And Approving The Form And Manner Of Notices; (C) Establishing Procedures Relating To Assumption And Assignment Of Certain Contracts, Including Notice Of Proposed Cure Amounts; And (D) Granting Related Relief* (the “Bid Procedures Motion”).

7. As described in the Bid Procedures Motion, after a thorough analysis of all factors and other considerations, ALF has determined that pursuing a sale of substantially all of its Assets is in the best interests of its estate and the creditors thereof, customers, employees, and other stakeholders. ALF believes that the Bid Procedures permit interested parties reasonable

³ The DIP Financing is fully described in the *Emergency Motion For Interim And Final Orders (A) Authorizing American LaFrance To Incur Postpetition Financing, (B) Authorizing American LaFrance To Use Cash Collateral, And (C) Scheduling Final Hearing* [Docket No. 20].

opportunities, consistent with the financial constraints of ALF, to evaluate whether to submit a bid for the Assets that is higher and better than the Agreement executed by ALF and the Buyer.

IV. RELIEF REQUESTED

8. By this Motion, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, ALF seeks an order, substantially similar to the Order attached hereto as Exhibit B, which:

- a. authorizes the Asset Sale to the Buyer or such other buyer who submits a higher or better offer for the Assets, or portions thereof, free and clear of all Encumbrances whatsoever;
- b. approves the Agreement and waives the 10-day stay imposed by Bankruptcy Rules 6004 and 6006, subject to the receipt by ALF of higher and/or better offers;
- c. approves the assumption and assignment of the Designated Contracts if ALF accepts the Agreement or another offer contemplating a going-concern purchase, as the highest and/or best offer; and
- d. grants such other and further relief as is just and proper.

V. JUSTIFICATION FOR IMMEDIATE SECTION 363 SALE

9. In recent months, ALF has operated at a loss and experienced a severe contraction in trade terms by its vendors. This contraction, which has ranged from severe tightening of payment terms to requirements of cash-in-advance and, in some circumstances, cash-on-order. With virtually no liquidity, and having exhausted all other reasonable options, ALF was faced with the threat of insufficient cash to meet day-to-obligations. ALF could not continue in business unless it obtained additional financing, which the Buyer has agreed to provide. Under the DIP Financing, the Buyer agreed to infuse capital into ALF so that ALF could meet its current obligations while seeking a buyer for its assets. ALF has agreed to sell,

and the Buyer has agreed to buy, substantially all of ALF's assets. From the Petition Date through the close of this sale, the Buyer has agreed to fund ALF's day-to-day obligations. This funding is expected to end on May 1, 2008. An immediate asset sale will allow ALF to preserve and maximize value for the estate. Such a sale will likely generate the highest return for ALF if the Assets are sold to an entity – like the Buyer – with access to capital and a clear motivation to continue and improve ALF's operations.

VI. TERMS OF PROPOSED SALE

10. Pursuant to the Agreement, ALF proposes to sell, assign, and transfer the Assets to the Buyer free and clear of all Liens, Claims, Encumbrances, and Interests, with all such Liens, Claims, Encumbrances, and Interests to attach to the proceeds of the Asset Sale. The significant terms of the Agreement are as follows:⁴

- (a) Purchase Price: (i) the Credit Bid Amount plus (ii) the aggregate amount of the Assumed Liabilities;
- (b) Assets: means, other than the Excluded Assets, all of ALF's right, title, and interest in and to the tangible and intangible assets, properties, rights, claims and contracts owned, leased, and/or licensed by ALF of every kind, character, and description, whether accrued, contingent or otherwise, existing as of the Closing (which assets comprise substantially all of ALF's assets, properties, rights, claims and contracts), including, without limitation:
 - (i) all inventory, wherever located, including supplies, goods-in-transit, works in process, raw materials, and finished products;
 - (ii) all accounts receivable and other receivables of ALF (including, without limitation, all accounts receivable and other receivables to collect from customers) and all rights of any kind or nature to retain all fees and other amounts payable, or that may become payable, to ALF with respect to

⁴ The following description of the terms of the Agreement and all of the exhibits, schedules and attachments thereto is intended solely to give the Court and interested parties an overview of the significant terms of the Agreement.

services performed by or on behalf of ALF on or prior to the Closing Date and all defenses, claims, counterclaims, and cross-claims with respect to any right of setoff or recoupment asserted with respect to such account receivable or receivable;

- (iii) all tangible personal property owned or used by ALF, including, without limitation, all equipment, furniture, fixtures, supplies, machinery, vehicles, tools and furnishings;
- (iv) all Owned Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon;
- (v) all Designated Contracts;
- (vi) all books and records, files, data, reports, computer codes, and sourcing data, customer and supplier lists, cost and pricing information, business plans, quality control records and manuals, blueprints, research and development files, accounting and tax files, personnel records and other records of ALF or related to the operations of ALF and/or the Business;
- (vii) the Intellectual Property and all telephone numbers utilized by ALF in connection with the Business (including, without limitation, all of the trademarks, trade names, URL's and telephone numbers listed on Schedule 1.1), in each case, to the extent assignable;
- (viii) all Software owned by ALF or leased by ALF pursuant to a Designated Contract;
- (ix) all Permits that relate to the Business, to the extent assignable;
- (x) all marketing, advertising and promotional materials;
- (xi) all rights, privileges, claims (including warranty claims, to the extent transferable), Avoidance Actions, offsets, demands, choses in action and indemnification rights of ALF against or with respect to (including all of Sellers' rights under any indemnification agreements) any Person (including, without limitation, all of the foregoing against any of the Persons identified on Schedule 1.2) in connection with and/or otherwise related to the Business, any of the Assets and/or any of the Assumed Liabilities

and arising prior to (or related to facts, circumstances and/or events arising prior to) the Closing, whether choate or inchoate, known or unknown, contingent or noncontingent;

- (xii) all rights of ALF relating to deposits and prepaid charges and expenses, claims for refunds, indemnification rights and rights to offset in respect thereof relating to the Assets;
- (xiii) all goodwill associated with the Business and/or the Assets;
- (xiv) any interest in and to any refunds of Taxes of whatever nature;
- (xv) all rights under all insurance policies and all rights of every nature and description under or arising out of such policies, except as provided in clause (f) of the definition of "Excluded Assets" and except to the extent such insurance policies are non-assignable as a matter of law; and
- (xvi) all cash (including checks received prior to the Closing, whether or not deposited or cleared prior to the Closing), cash equivalents and short-term investments (including, without limitation, restricted cash and all cash deposits to or for the benefit of utilities, including any such cash deposits maintained in escrow).

(c) Excluded Assets: means all of Seller's right, title, and interest in and to the following assets:

- (i) all minute books, stock records, and corporate seals;
- (ii) all records that ALF is required by law to retain in its possession and all personnel records with respect to employees that are not considered Transferred Employees (provided that records necessary for Buyer to provide COBRA coverage as legally required shall not be considered Excluded Assets and shall be considered to be Assets for all purposes of this Agreement); provided, however, that ALF shall make such records available to Buyer if required by Buyer from and after the Closing;
- (iii) any rights of ALF under this Agreement;

- (iv) the equity interests of ALF;
 - (v) any Contracts or leases that are not Designated Contracts; and
 - (vi) all rights under insurance policies to the extent relating to claims for losses related exclusively to any Excluded Asset or otherwise non-assignable as a matter of law.
- (d) Assumed Liabilities: means, without duplication, only the following:
- (i) Cure Costs associated with, and the liabilities and obligations of ALF arising from and after the Closing under the Designated Contracts assigned to Buyer;
 - (ii) trade payables to the extent first arising after the Petition Date directly relating to the operation of the Business in the ordinary course; and
 - (iii) all obligations under the programs described in the *Motion for Authority to Continue Certain Customer Programs and Practices* (and specifically excluding any other Liabilities relating to products or services sold or provided prior to the Closing, including, without limitation, any Liability for any claim under any Environmental Law and any claims for property damage, personal injury or death), and
 - (iv) Notwithstanding any provision of this Agreement to the contrary, the Assumed Liabilities shall not include any of the Excluded Liabilities; and
 - (v) Obligations related to the bid and performance bonds, and letters of credit set forth on Schedule 1.2 to the Agreement.
- (e) Excluded Liabilities: shall include all Liabilities of Seller not specifically assumed by the Buyer pursuant to the Agreement as Assumed Liabilities, including, without limitation, the liabilities described on Schedule 1.3 of the Agreement.
- (f) Release: Pursuant to section 10.15 of the Agreement,

effective upon the Closing Date, on behalf of itself and its estate, Seller acknowledges that it has no claim, counterclaim, setoff, recoupment, action, or cause of action of any kind or nature whatsoever (including, actions for avoidance, subordination, or recharacterization of any of Buyer's pre-Petition Date Claims, Encumbrances, Interests, and Liens) against the Buyer and any of its members, employees, agents, Affiliates, attorneys, or financial advisors (collectively, the "Buyer Group"), that directly or indirectly arise out of, are based on, or in any manner are connected with (i) the Credit Agreement and any of other pre-Petition Date agreements to which Buyer and Seller are (or were) parties and all transactions referred to in such agreements, or (ii) the acquisition by the Buyer of Claims and Liens in and against Seller (jointly, the "Released Claims"). Should any Released Claims nonetheless exist, Seller, on behalf of itself and its estate, hereby (i) releases and discharges each member of the Buyer Group from any liability whatsoever on such Released Claims and (ii) releases, waives, and discharges all such Released Claims against any member of the Buyer Group.

VII. APPLICABLE AUTHORITY

A. **The Proposed Sale Is An Exercise Of Sound Business Judgment And Should Be Approved.**

11. Section 363 of the Bankruptcy Code, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business, provides, in relevant part: "[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).

12. Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, courts have held that approval of a proposed sale of property pursuant to section 363(b) is appropriate if the transaction represents the reasonable business judgment of the debtor. *See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *see also In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be

satisfied that there is a “sound business reason” justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are “that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith”); *Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

13. If a valid business justification exists for the sale, as it does in this case, a debtor’s decision to sell property out of the ordinary course of business enjoys a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Therefore, any party objecting to the debtor’s proposed asset sale must make a showing of “bad faith, self-interest or gross negligence.” *Id.* at 656; *see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where 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.”).

14. In determining whether a proposed sale satisfies this standard, courts typically consider the following: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See, e.g., In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (D. Del. 1987). The proposed sale satisfies all these factors.

15. *First*, ALF has proposed the sale of the Assets after thorough consideration of all viable alternatives and has concluded that the sale is supported by a number of sound business reasons. In particular, ALF submits that the facts described above and in the *Statement of Background Information*, which require a prompt sale of the Assets to preserve value for this estate, provide a strong business justification for the sale of the Assets. The maximization of asset value for the benefit of creditors reflects a sound business purpose that warrants authorization of the proposed sale.

16. *Second*, ALF (a) provided notice of the Bid Procedures Motion as stated in the Bid Procedures Motion; (b) will provide notice of the Auction and the sale as outlined in the order approving the Bid Procedures Motion; and (c) has given notice of the filing of this Motion as indicated in the Bid Procedures Motion. ALF submits that such notice constitutes adequate and reasonable notice to interested parties. ALF believes that a more extended process may harm the recovery to its estate and creditors.

17. *Third*, the value to be received by ALF for the Assets as a going concern by entering into the Agreement, or through such other purchase agreement(s) between ALF and the Successful Bidder,⁵ exceeds any value ALF could obtain for the Assets if it were required to liquidate assets in piecemeal fashion. As of the date of this Motion, no other entity or group of entities has provided a definitive offer to purchase the Assets for greater economic value to ALF's estate than the Buyer.

18. *Finally*, as described in more detail below, the Asset sale and the Agreement were negotiated in good faith.

⁵ As defined in the Bid Procedures Motion.

19. For the foregoing reasons, ALF submits that approval of the Asset Sale and the Agreement and all related transactions are appropriate and warranted under section 363 of the Bankruptcy Code.

B. Sale Of The Assets Will Be Free And Clear Of Encumbrances.

20. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if -

- (a) applicable nonbankruptcy law permits a sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (d) such interest is in *bona fide* dispute; or
- (e) 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).

21. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) (“[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596,

606 n.8 (Bankr. S.D.N.Y. 1986). The Court also may authorize the sale of a debtor's assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply. See *In re Trans World Airlines, Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) ("Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)."); see also *Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11").

22. With regard to the transfer of the Assets pursuant to the Agreement, ALF believes that at least one of the tests in section 363(f) is satisfied. In particular, ALF believes that section 363(f)(2) is met because each of the parties holding liens on the Assets, if any, will consent or, absent any objection to this Motion, be deemed to have consented to the sale and transfer of the Assets.

23. Further, any lienholder will be adequately protected by having its liens, if any, attach to the sale proceeds received by ALF for the sale of the Assets to the Buyer in the same order of priority, validity, force, and effect that such creditor had prior to such sale, subject to any claims and defenses ALF and its estate may possess with respect thereto. Accordingly, section 363(f) authorizes the sale and transfer of the Assets free and clear of any such Encumbrances.⁶

⁶ In addition, except with respect to Assumed Liabilities or as otherwise provided in the Agreement, Buyer should not be liable under any successor-liability doctrines. Courts have consistently held that the purchaser of a debtor's assets under section 363 of the Bankruptcy Code takes such assets free and clear of successor liability resulting or arising from pre-existing claims. Such successor liability-type claims would frustrate the purpose of an order authorizing the sale of estate assets free and clear of all "interests." Accordingly, the purchasing parties should not be subject to further claims related to ALF's pre-sale conduct. See, e.g., *Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 91 (2d Cir. 1988) (channeling of claims to proceeds of sale consistent with intent of sale free and clear under Bankruptcy Code section 363(f)); *Rubinstein v. Alaska Pacific Consortium (In re New England Fish Co.)*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (finding that transfer of property under section 363(f) was made free and clear of Title VII employment-discrimination and civil-rights claims of debtors' employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D. R.I.

C. The Agreement Was Negotiated At Arm's Length And In Good Faith.

24. ALF requests that this Court find and conclude that ALF and Buyer negotiated and acted at all times in good faith and, as a result, the Buyer is entitled to the protections of a good-faith purchaser under section 363(m) of the Bankruptcy Code and that the Agreement does not constitute an avoidable transaction pursuant to section 363(n) of the Bankruptcy Code.

25. Further, ALF submits that the Agreement represents substantial value to the bankruptcy estate because it provides favorable terms for the disposition of the Assets for fair and reasonable consideration. *See Mellon Bank, NA. v. Metro Communications, Inc.*, 945 F.2d 635 (3d Cir.1991) (finding that reasonably equivalent value existed under the Bankruptcy Code), *cert. denied*, 503 U.S. 937 (1992); *see also Mellon Bank, N.A. v. Official Comm. Of Unsecured Creditors (In re R.M.I., Inc.)*, 92 F.3d 139 (3d Cir. 1996); *Salisbury v. Texas Commerce Bank-Houston, N.A. (In re WCC Holding Corp.)*, 171 B.R. 972, 984 (Bankr. N.D. Tex. 1994) (reasonably equivalent value under Texas law) (citing *Besing v. Hawthorne (In re Besing)*, 981 F.2d 1488, 1495 (5th Cir.), *cert. denied*. 510 U.S. 821 (1993) and *Southmark Corp. v. Riddle (In re Southmark Corp.)*, 138 B.R. 820, 829 (N.D. Tex. 1992)); *In re China Resource Prod. Ltd. v. Favda Intern., Inc.*, 856 F. Supp. 856, 866 (D. Del. 1994) (quoting *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 792 (Del. Ch. 1992)).

26. The Buyer is ALF's current secured lender under the Credit Agreement, and has agreed to provide postpetition debtor-in-possession financing to ALF. In addition, an affiliate of the Buyer provides temporary executive staffing for the Debtor in exchange for certain fees. ALF submits that all parties have acted in good faith throughout the negotiations. As set forth above, ALF's board has taken steps, including the use of an independent Chief Restructuring Officer,

1985) (finding that transfer of liquor license pursuant to section 363(f) free and clear of any interest was permissible even though estate had unpaid tax liability); *American Living Sys. v. Bonapfel (In re All American of Ashburn, Inc.)*, 56 B.R. 186, 189-90 (Bankr. N.D. Ga. 1986) (finding that product-liability claims precluded on successor-liability doctrine where assets were sold free and clear pursuant to section 363(f)), *aff'd sub. nom.*, *Griffen v. Bonapfel*, 805

Mr. William Snyder, to oversee the sale and marketing process to ensure that the process is fair and open.

27. Based upon the foregoing, ALF submits that to preserve and maximize the value of its estate, the sale of the Assets pursuant to the Agreement (or a higher and/or better offer) is an exercise of sound business judgment, is in the best interests of ALF and its estate, and should be approved in all respects.

D. ALF May Enter Into The Agreement.

28. In connection with the sale of substantially all of a debtor's assets, courts routinely approve entry into asset purchase agreements. Such agreements are approved if they are an exercise of the debtor's sound business judgment. *See, e.g., In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332377, at *5 (Bankr. D. Del. May 17, 2002); *In re Arlco, Inc.*, 239 B.R. 261, 265 (Bankr. S.D.N.Y. 1999). Here, the Agreement was the subject of arm's-length negotiations between ALF and the Buyer, and ALF submits that the terms and conditions of the Agreement are the best that could be obtained under the circumstances, and that entry into the Agreement is a sound exercise of ALF's business judgment.

E. Cause Exists To Eliminate The Stays Imposed By The Bankruptcy Rules.

29. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." FED. R. BANKR. P. 6004(h). Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease... is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise." FED. R. BANKR. P. 6006(d).

30. ALF requests that any order entered authorizing the consummation of a transaction that is deemed a sale of assets and/or an assignment of an unexpired lease be effective immediately by providing that the 10-day stay imposed by Bankruptcy Rules 6004 and/or 6006, as the case may be, is inapplicable. This waiver or elimination of the 10-day stay is necessary so that the proposed Sale may close as expeditiously as possible and within the time frames contemplated by ALF and the successful bidder(s). Given ALF's liquidity position and the danger of losing going-concern value, ALF respectfully submits that it is in the best interests of its estate to close the sale as soon as possible after all closing conditions have been met or waived. Accordingly, ALF hereby requests that the Court eliminate the 10-day stay period imposed by Bankruptcy Rules 6004 and 6006.

F. Assumption And Assignment of Designated Contracts Is Authorized By Section 365 Of The Bankruptcy Code.

31. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. 11 U.S.C. § 365(a) and (b); *In re Jamesway Corp.*, 201 B.R. 73, 76 (Bankr. S.D.N.Y. 1996). Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). In turn, section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing as follows:

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

- (A) cures or provides adequate assurance that the trustee will promptly cure, such default ...;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any

actual pecuniary loss to such party resulting from such default; and

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

11 U.S.C. § 365(b)(1).

32. In analyzing whether the assumption or rejection of an executory contract or unexpired lease pursuant to section 365(a) should be approved, courts apply the “business-judgment” test, which requires a determination that the requested assumption or rejection be beneficial to the estate. *See, e.g., In re Group of Institutional Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) (“The question [of assumption] is one of business judgment.”); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993) (holding that, when deciding whether to grant a motion to assume, a court must put itself in the trustee’s position and determine whether such assumption would be a good decision or a bad one).

33. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract. *See In re Paolo Gucci*, 193 B.R. 411, 414 (S.D.N.Y. 1996); *Sharon Steel Corp. v. National Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *In re III Enter., Inc.*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (“Generally, a court will give great deference to a debtor’s decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment—a standard which we have concluded many times is not difficult to meet.”).

34. Here, ALF’s assumption and assignment of the Designated Contracts to the Buyer meets the business-judgment standard and satisfies the requirements of section 365 of the Bankruptcy Code. As discussed above, the transactions contemplated by the Agreement will provide significant benefit to ALF’s estate. Because ALF cannot obtain the benefits of the

Agreement without the assumption of the Designated Contracts, the assumption of these Designated Contracts is undoubtedly a sound exercise of ALF's business judgment.

35. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a), and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but it should be given "practical, pragmatic construction." *EBG Midtown South Corp. v. McLaren/Hart Env't Eng'g. Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993).

36. Here, the Buyer has agreed to pay all Cure Costs in connection with the Designated Contracts.⁷ The Buyer has sufficient assets to continue performance thereunder. At the hearing on this Motion, the Buyer will demonstrate to the satisfaction of the Bankruptcy Court that adequate assurance of future performance is present by the promise to perform the obligations of the Designated Contracts from and after the Closing Date. The hearing will therefore provide the Bankruptcy Court and other interested parties with the opportunity to

⁷ The Bid Procedures Motion, filed contemporaneously herewith, seeks to establish a fair and efficient process by which ALF will timely satisfy the requirements for assumption and assignment of the Assumed Contracts as requested in this Motion.

evaluate and, if necessary, challenge the ability of the Buyer, or a higher bidder, to provide adequate assurance of future performance under the Designated Contracts. Accordingly, ALF submits that the assumption and assignment of the Designated Contracts as set forth herein should be approved.

37. To assist in the assumption, assignment, and sale of the Designated Contracts, ALF requests that the Bankruptcy Court enter an order providing that anti-assignment provisions in the Designated Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Designated Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

38. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection

11 U.S.C. § 365(f)(1).

39. By operation of law, section 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g., 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.”). Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (finding that section 365(f)(3) prohibits enforcement of any lease

clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court's scrutiny regarding anti-assignment effect).

40. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced. *See In re Rickel Home Centers, 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.”). Similarly, in *In re Mr. Grocer, Inc.*, the court noted that:

[The] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Thus, ALF requests that any anti-assignment provisions be deemed not to restrict, limit or prohibit the assumption, assignment and sale of the Designated Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

VIII. NOTICE

41. Notice of this Motion has been given to the following: (a) the Office of the United States Trustee; (b) the attorneys for the Agent; (c) all creditors known to Debtor who have or may assert liens against the Debtor's assets; (d) the United States Internal Revenue Service; (e) the twenty (20) largest unsecured creditors of the Debtor; and (f) all parties in interest who have filed a notice of appearance or on whom service must be effected under the Federal Rules of

Bankruptcy Procedure or the Local Rules of the District of Delaware. Given the nature of the relief requested herein, ALF submits that no further notice is required.

**IX.
NO PRIOR REQUEST**

42. No previous motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, ALF respectfully requests that this Court (a) enter an order, substantially in the form attached hereto as Exhibit B, and (b) grant such other and further relief as this Court deems just and proper.

Dated: February 3, 2008
Wilmington, Delaware

KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS, LLP

By: /s/ Christopher A. Ward

Joanne B. Wills (No. 2357)
Christopher A. Ward (No. 3877)
919 Market Street, Suite 1000
Wilmington, DE 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193
jwills@klehr.com
cward@klehr.com

-and-

HAYNES AND BOONE, LLP
Robert D. Albergotti (TX. 00969800)
Ian T. Peck (TX 24013306)
Abigail Ottmers (TX24037225)
901 Main Street, Suite 3100
Dallas, Texas 75202
Telephone: 214.651.5000
Facsimile: 214.651.5940
ian.peck@haynesboone.com
abigail.ottmers@haynesboone.com

Proposed Counsel for the Debtor
and Debtor in Possession

EXHIBIT A
[The Agreement]

EXHIBIT B
[The Proposed Order]

ASSET PURCHASE AGREEMENT

by and among

PATRIARCH PARTNERS AGENCY SERVICES, LLC, OR ITS ASSIGNEE(S),

and

AMERICAN LAFRANCE, LLC

Dated as of _____, 2008

ARTICLE I. DEFINITIONS	6
ARTICLE II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES	14
Section 2.1. Purchase and Sale.	14
Section 2.2. Consideration.	15
Section 2.3. Allocation; IRS Filings.	15
Section 2.4. Transfer Taxes.	15
Section 2.5. Assignment and Assumption.	15
Section 2.6. Bulk Sales Law.	16
ARTICLE III. REPRESENTATIONS AND WARRANTIES OF SELLER.....	16
Section 3.1. Organization.....	16
Section 3.2. Authority.....	17
Section 3.3. Consents and Approvals: No Violations.....	17
Section 3.4. Intellectual Property.....	17
Section 3.5. Assets.....	18
Section 3.6. No Brokers or Finders.....	18
Section 3.7. Real Property.	18
Section 3.8. Material Contracts.....	18
Section 3.9. Employee Benefits.....	18
Section 3.10. Labor.....	19
Section 3.11. Environmental Matters.....	19
Section 3.12. Board Approval and Recommendations.	19
ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER.....	19
Section 4.1. Organization.....	20
Section 4.2. Authority.....	20
Section 4.3. Consents and Approvals; No Violations.....	20
Section 4.4. No Brokers or Finders.....	20

Section 4.5.	Legal Proceedings.....	21
Section 4.6.	Financing.....	21
ARTICLE V.	FURTHER COVENANTS AND AGREEMENTS.....	21
Section 5.1.	Covenants of Seller Pending the Closing.....	21
Section 5.2.	Covenants of Buyer Pending the Closing.	23
Section 5.3.	Further Assurances and Services.	23
Section 5.4.	Employment Matters.....	23
Section 5.5.	Casualty.....	24
Section 5.6.	Name Change.....	24
ARTICLE VI.	TERMINATION.....	24
Section 6.1.	Termination.....	24
Section 6.2.	[Omitted].....	26
ARTICLE VII.	CONDITIONS TO BUYER’S OBLIGATIONS	26
Section 7.1.	Seller’s Closing Deliveries.	26
Section 7.2.	Representations and Warranties True.	27
Section 7.3.	Performances.....	27
Section 7.4.	Governmental Consents and Approvals.....	27
Section 7.5.	Bankruptcy Court Approvals.	27
Section 7.6.	No Injunction.	28
Section 7.7.	Credit Bid Approval.....	28
ARTICLE VIII.	CONDITIONS TO SELLER’S OBLIGATIONS.....	28
Section 8.1.	Representations and Warranties.....	28
Section 8.2.	Governmental Consents and Approvals.....	28
Section 8.3.	Performances.....	29
Section 8.4.	Buyer’s Closing Deliveries.	29
Section 8.5.	Bankruptcy Court Approvals.	29

Section 8.6. No Injunction.	29
ARTICLE IX. BANKRUPTCY MATTERS.....	29
Section 9.1. Motion(s).....	29
Section 9.2. Bid Procedures Order.....	30
Section 9.3. Sale Order.	31
Section 9.4. Assumption of Designated Contracts.....	32
Section 9.5. Procedure.	32
ARTICLE X. MISCELLANEOUS	32
Section 10.1. Entire Understanding, Waiver, Etc.	32
Section 10.2. Severability.	32
Section 10.3. Captions.	32
Section 10.4. Notices.	33
Section 10.5. Assignment.	34
Section 10.6. Parties in Interest.....	34
Section 10.7. Counterparts and Facsimile Signatures.....	34
Section 10.8. Construction of Terms.	35
Section 10.9. Waiver of Jury.....	35
Section 10.10. Non-Survival of Representations and Warranties.....	36
Section 10.11. Calculation of Time Periods.	36
Section 10.12. Governing Law; Jurisdiction.....	36
Section 10.13. Expenses.	38
Section 10.14. Books and Records.	38
Section 10.15. General Release.	38
Section 10.16. Press Releases.	38
Section 10.17. Remedies.....	39

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of _____, 2008, by and among Patriarch Partners Agency Services, LLC, a Delaware limited liability company, or its assignee(s) ("Patriarch" or "Buyer") and American LaFrance, LLC, a Delaware limited liability company (the "Company" or "Seller," and collectively with Buyer, the "Parties").

RECITALS

WHEREAS, Seller is engaged in the manufacture of (i) emergency vehicles, including pumper fire trucks, aerials (or ladder) fire trucks, ambulances, wildland and brush trucks, and vocational vehicles and (ii) medium and heavy duty cab/chassis truck assemblies (the "Business"); and

WHEREAS, Seller desires to sell substantially all of its assets to Buyer, and Buyer desires to purchase substantially all of Seller's assets, on the terms and subject to the conditions hereinafter set forth; and

WHEREAS, on January 28, 2008 (the "Petition Date"), Seller filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (the "Bankruptcy Case"); and

WHEREAS, the Board of Managers (or similar governing body) of Seller, in consultation with its independent and disinterested Chief Restructuring Officer, has determined that it is advisable and in the best interests of Seller and its bankruptcy estate and the beneficiaries of that estate to consummate the transactions provided for herein pursuant to the Bid Procedures Order and the Sale Order (as such terms are defined below); and

WHEREAS, the Parties desire to consummate the transaction contemplated by this Agreement as promptly as practicable after the Bankruptcy Court enters the Sale Order approving such transaction; and

WHEREAS, the Parties desire to make certain representations, warranties, covenants, and agreements in connection with the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants, and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by Seller and Buyer, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I. DEFINITIONS

The terms defined in this Article shall have the following respective meanings for all purposes of this Agreement, with the definitions being equally applicable to both the singular and plural forms of the terms defined:

“Affiliate” means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with another Person. For purposes of this definition of “Affiliate,” a Person shall be deemed to control another Person if it possesses, directly or indirectly, the power to direct or cause the direction of the management policies of such other Person, whether through ownership of voting securities, by contract or otherwise.

“Allocation Statement” has the meaning given to such term in Section 2.3.

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Seller (i) accepts or approves a Qualified Bid, other than that of Buyer, as the highest and/or best offer, or (ii) sells, transfers, leases, or otherwise disposes of, or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Seller or otherwise), including pursuant to a stand-alone plan of reorganization or refinancing, all or substantially all of the Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a party or parties other than Buyer within one year from the date hereof.

“Assets” means, other than the Excluded Assets, all of Seller’s right, title, and interest in and to the tangible and intangible assets, properties, rights, claims and contracts owned, leased and/or licensed by Seller of every kind, character, and description, whether accrued, contingent or otherwise, existing as of the Closing (which assets comprise substantially all of Seller’s assets, properties, rights, claims, and contracts), including, without limitation:

- (a) all inventory, wherever located, including supplies, goods-in-transit, works in process, raw materials, and finished products;
- (b) all accounts receivable and other receivables of Seller (including, without limitation, all accounts receivable and other receivables to collect from customers) and all rights of any kind or nature to retain all fees and other amounts payable, or that may become payable, to Seller with respect to services performed by or on behalf of Seller on or prior to the Closing Date and all defenses, claims, counterclaims, and cross-claims with respect to any right of setoff or recoupment asserted with respect to such account receivable or receivable;

- (c) all tangible personal property owned or used by Seller, including, without limitation, all equipment, furniture, fixtures, supplies, machinery, vehicles, tools, and furnishings;
- (d) all Owned Property, together with all buildings, fixtures, structures, improvements, and other appurtenances thereto and thereon;
- (e) all Designated Contracts;
- (f) all books and records, files, data, reports, computer codes and sourcing data, customer and supplier lists, cost and pricing information, business plans, quality-control records and manuals, blueprints, research and development files, accounting and tax files, personnel records and other records of Seller or related to the operations of Seller and/or the Business;
- (g) the Intellectual Property and all telephone numbers utilized by Seller in connection with the Business (including, without limitation, all of the trademarks, trade names, URL's and telephone numbers listed on Schedule 1.1), in each case, to the extent assignable;
- (h) All Software owned by Seller or leased by Seller pursuant to a Designated Contract;
- (i) all Permits that relate to the Business, to the extent assignable;
- (j) all marketing, advertising, and promotional materials;
- (k) all rights, privileges, claims (including warranty claims, to the extent transferable), Avoidance Actions, offsets, demands, choses in action and indemnification rights of Seller against or with respect to (including all of Seller's rights under any indemnification agreements) any Person in connection with and/or otherwise related to the Business, any of the Assets and/or any of the Assumed Liabilities and arising prior to (or related to facts, circumstances and/or events arising prior to) the Closing, whether choate or inchoate, known or unknown, contingent or noncontingent;
- (l) all rights of Seller relating to deposits and prepaid charges and expenses, claims for refunds, indemnification rights, and rights to offset relating to the Assets;
- (m) all goodwill associated with the Business and/or the Assets;
- (n) any interest in and to any refunds of Taxes of whatever nature;

- (o) all rights under all insurance policies and all rights of every nature and description under or arising out of such policies, except as provided in clause (f) of the definition of “Excluded Assets”, and except to the extent such insurance policies are non-assignable as a matter of law; and
- (p) all cash (including checks received prior to the Closing, whether or not deposited or cleared prior to the Closing), cash equivalents, and short-term investments (including, without limitation, all restricted cash and cash deposits to or for the benefit of utilities, including any such cash deposits maintained in escrow).

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A.

“Assumed Liabilities” means, without duplication, only the (i) Cure Costs associated with, and the liabilities and obligations of Seller arising from and after the Closing under, the Designated Contracts assigned to Buyer, (ii) trade payables to the extent first arising after the Petition Date directly relating to the operation of the Business in the ordinary course, (iii) all obligations under the programs described in the *Motion to Continue Certain Customer Programs and Practices* but specifically excluding any other Liabilities relating to products or services sold or provided Seller, prior to the Closing, including, without limitation, any Liability for any claim under any Environmental Law and any claims for property damage, personal injury or death), (iv) without duplication, the Company’s obligation (if any) to pay any accrued but unpaid fees and expenses owed by the Company to the Debtor’s Professionals (as that term is defined in and subject to the terms and conditions in the *Emergency Motion For Interim And Final Orders (A) Authorizing American LaFrance To Incur Postpetition Financing, (B) Authorizing American LaFrance To Use Cash Collateral, And (C) Scheduling A Final Hearing* filed by Seller and approved by the Bankruptcy Court in the order granting that motion); and (v) obligations related to the bid and performance bonds, and letters of credit set forth on the attached Schedule 1.2. Notwithstanding any provision of this Agreement to the contrary, the Assumed Liabilities shall not include any of the Excluded Liabilities.

“Auction” means the auction for the sale of the Assets conducted by Seller if any other Qualified Bid is received pursuant to the Bid Procedures Order.

“Avoidance Actions” means any causes of action arising under chapter 5 of the Bankruptcy Code (11 U.S.C. §§ 501 *et seq.*).

“Bankruptcy Case” has the meaning given to such term in the Recitals.

“Bankruptcy Code” has the meaning given to such term in the Recitals.

“Bankruptcy Court” has the meaning given to such term in the Recitals.

“Bid Procedures Order” means the order of the Bankruptcy Court authorizing and approving procedures for soliciting Qualified Bids and conducting the Auction substantially in the form attached hereto as Exhibit B (subject to non-material changes only).

“Bill of Sale” means the Bill of Sale, substantially in the form attached hereto as Exhibit C.

“Buyer Plans” has the meaning given to such term in Section 5.4(b).

“Buyer Ancillary Documents” has the meaning given to such term in Section 4.2.

“Business” has the meaning assigned to such term in the Recitals.

“Business Day” means a day that is a day of the year in which banks are not required or authorized by law to close in New York, New York.

“Casualty” has the meaning given to such term in Section 5.5.

“Claim(s)” means (a) claims as that term is defined in section 101(5)(A) of the Bankruptcy Code, and (b) claims as that term is defined in section 101(5)(B) of the Bankruptcy Code.

“Closing” means the consummation and effectuation of the transactions contemplated herein pursuant to the terms and conditions of this Agreement, which shall be held two (2) Business Days after the date that all conditions (except for closing conditions that by their terms can only be satisfied on the Closing Date) to the Parties’ obligations to consummate the transactions contemplated herein have been satisfied or, if applicable, waived by the appropriate Party or Parties, at 10:00 A.M. (Eastern Time) in the offices of Gardere Wynne Sewell LLP, or on such other date or at such other time or place as is mutually agreed by the Parties hereto.

“Closing Date” means the date on which the Closing actually occurs.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985.

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

“Contract” means any agreement, contract, commitment, or other binding arrangement or understanding, whether written or oral, to which Seller is a party and permitted under the Bankruptcy Code to assume and assign other than an Employee Benefit Plan.

“Copyrights” means all copyrights, including, without limitation, moral rights, and rights of attribution and integrity, copyrights in software and in the

content contained on any web site, and registrations and applications for any of the foregoing, and rights to sue for past infringement thereof.

“Credit Agreement” means the *Credit Agreement*, dated December 14, 2005, entered into by and between the Company, as borrower, the lender parties thereto from time to time, and Patriarch Partners Agency Services, LLC, as agent for the certain Lenders (as defined therein), as amended, modified or restated.

“Credit Bid Amount” has the meaning given to such term in Section 2.2(a).

“Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case.

“Cure Costs” means amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and sale and assignment of the Designated Contracts.

“Designated Contracts” has the meaning given to such term in Section 2.5.

“DIP Amount” has the meaning given to such term in Section 2.2(b)(i).

“DIP Financing Amendment” means the *Debtor In Possession Financing Amendment To Credit Agreement*, dated on or about the date hereof, entered into by and between the Company, as borrower, and Buyer, as lender, as amended, modified, or restated from time to time.

“Employee Benefit Plans” has the meaning given to such term in Section 3.9.

“Encumbrance” means any mortgage, conditional sales agreement, title-retention contract, easement, encumbrance, security interest, Lien, debt, levy, charge, right, indenture, lease, option, pledge, or restriction (whether on voting, sale, transfer, disposition or otherwise), whether imposed by agreement, understanding, law, equity or otherwise, except for any restrictions generally arising under any applicable federal or state securities laws.

“Environmental Laws” means all federal, state, local, and foreign environmental, health and safety laws, codes, and ordinances and all rules and regulations promulgated thereunder, including, without limitation, laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment (including, without limitation, air, surface water, ground water, land surface, or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substance or waste or other pollutants, contaminants, chemicals, or industrial, solid, toxic, or hazardous substances or wastes.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” has the meaning given to such term in Section 3.9.

“Excluded Assets” means all of Seller’s rights, title, and interests in and to the following assets:

- (a) all minute books, stock records, and corporate seals;
- (b) all records that Seller is required by law to retain in its possession and all personnel records with respect to employees that are not considered Transferred Employees (provided that records necessary for Buyer to provide COBRA coverage as legally required shall not be considered Excluded Assets and shall be considered to be Assets for all purposes of this Agreement); provided, however, that Seller shall make such records available to Buyer if required by Buyer from and after the Closing;
- (c) any rights of Seller under this Agreement;
- (d) the equity interests of Seller;
- (e) any Contracts or leases that are not Designated Contracts; and
- (f) all rights under insurance policies to the extent relating to claims for losses related exclusively to any Excluded Asset or otherwise non-assignable as a matter of law.

“Excluded Liabilities” shall include all Liabilities of Seller not specifically assumed by Buyer pursuant to this Agreement as Assumed Liabilities.

“Governmental Entity” means any government or any agency, bureau, board, commission, court (including, without limitation, the Bankruptcy Court), department, official, political subdivision, tribunal, or other instrumentality of government, whether federal, state, local, domestic or foreign.

“Hazardous Material” means any substance, material, or waste that is regulated by any Governmental Entity, including, without limitation, petroleum and its by-products, asbestos, and any material or substance that is defined as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste,” or “toxic substance” under any provision of Environmental Law.

“Intellectual Property” means Copyrights, Patents, Trademarks, Software, and Trade Secrets owned or used by Seller or held for use in the Business.

“Intellectual Property Assignments” has the meaning given to such term in Section 2.1(b).

“Interest” means a right, Claim, title, or legal share in property.

“Liability” means any debt, liability, Claim, Lien, expense, commitment, or obligation, whether accrued or not, known or unknown, disclosed or undisclosed, fixed or contingent, asserted or unasserted, liquidated or unliquidated, and including all costs and expenses relating thereto.

“Lien” means any debt, mortgage, security interest, lien, encumbrance, pledge, charge, defect, Claim, option, right of first refusal, restriction, or adverse claim of any kind or nature whatsoever.

“Material Adverse Effect” means any event, occurrence, or effect that has had or would be reasonably likely to have, individually or when taken as a whole with any other events, occurrences, or effects, a material adverse effect on the Assets, the Business, and/or the ability of Seller to consummate the transactions contemplated by this Agreement.

“Material Contracts” has the meaning given to such term in Section 3.8.

“Multiemployer Plans” has the meaning given to such term in Section 3.9.

“Notice” has the meaning given to such term in Section 10.4.

“Owned Property” has the meaning given to such term in Section 3.7.

“Patents” means all patents and industrial designs, including, without limitation, any continuations, divisionals, continuations-in-part, renewals, reissues, and applications for any of the foregoing, and rights to sue for past infringement thereof.

“Petition Date” has the meaning given to such term in the Recitals.

“Permits” means permits, certificates, licenses, filings, approvals, and other authorizations of any Governmental Entity.

“Permitted Encumbrances” means any (i) Encumbrances described on Schedule 1.4; (ii) any easements and any rights of lessors under any leases included in the Designated Contracts; and (iii) statutory liens arising in the ordinary course that are unavoidable, not past due, and do not materially affect the value or use of the affected asset.

“Person” means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, association, joint venture, or other entity or a Governmental Entity.

“Purchase Price” has the meaning given to such term in Section 2.2.

“Qualified Bid” has the meaning given to such term in Section 9.2(c).

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, or leaching into the indoor or outdoor environment, or into or out of any property.

“Sale Hearing” has the meaning given to such term in Section 9.2(b).

“Sale Order” means an order of the Bankruptcy Court authorizing and approving the sale of the Assets by Seller to Buyer and the sale and assignment by Seller and assumption by Buyer of the Designated Contracts, substantially in the form attached hereto as Exhibit D (subject to non-material changes only).

“Seller Ancillary Documents” has the meaning given to such term in Section 3.2.

“Software” means any and all (i) computer programs, (ii) databases and compilations, (iii) descriptions, flow-charts, and other work product used to design, plan, and/or develop any, of the foregoing, (iv) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons, and icons, and (v) all documentation, including user manuals and other training documentation related to any of the foregoing.

“Taxes” means all taxes, duties, customs, charges, fees, levies, and assessments of any kind or nature imposed by any Governmental Entity, including, without limitation, all income, sales, use, ad valorem, value added, franchise, severance, net or gross proceeds, withholding, payroll, employment, unemployment, social security, excise, personal property, real property, intangible, windfall profits, production, license alternative or add-on minimum, transfer, stamp, duty, or other taxes (including any interest thereon and any penalties, additions to tax, or additional amounts with respect thereto).

“Tax Return” means any return, declaration, report, statement, information return, exhibit, attachment, or other similar information required to be supplied with respect to Taxes.

“Title IV Plans” has the meaning given to such term in Section 3.9.

“Trademarks” means all trademarks, service marks, trade names, domain names, brand names, corporate names, designs, logos, emblems, signs, or insignia, slogans, other similar designations of source or origin and general intangibles of like nature, together with the goodwill of the business symbolized by any of the foregoing, registrations, and applications relating to any of the foregoing, and rights to sue for past infringement thereof.

“Trade Secrets” means all trade secrets including, without limitation, trade secrets of the following nature: financing and marketing information, technology, know-how, inventions, proprietary processes, formulae, algorithms, models, and methodologies, and rights to sue for past infringement thereof.

“Transfer Taxes” means transfer, recording, stamp, or similar Taxes.

“Transferred Employees” has the meaning given to such term in Section 5.4(a).

ARTICLE II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1. Purchase and Sale.

(a) Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, on the terms and subject to the conditions contained in this Agreement, at the Closing, Seller shall sell, assign, transfer, and convey, or cause to be sold, assigned, transferred, and conveyed, to Buyer, and Buyer shall purchase and accept all of Seller’s rights, title, and interests in, to, and under the Assets, free and clear of all pledges, security interests, Liens, Claims, Interests, options, charges, Encumbrances, and restrictions (other than the Assumed Liabilities and Permitted Encumbrances). The Assets that are being sold and transferred by Seller at Closing shall be conveyed to and accepted by Buyer on an “as is,” “where is,” and “with all faults” condition, free of any warranties or representations whatsoever, whether express or implied, except as expressly set forth in this Agreement.

(b) The sale, assignment, transfer, and conveyance of the Assets shall be made pursuant to the terms of this Agreement and shall be effectuated by the execution and delivery at the Closing by Seller of one or more Bill of Sales, together with any reasonably necessary transfer declarations or other filings, and such other instruments of assignment, transfer, and conveyance as Buyer shall reasonably request to vest in Buyer good and marketable title to the Assets, in form and substance as Buyer shall reasonably request, including, without limitation, assignments regarding all Intellectual Property (the “Intellectual Property Assignments”). Seller will not sell, and Buyer will not purchase, any of the Excluded Assets pursuant to this Agreement.

(c) At the Closing, Seller shall assign to Buyer, and Buyer shall assume, the Assumed Liabilities by the execution and delivery at the Closing by Buyer and Seller of one or more Assignment and Assumption Agreements. Notwithstanding any other provision in this Agreement to the contrary, Buyer is assuming only the Assumed Liabilities and is not assuming any other Liability or obligation of Seller (or any predecessor of Seller or any prior owner of all or part of any such Seller’s Business and/or assets) of whatever nature, whether presently in existence or arising hereafter.

Section 2.2. Consideration.

The aggregate consideration for the purchased Assets (the “Purchase Price”) shall be equal to the following, as calculated on the Closing Date:

- (i) the aggregate amount of \$150,000,000.00 and any additional amount bid by Buyer pursuant to section 7.7 hereof (the “Credit Bid Amount”) plus
- (ii) the assumption by Buyer of the aggregate amount of the Assumed Liabilities.

Section 2.3. Allocation; IRS Filings.

(a) Within the earlier of (i) 120 days after the Closing Date and (ii) 20 days prior to the extended due date of the Tax Returns to which IRS Form 8594 must be attached, Buyer shall deliver to Seller a statement (the “Allocation Statement”) allocating, for tax purposes, the consideration paid by Buyer for the Assets among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder.

(b) The Parties to this Agreement hereby agree to (i) be bound by the Allocation Statement, (ii) act in accordance with the Allocation Statement in connection with the preparation, filing, and audit of any Tax Return (including, without limitation, in the filing of IRS Form 8594 and any corresponding other Tax forms), and (iii) take no position inconsistent with the Allocation Statement for any Tax purpose (including, without limitation, in any audit, judicial or administrative proceeding).

Section 2.4. Transfer Taxes.

To the extent not exempt under the Bankruptcy Code, all Transfer Taxes arising out of, in connection with, or attributable to, the transactions effected pursuant to this Agreement shall be borne and paid exclusively by Buyer to the extent imposed by Governmental Entities. Buyer shall prepare and timely file all relevant Tax Returns required to be filed in respect of such Transfer Taxes and shall pay such Transfer Taxes.

Section 2.5. Assignment and Assumption.

At Closing, Seller shall, pursuant to the Sale Order and the Assignment and Assumption Agreement(s) and other transfer and assignment documents reasonably requested by Buyer, assume and sell and assign to Buyer (the consideration for which is included in the Purchase Price), the executory Contracts and unexpired leases to which Seller is a party and that may be assigned by Seller to Buyer pursuant to sections 363 and 365 of the Bankruptcy Code (“Designated Contract(s)”), which are set forth on a list (identifying the name, parties and date of each such Designated Contract) provided by Buyer to the

Company on or before the date that is four (4) days after entry of the Bid Procedures Order; provided, however, that Buyer shall have the right in its sole and absolute discretion to notify Seller in writing of any Designated Contract that it does not wish to assume immediately prior to the commencement of the Sale Hearing (as defined below). Buyer will pay all Cure Costs in connection with such assumption and sale and assignment (as agreed to between Buyer and the Company or as determined by the Bankruptcy Court), and Buyer will assume and agree to perform and discharge the Assumed Liabilities under the Designated Contracts, pursuant to the Bill of Sale; provided, however, that on or before February 19, 2008, Seller shall provide to Buyer (i) a schedule setting forth all of the costs of cure to be satisfied for Seller to assume and assign to Buyer the executory contracts and unexpired leases to which Seller is a party, to the extent Buyer elects to designate any such contract or lease as a Designated Contract and (ii) a schedule setting forth all such contracts and leases and, notwithstanding Schedule 3.8, each Material Contract. From and after the date hereof, Seller shall not reject any Designated Contract unless otherwise agreed to in writing by Buyer. Seller shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to Designated Contracts and take all other actions necessary to cause such Designated Contracts to be assumed by Seller and assigned to Buyer pursuant to section 365 of the Bankruptcy Code, and Buyer shall, at or prior to Closing, comply with all requirements under section 365 necessary to assign to Buyer the Designated Contracts. The Buyer and Seller agree that there shall be excluded from the Assets any Designated Contracts that are not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than Seller, to the extent that such consent shall not have been given prior to the Closing, and the Closing shall proceed with respect to the remaining Assets without reduction to the Purchase Price, subject to Buyer's termination rights set forth in Section 6.1.

Section 2.6. Bulk Sales Law.

The Buyer hereby waives compliance by Seller with the requirements and provisions of any "bulk-transfer" laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Assets to Buyer.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as otherwise indicated in the Schedules attached hereto, Seller represents and warrants to Buyer, to the best of Seller's knowledge as of the date hereof, the following:

Section 3.1. Organization.

The Seller is an entity duly organized, validly existing, and in good standing under the laws of Delaware and has full limited-liability-company right,

power, and authority to own, lease, and operate all of its properties and assets (including the Assets) and to carry out its Business as it is presently conducted, subject to the Bankruptcy Code. There are no corporations, joint ventures, partnerships, or other entities or arrangements in which Seller, directly or indirectly, owns any capital stock or an equity interest.

Section 3.2. Authority.

Subject to entry of the Sale Order by the Bankruptcy Court, Seller has all requisite limited-liability-company right, power, and authority to execute, deliver, and perform this Agreement and each instrument of conveyance and other document to be executed and delivered by Seller pursuant to the requirements of this Agreement (all such instruments and documents, the “Seller Ancillary Documents”). The execution, delivery, and performance of this Agreement and each Seller Ancillary Document has been duly and validly authorized and approved by all necessary limited-liability-company action, subject to the approval of the Bankruptcy Court. Subject to the approval of the Bankruptcy Court, this Agreement has been duly and validly executed and delivered, and at the Closing each Seller Ancillary Document will be duly and validly executed and delivered, by Seller, and (a) assuming this Agreement has been duly authorized, executed, and delivered by Buyer, this Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, and (b) assuming each such Seller Ancillary Document, if applicable, has been duly authorized, executed and delivered by Buyer (to the extent Buyer is required to be party thereto), each such Seller Ancillary Document shall constitute the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Section 3.3. Consents and Approvals: No Violations.

Subject to entry of the Sale Order by the Bankruptcy Court, the execution, delivery, and performance of this Agreement by Seller will not (with or without the giving of notice or the passage of time, or both) (a) violate any applicable provision of law or any rule or regulation of any Governmental Entity, or any order, writ, injunction, judgment, or decree of any Governmental Entity applicable to Seller, (b) violate, or require any consent under, the Certificate of Incorporation, By-Laws and/or other comparable organizational document of Seller and, to the extent such consent is required, it shall have been received, (c) require any consent or approval by, notice to, or registration with, any Governmental Entity, or (d) result in the creation of any Lien on any of the Assets.

Section 3.4. Intellectual Property.

Schedule 3.4 lists all Intellectual Property other than Trade Secrets owned by Seller and currently used in the operation of the Business. Except as set forth on Schedule 3.4, (i) with respect to any Intellectual Property owned by Seller (as

opposed to Intellectual Property for which Seller is a licensee), Seller has all right, title, and interest to all Intellectual Property, without any conflict known to Seller with the rights of others, (ii) no Person other than Seller has the right to use the Intellectual Property owned by Seller, and (iii) Seller has the valid right to use, pursuant to a license, sublicense, or other agreement, any Intellectual Property used in the Business that is owned by a party other than Seller.

Section 3.5. Assets.

The Seller has good, valid, marketable, and undivided title to all assets used in the operation of the Business (including the Assets), free and clear of all Claims, Encumbrances, Interests, and Liens other than those set forth on Schedule 3.5 and Permitted Encumbrances. Subject to the entry of the Sale Order, Buyer will be vested with good title to the Assets, free and clear of all Claims, Encumbrances, Interests, and Liens other than Permitted Encumbrances.

Section 3.6. No Brokers or Finders.

No agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Seller in connection with the negotiation, execution, or performance of this Agreement or the transactions contemplated by this Agreement, is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transaction.

Section 3.7. Real Property.

Schedule 3.7 sets forth Seller's Owned Real Property ("Owned Property").

Section 3.8. Material Contracts.

To Seller's knowledge, Schedule 3.8 sets forth a complete list of all of the material Contracts (other than purchase orders and supplier orders, but including all real-property leases) to which Seller is a party or by which it is bound and that are used in or related to the ordinary course of the Business or by which any of the Assets or the Business may be bound or affected (collectively, the "Material Contracts"). Seller has made available to Buyer all available Material Contracts.

Section 3.9. Employee Benefits.

All material employee benefit plans or programs, including bonus plans, consulting or other compensation agreements, incentive, equity or equity-based compensation, deferred-compensation arrangements, stock-purchase, severance-pay, sick-leave, vacation-pay, salary continuation, disability, hospitalization, medical-insurance, life-insurance, and scholarship programs maintained by Seller are identified in the *Motion for Authority to Pay Prepetition Wages, Compensation, and Employee Benefits*. To Seller's knowledge, such plans,

programs, arrangements, or agreements described or referred to in this Section 3.9 are, and have been, maintained in substantial compliance with applicable law.

Section 3.10. Labor.

Except as set forth on Schedule 3.10, Seller is not a party to any labor or collective bargaining agreement. There are no unfair labor-practice charges, grievances, or complaints pending or, to Seller's knowledge, threatened by or on behalf of any current or former employee or group of employees of Seller, except in each case as would not reasonably be expected to result in material liability to Buyer or have a Material Adverse Effect.

Section 3.11. Environmental Matters.

Except as set forth on Schedule 3.11, to Seller's knowledge, there have been and are no Releases, threat of Releases, events, conditions, circumstances, incidents, actions, or omissions relating to or in any way affecting Seller, the Assets, and/or the Business that (i) violate any Environmental Law, (ii) have given rise to any Liability under any Environmental Law (including, without limitation, any Hazardous Materials that have been released, disposed of, emitted, treated, stored, generated, placed, deposited, discharged, or spilled at, on, or under any facility ever owned, operated, or leased by Seller, or any facility to which Seller has sent any Hazardous Material), or (iii) otherwise form the basis of any Claim, action, demand, suit, proceeding, hearing, study, or investigation (x) under any Environmental Law or (y) based on or related to the manufacture, processing, distribution, use, treatment, storage (including, without limitation, underground storage tanks), disposal, transport, or handling, or the emission, discharge, Release, or threatened Release of any Hazardous Material.

Section 3.12. Board Approval and Recommendations.

The Board of Managers (or similar governing body) of Seller has determined that, based on its consideration of the available alternatives, and subject to the approval of the Bankruptcy Court and the provisions in this Agreement regarding the solicitation of Alternate Transactions, a sale, assignment, and assumption of the Assets and Assumed Liabilities pursuant to this Agreement under sections 105, 363, and 365 of the Bankruptcy Code is in Seller's best interests.

**ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller, as of the date hereof, the following:

Section 4.1. Organization.

Buyer is a Delaware limited liability company duly formed and in good standing under the laws of the state of Delaware and has the full limited-liability-company right, power, and authority to own, lease, and operate all of its properties and assets and to carry out its business as it is presently conducted.

Section 4.2. Authority.

Subject to entry of the Sale Order by the Bankruptcy Court, Buyer has all requisite limited-liability-company right, power, and authority to execute, deliver, and perform this Agreement and each instrument of conveyance and other document to be executed and delivered by Buyer pursuant to the requirements of this Agreement (the "Buyer Ancillary Documents"). The execution, delivery, and performance of this Agreement and each Buyer Ancillary Document by Buyer has been duly and validly authorized and approved by all necessary limited-liability-company action, subject to the approval of the Bankruptcy Court. Subject to the approval of the Bankruptcy Court, this Agreement has been duly and validly executed and delivered by Buyer, and at the Closing each Buyer Ancillary Document will be duly and validly executed and delivered by Buyer, and (a) assuming this Agreement has been duly authorized, executed, and delivered by Seller, this Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, and (b) assuming each such Buyer Ancillary Document has been duly authorized, executed, and delivered by Seller (to the extent Seller is required to be party thereto), each such Buyer Ancillary Document shall constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

Section 4.3. Consents and Approvals; No Violations.

Subject to entry of the Sale Order by the Bankruptcy Court, the execution, delivery, and performance of this Agreement by Buyer will not (with or without the giving of notice or the passage of time, or both) (a) violate any applicable provision of law or any rule or regulation of any Governmental Entity applicable to Buyer, or any order, writ, injunction, judgment, or decree of any court, administrative agency, or Governmental Entity applicable to Buyer, or (b) require any consent under or constitute a default (or give rise to any right of termination, amendment, cancellation or acceleration) under any material agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which Buyer is a party or by which it is bound, or any material Permit held by Buyer.

Section 4.4. No Brokers or Finders.

No agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by or acting on behalf of Buyer in connection with the negotiation, execution, or performance of this Agreement or the transactions contemplated by this Agreement, is or will be entitled to any brokerage or finder's

or similar fees or other commissions as a result of this Agreement or such transactions.

Section 4.5. Legal Proceedings.

There is no order or action pending or, to the knowledge of Buyer, threatened against or affecting Buyer that individually or when aggregated with one or more other actions would have a material adverse effect on Buyer's ability to perform this Agreement and Buyer Ancillary Documents or any material aspect of the transactions contemplated by this Agreement.

Section 4.6. Financing.

Buyer has available sufficient funding to enable Buyer to consummate the purchase of the Assets from Seller on the terms set forth in Article II and otherwise to perform all of Buyer's obligations under this Agreement.

**ARTICLE V.
FURTHER COVENANTS AND AGREEMENTS**

Section 5.1. Covenants of Seller Pending the Closing.

From the date hereof until the Closing, or any termination of this Agreement in accordance with Article VI hereof, except as required by orders of the Bankruptcy Court or with the prior written consent of Buyer, Seller shall:

- (a) not take or intentionally omit to take any action that could reasonably be expected to result in a breach of Seller's representations and warranties hereunder;
- (b) promptly disclose to Buyer any information relating to Seller's representations and warranties hereunder that Seller becomes aware of after the date hereof that makes any information previously provided to Buyer incomplete or incorrect in any material respect and all information regarding any material damage to or material loss of any of the Assets;
- (c) use its commercially reasonable efforts to cause all of the conditions to the obligations of Buyer under Article VII to be satisfied on or prior to the Closing Date and to make commercially reasonable efforts to obtain, prior to the Closing, in writing (copies of which shall be delivered to Buyer) all consents, waivers, or approvals of all third parties and Governmental Entities that are necessary for the consummation by Seller of the transactions contemplated by this Agreement;
- (d) use its commercially reasonable efforts to (i) preserve the existing business organization and management of the Business intact, (ii)

keep available the services of the current officers and employees of the Business, to the extent reasonably feasible, and (iii) maintain the existing relations with customers, carriers, distributors, suppliers, creditors, employees, vendors, and others having business dealings with the Business, to the extent reasonably feasible.

- (e) not make any loans to or otherwise enter into any transaction with any officer, employee, partner, or Affiliate, or make or grant any increase in any employee-benefit plan, incentive arrangement, or other benefit covering any of its officers or employees, or establish, amend, or contribute to any pension, retirement, severance, profit-sharing plan or multi-employer plan covering any of the employees of the Business, except as required by Law;
- (f) not enter into, assume, amend, modify, or terminate any material Contract or lease (including any Designated Contract), without consent of Buyer, or amend or otherwise modify any of its organizational documents;
- (g) not adopt or propose any change to, or fail to maintain, the current levels of insurance coverage afforded Seller under existing insurance policies;
- (h) not redeem or repurchase, directly or indirectly, or pay or declare any dividends or other distributions in respect of, any of its equity interests;
- (i) not issue any notes, bonds, or other debt securities or otherwise incur any indebtedness for borrowed money or material capital leases or guarantee or otherwise become liable for any such obligations of any other Person;
- (j) not sell, assign, transfer, lease, or license any of the Assets, other than sales of inventory in the ordinary course of the Business, or subject any of the Assets or the Business to any Lien or Encumbrance (except for Permitted Encumbrances);
- (k) not cancel or compromise any material debt or claim or waive or release any material right of Seller that constitutes an Asset;
- (l) not enter into any commitment for capital expenditures except pursuant to any budget approved under the DIP Financing Amendment; and
- (m) not take any action that will cause a default or an event of default under the DIP Financing Amendment.

Section 5.2. Covenants of Buyer Pending the Closing.

Pending the Closing and prior to any termination of this Agreement in accordance with Article VI hereof, and except as otherwise agreed to in writing by the Company, Buyer shall:

(a) not take or intentionally omit to take any action that could reasonably be expected to result in a breach of any of Buyer's representations and warranties hereunder in any material respect;

(b) promptly disclose to the Company any information relating to Buyer's representations and warranties hereunder that Buyer becomes aware of at any time after the date hereof that makes any information previously provided by Buyer incomplete or incorrect in any material respect; and

(c) use commercially reasonable efforts to cause all of the conditions to Seller's obligations under Article VIII to be satisfied on or prior to the Closing Date and make commercially reasonable efforts to obtain, prior to the Closing, in writing (copies of which shall be delivered to the Company) all consents, waivers, or approvals of all third parties and Governmental Entities that are necessary for the consummation by Buyer of the transactions contemplated by this Agreement (if any).

Section 5.3. Further Assurances and Services.

The Parties shall cooperate reasonably with each other in connection with any steps required to be taken under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, as the other party may reasonably request, for the purpose of carrying out the intent of this Agreement.

In addition, Seller shall provide, and cause its Affiliates, officers, directors, employees, attorneys, accountants, and other agents to provide, Buyer and its accounting, legal, and other representatives full and complete access at all reasonable times to such Seller's directors, managers, officers, personnel, key customers, vendors, carriers, clients, and suppliers, consultants, attorneys, accountants, and facilities and to business, financial, legal, regulatory, tax, compensation, and other data and information concerning the Business.

Section 5.4. Employment Matters.

(a) Seller agrees that, from and after the date hereof, Buyer may offer employment, effective as of the Closing, to any Persons employed by Seller, which employment will become effective as of the Closing Date and only if the Closing occurs. Only if the Closing occurs, any such Person who accepts such an offer of employment with Buyer shall be a "Transferred Employee" and shall be employed by Buyer on such terms and conditions as Buyer and each such

Transferred Employee may mutually agree. Upon request of Buyer, Seller shall provide Buyer reasonable access to data (including computer data) regarding the dates of hire, compensation, benefits, and job descriptions of the Transferred Employees.

(b) At Closing, Buyer shall make available or establish an employee-benefit plan for the Transferred Employees and their dependents. The Buyer shall credit (i) each Transferred Employee with his or her service with Seller between the Petition Date and the Closing Date to the same extent such service would have been credited had such service been with Buyer, up to the priority limits imposed by section 507 and (ii) the Transferred Employees with all service recognized by Seller under employee plans as service with Buyer for purposes of eligibility to participate and vesting under all employee benefit plans, programs and policies of Buyer, whether now existing or hereafter adopted (the “Buyer Plans”). Buyer shall waive any coverage-waiting period, pre-existing condition, and actively-at-work requirements under Buyer Plans to the extent such conditions or requirements have been satisfied under corresponding plans of Seller and shall provide that any eligible expenses incurred before the Closing Date by a Transferred Employee (and his or her dependents) during the calendar year of the Closing and disclosed to Buyer by such Transferred Employee shall be taken into account for purposes of satisfying the applicable deductible, coinsurance, and maximum out-of-pocket provisions, and applicable annual and/or lifetime maximum benefit limitations of Buyer Plans.

Section 5.5. Casualty.

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

Section 5.6. Name Change.

As soon as practicable after Closing, Seller shall cause its name to be changed from American LaFrance, LLC to ALF or such other name as may be agreed to by Buyer and Seller.

**ARTICLE VI.
TERMINATION**

Section 6.1. Termination.

This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement executed by the Company and Buyer.

- (b) automatically and without any action or notice by either the Company (on behalf of Seller) to Buyer, or Buyer to the Company, immediately upon:
 - (i) the issuance of an order, decree, or ruling restraining, enjoining, or otherwise prohibiting the transfer of the Assets contemplated hereby;
 - (ii) approval by the Bankruptcy Court of an Alternate Transaction; or
 - (iii) Buyer not being declared the winning bidder upon completion of the Auction.

- (c) by Buyer:
 - (i) if the Bid Procedures Order shall not have been entered by February 22, 2008;
 - (ii) if the Auction has not concluded by April 8, 2008;
 - (iii) if the Bankruptcy Court has not entered the Sale Order by April 15, 2008 (or such later date as Buyer may have designated in writing to the Company);
 - (iv) if there has been a material violation or breach by Seller of any representation, warranty, or covenant contained in this Agreement that (x) has rendered the satisfaction of any condition to Buyer's obligations impossible or is incurable or, if curable, has not been cured within five (5) days following receipt by the Company of written notice of such breach from Buyer, and (y) has not been waived by Buyer;
 - (v) at any time after April 18, 2008, if the Closing shall not have occurred;
 - (vi) if Seller's Bankruptcy Case shall be converted to a case under chapter 7 of the Bankruptcy Code or dismissed, or if a trustee is appointed in the Bankruptcy Case;
 - (vii) if the lenders' obligations under the DIP Financing Amendment are terminated;
 - (viii) if either the interim or the final order authorizing and approving the DIP Financing Amendment has not been entered within the time periods set forth therein;
 - (ix) if there shall be excluded from the Assets any Designated Contract that is not assignable or transferable pursuant to

the Bankruptcy Code or otherwise without the consent of any Person other than Seller, to the extent that such consent shall not have been given prior to the Closing, and such Designated Contract shall, in Buyer's sole opinion, prevent it from effectively operating the Business; or

- (x) if Buyer so elects in writing pursuant to Section 5.5 hereof.
- (d) by the Company, if there has been a material violation or breach by Buyer of any agreement or any representation or warranty contained in this Agreement that (x) has rendered the satisfaction of any condition to Seller's obligations impossible or incurable or, if curable, has not been cured within five (5) days following receipt by Buyer of written notice of such breach from the Company, and (y) has not been waived by the Company.

Section 6.2. [Omitted]

[Omitted]

**ARTICLE VII.
CONDITIONS TO BUYER'S OBLIGATIONS**

Each and every obligation of Buyer to consummate the transactions described in this Agreement shall be subject to the fulfillment (or, with respect to any obligation other than Bankruptcy Court approval of the Bid Procedures Order, and Sale Order, waiver thereof by Buyer in writing) on or before the Closing Date, of the following conditions precedent:

Section 7.1. Seller's Closing Deliveries.

Seller shall have delivered, or caused to be delivered, to Buyer at the Closing each of the following:

- (a) one or more Bills of Sale (as requested by Buyer), executed by Seller;
- (b) duly executed and acknowledged (as appropriate) assignments of the U.S. trademark registrations and applications and U.S. patents and patent applications included in the purchased Intellectual Property, in a form suitable for recording in the U.S. Patent and Trademark Office, assignment documents for trademark and/or patent rights in other jurisdictions as reasonably requested by Buyer, and general assignments of all other purchased Intellectual Property;
- (c) possession of the Assets;

- (d) an entered copy of the Sale Order;
- (e) a non-foreign affidavit dated as of the Closing Date in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code so that Buyer is exempt from withholding any portion of the Purchase Price;
- (f) duly and properly authorized and executed Organizational Amendments; and
- (g) any other documents reasonably requested by Buyer to effectuate the transfer of the Assets at Closing.

Section 7.2. Representations and Warranties True.

The representations and warranties of Seller contained in this Agreement shall have been true on the date of this Agreement, and shall be true in all material respects (except as to those representations and warranties that are qualified by materiality and/or Material Adverse Effect, which shall be true in all respects) on the Closing Date with the same effect as though such representations were made as of such date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

Section 7.3. Performances.

Seller shall have performed and complied with all covenants and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

Section 7.4. Governmental Consents and Approvals.

The Parties shall have received all necessary and appropriate governmental consents, approvals, and filings required for them to consummate the transactions contemplated hereby, including, without limitation, any approval under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations thereunder, if applicable.

Section 7.5. Bankruptcy Court Approvals.

The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order substantially in the forms attached hereto as Exhibits B and D, respectively (subject to non-material changes only), and provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Sale Order shall have become a final and nonappealable order, unless this condition has been waived in writing by Buyer in its sole discretion.

Section 7.6. No Injunction.

There shall not be in effect, at the Closing Date, any injunction or other binding order of any court or other tribunal having jurisdiction over Buyer that prohibits the purchase of the Assets by Buyer. The Sale Order shall not have been reversed or vacated, and shall not be subject to a stay pending appeal. The stay provided for in Rule 6004(g) of the Federal Rules of Bankruptcy Procedure shall have expired or been waived by the Bankruptcy Court.

Section 7.7. Credit Bid Approval.

The Bankruptcy Court shall have entered an order, binding on all parties-in-interest in the Bankruptcy Case (which order may be the Sale Order) unconditionally allowing (i) a Claim by Buyer in the Bankruptcy Case in an amount equal to the DIP Amount and (ii) a Claim by Buyer in the Bankruptcy Case in an aggregate amount equal to all obligations under the Credit Agreement as prepetition, senior secured obligations, and, in each case, authorizing and approving the Credit Bid by Buyer contemplated by this Agreement pursuant to section 363(k) of the Bankruptcy Code and authorizing Buyer to credit bid up to the aggregate amount of the DIP Amount and any amounts due pursuant to the Credit Agreement.

**ARTICLE VIII.
CONDITIONS TO SELLER'S OBLIGATIONS**

Each and every obligation of Seller to consummate the transactions described in this Agreement shall be subject to the fulfillment (or, with respect to any obligation other than Bankruptcy Court approval of the Bid Procedures Order and Sale Order, the waiver thereof by the Company in writing) on or before the Closing Date, of the following conditions precedent.

Section 8.1. Representations and Warranties.

The representations and warranties of Buyer contained in this Agreement shall have been true on the date of this Agreement, and shall be true in all material respects (except as to those representations and warranties that are qualified by materiality, which shall be true in all respects) on the Closing Date with the same effect as though such representations were made as of such date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

Section 8.2. Governmental Consents and Approvals.

The Parties shall have received all necessary and appropriate governmental consents, approvals, and filings required for them to consummate the transactions contemplated hereby, including, without limitation, any approval under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations thereunder, if applicable.

Section 8.3. Performances.

Buyer shall have performed and complied in all material respects with all covenants and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

Section 8.4. Buyer's Closing Deliveries.

Buyer shall deliver, or cause to be delivered, as applicable, to Seller, at the Closing each of the following:

- (a) the Assignment and Assumption Agreement executed by Buyer; and
- (b) such other deliveries as Buyer may be required to make on the Closing pursuant to any other provision of this Agreement.

Section 8.5. Bankruptcy Court Approvals.

The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order substantially in the forms attached hereto as Exhibits B and D, respectively (subject to non-material changes only), and provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Sale Order shall have become a final and nonappealable order, unless this condition has been waived by Buyer in its sole discretion.

Section 8.6. No Injunction.

There shall not be in effect, at the Closing Date, any injunction or other binding order of any court or other tribunal having jurisdiction over Seller that prohibits the sale of the Assets to Buyer. The Sale Order shall not have been reversed or vacated, and shall not be subject to a stay pending appeal. The stay provided for in Rule 6004(g) of the Federal Rules of Bankruptcy Procedure shall have expired or been waived by the Bankruptcy Court.

**ARTICLE IX.
BANKRUPTCY MATTERS**

Section 9.1. Motion(s).

Seller shall file with the Bankruptcy Court, within one (1) Business Day after the full execution and delivery of this Agreement and the commencement of the Bankruptcy Case, a motions) (the "Motion") seeking the Bankruptcy Court's approval of the Bid Procedures Order and the Sale Order in the forms attached hereto Exhibits B and D, respectively. Seller shall attach a true and complete copy of this Agreement to the Motion filed with the Bankruptcy Court.

Section 9.2. Bid Procedures Order.

The Motion shall request, among other things, (1) the scheduling of the date for the Auction to be commenced no later than March 28, 2008, and the Sale Hearing (as defined below) to be conducted no later than April 9, 2008, and (ii) the entry of the Bid Procedures Order, containing, among other provisions acceptable to Buyer, the following provisions:

- (a) a date for a hearing to approve the Bid Procedures Order to be held no later than February 21, 2008, but in no event shall the Bid Procedures Order be entered later than February 22, 2008;
- (b) a schedule of the date(s) for the Auction and the hearing (the "Sale Hearing") to consider the entry of the Sale Order;
- (c) the establishment of notice requirements, bid procedures, including expressly approving Buyer's right to credit bid under section 363(k) of the Bankruptcy Code, requirements regarding competing bids, and the pre-qualification of competing bids and bidders ("Qualified Bids") for the Auction;
- (d) a requirement that a competing bidder shall be required to demonstrate that it has the financial wherewithal to consummate the transactions contemplated by this Agreement;
- (e) a requirement that any party desiring to submit a Qualified Bid must submit a deposit equal to \$1,000,000.00 simultaneously with the submission of a Qualified Bid;
- (f) a requirement that Qualified Bids must be in substantially the form of this Agreement and marked to show any modifications to this Agreement;
- (g) a requirement that a Qualified Bid must be in an amount that is at least \$100,000.00 greater than the Purchase Price;
- (h) a requirement that subsequent bids must be in an amount that is at least \$250,000.00 more than the prior bid; and
- (i) establishment of cure claim notice and dispute procedures relating to the assumption and sale and assignment of the Designated Contracts.

The Seller shall serve on all counterparties to those Contracts and leases that may be designated as Designated Contracts a notice specifically stating that Seller is or may be seeking the assumption and assignment of the Designated Contracts and shall notify such parties of the deadline for objecting to the amounts listed in the Cure Schedule, which deadline shall not be less than three

Business Days prior to the Sale Hearing. In cases in which Seller is unable to establish that a default exists, the relevant cure amount shall be set at \$0.00. The Motion shall reflect Buyer's promise to perform from and after the Closing under the Designated Contracts. Notwithstanding anything to the contrary in this Agreement, Buyer acknowledges and agrees that if Seller is unable to transfer or assign any Designated Contract by reason of Buyer's failure to provide adequate assurance of future performance, and provided that Buyer, in its reasonable discretion, determines that such contract is not material to the operation of the Business or if Buyer has failed to use its commercially reasonable efforts to demonstrate adequate assurance of future performance with respect to such Designated Contract, such Contract shall thereupon become an Excluded Asset.

Section 9.3. Sale Order.

The Motion shall seek the entry of the Sale Order containing, among other things, the following provisions:

- (a) finding that the notice of the Sale Hearing and the Auction was proper and sufficient under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Bankruptcy Court's Local Bankruptcy Rules, that Seller and Buyer entered into the Agreement in good faith, the Purchase Price and Assumed Liabilities constitute fair value in consideration for the Assets and Designated Contracts and determining that Buyer is a "good-faith" purchaser entitled to the protections afforded by section 363(m) of the Bankruptcy Code with respect to the transactions, the Assets, and the Designated Contracts;
- (b) authorizing Seller to transfer to Buyer all right, title, privilege, and interest of Seller in and to the Assets, free and clear of any Claims, Encumbrances, Interests, and Liens, with all such Claims, Encumbrances, Interests, and Liens attaching to the net proceeds of sale, if any;
- (c) authorizing Seller to assume and sell and assign the Designated Contracts to Buyer pursuant to sections 363 and 365 of the Bankruptcy Code;
- (d) finding that Buyer is not a successor to Seller or its estate by reason of any theory of law or equity with respect to any Liens, Claims, and Encumbrances against the Debtor or the Assets; and
- (e) establishing the amounts, if any, that Seller must pay or escrow to cure any defaults or actual pecuniary losses under or with respect to the Designated Contracts.

Section 9.4. Assumption of Designated Contracts.

Pursuant to section 365 of the Bankruptcy Code and as requested by parties to the Designated Contracts and required by the Bankruptcy Court, Buyer shall provide adequate assurance of future performance under and with respect to the Designated Contracts. After the Closing Date, Seller shall be released from any further liability under the Designated Contracts as provided for under section 365(k) of the Bankruptcy Code.

Section 9.5. Procedure.

To the extent practicable under the circumstances, Seller shall provide Buyer with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement for Buyer's prior review and comment. The Bid Procedures Order and Sale Order shall be in the forms attached hereto as Exhibits B and D, respectively, and any changes thereto shall be subject to the Company's and Buyer's approval, with such approval to be in the sole discretion of each party. Seller shall seek approval of the Bid Procedures Order and the Sale Order. If the Sale Order shall be appealed, Seller and Buyer shall each defend such appeal.

**ARTICLE X.
MISCELLANEOUS**

Section 10.1. Entire Understanding, Waiver, Etc.

This Agreement (including the Exhibits and the Schedules attached hereto) collectively represent the entire understanding and agreement of the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented, or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, or waiver is sought. A waiver by any Party of any of the terms or conditions of this Agreement, or of any breach thereof, shall not be deemed a waiver of such term or condition for the future, or of any other term or condition, or of any subsequent breach thereof.

Section 10.2. Severability.

If any provision of this Agreement or the application of such provision shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

Section 10.3. Captions.

The captions herein are for convenience only and shall not be considered a part of this Agreement for any purpose, including, without limitation, the construction or interpretation of any provision.

Section 10.4. Notices.

All notices, requests, demands, and other communications (collectively, “Notices”) that are required or may be given under this Agreement shall be in writing. All Notices shall be deemed to have been duly given or made: (a) if by hand, immediately upon delivery if it is a Business Day between the hours of 9:00 a.m. and 5:00 p.m. (Eastern time) in the place of receipt and otherwise at the beginning of the first Business Day thereafter; (b) if by telecopier or similar device, immediately upon sending, provided notice is sent on a Business Day between the hours of 9:00 a.m. and 5:00 p.m. (Eastern time) in the place of receipt, but if not, then immediately upon the beginning of the first Business Day after being sent; (c) if by Federal Express, Express Mail, or any other reputable overnight delivery service, one (1) Business Day after being placed in the exclusive custody and control of said courier; and (d) if mailed by certified mail, return-receipt requested, five (5) Business Days after mailing. Notwithstanding the foregoing, with respect to any Notice given or made by telecopier or similar device, such Notice shall not be effective unless and until (i) the telecopier or similar device being used prints a written confirmation of the successful completion of such communication by the Party sending the Notice, and (ii) a copy of such Notice is deposited in first-class mail to the appropriate address for the Party to whom the Notice is sent. In addition, notwithstanding the foregoing, a Notice of a change of address by a Party shall not be effective until received by the Party to whom such notice of a change of address is sent. All Notices are to be given or made to the Parties at the following addresses (or to such other address as either Party may designate by Notice in accordance with the provisions of this Section):

If to Seller: American LaFrance, LLC .
 1090 Newton Way
 Summerville, SC 29483
 Attention: William Hinz, Chief Executive Officer
 Fax No.: 843.486.7500

with a mandatory copy (which shall not constitute Notice) to:

Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, TX 75202
Attention: Ian T. Peck
Fax No.: 817.348.2350

and

Klehr, Harrison, Harvey, Branzburg & Ellers LLP
919 Market Street, Suite 1000
Wilmington, DE 19801
Attention: Joanne B. Wills

Fax No.: 302.426.9193

If to Buyer: Patriarch Partners Management Group
227 West Trade Street, Suite 1400
Charlotte, NC 28202
Attention: Lara Parker
Fax: 704.227.1208

with a mandatory copy (which shall not constitute Notice) to:

Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201-4761
Attention: Richard M. Roberson
Fax No.: 214.999.3955

and

Ashby & Geddes
500 Delaware Avenue
P.O. Box 1150
Wilmington, DE 19899
Attention: Don A. Beskrone
Fax No.: 302.654.2067

Section 10.5. Assignment.

Neither this Agreement nor any right or obligation hereunder is assignable, except that Buyer may assign its right or delegate its obligations (in whole or in part) hereunder to one or more newly formed entities, to one or more of its Affiliates, and/or to one or more Persons that Buyer determines to partner with in connection with the transactions contemplated by this Agreement; provided, however, that Buyer shall remain liable for all of its obligations under this Agreement.

Section 10.6. Parties in Interest.

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 10.7. Counterparts and Facsimile Signatures.

This Agreement may be executed in two or more counterparts and by facsimile or electronic pdf counterpart signatures, each of which shall be deemed

an original, but all of which, together, shall constitute one and the same instrument.

Section 10.8. Construction of Terms.

Any reference herein to the masculine, feminine, or neuter shall include the masculine, the feminine, and the neuter, and any reference herein to the singular or plural shall include the opposite thereof unless the context requires otherwise. All references to articles, sections, paragraphs, schedules, or exhibits shall be deemed references to articles, sections, or paragraphs of or schedules or exhibits to this Agreement unless the context requires otherwise. “Hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section, or other provision of this Agreement. The words “including” (and with correlative meaning “include”) means “including without limiting the generality of any description preceding such term.” The word “or” is used in the inclusive sense of “and/or.” With respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding.” Unless otherwise noted in this Agreement, all references to dollars or \$ are United States dollars. References to documents, instruments, or agreements shall be deemed to refer as well to all addenda, exhibits, schedules, or amendments to such documents, instruments, or agreements. The singular number includes the plural number and vice versa. Reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually. Because each Party and counsel to each Party has participated in the drafting of this Agreement, this Agreement shall not be interpreted against one Party or the other based on who drafted any provision.

Section 10.9. Waiver of Jury.

EACH PARTY HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH-OF-DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RESPECTIVE RELATED FUTURE DEALINGS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND

THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY-TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRIT CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

Section 10.10. Non-Survival of Representations and Warranties.

The representations and warranties respectively made by Seller and Buyer in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no claim with respect to any breach of any representation or warranty contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any other Party. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each Party hereto shall be liable to the other after the Closing for any breach thereof

Section 10.11. Calculation of Time Periods.

When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Section 10.12. Governing Law; Jurisdiction.

THIS AGREEMENT AND ALL DOCUMENTS, INSTRUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED PURSUANT TO THE TERMS AND PROVISIONS HEREOF WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE BANKRUPTCY CODE AND, TO THE EXTENT NOT INCONSISTENT WITH THE BANKRUPTCY CODE, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE-OF-LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE LAW OF NEW YORK WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT AND SELLER ANCILLARY DOCUMENTS AND BUYER ANCILLARY DOCUMENTS, EVEN IF UNDER SUCH JURISDICTION'S CHOICE-OF-LAW OR CONFLICT-OF-LAW ANALYSIS, THE

SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

THE BUYER AND SELLER FURTHER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (A) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY SELLER ANCILLARY DOCUMENT OR BUYER ANCILLARY DOCUMENT AND (B) THE ASSETS AND THE ASSUMED LIABILITIES. BUYER CONSENTS TO AND EXPRESSLY AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT REFUSES TO ACCEPT JURISDICTION OVER ANY SUCH DISPUTE, THEN EACH PARTY HEREBY IRREVOCABLY SUBMITS TO AND ACCEPTS FOR ITSELF AND ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF AND SERVICE OF PROCESS PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND THE RULES OF ITS COURTS, WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY ARISING UNDER, OR OUT OF, IN RESPECT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER DOCUMENT IN CONNECTION WITH THIS AGREEMENT OR OBLIGATION. EACH PARTY FURTHER IRREVOCABLY DESIGNATES AND APPOINTS THE INDIVIDUAL IDENTIFIED IN OR PURSUANT TO SECTION 10.4 HEREOF TO RECEIVE NOTICES ON ITS BEHALF, AS ITS AGENT TO RECEIVE ON ITS BEHALF SERVICE OF ALL PROCESS IN ANY SUCH ACTION BEFORE ANY GOVERNMENTAL ENTITY, SUCH SERVICE BEING HEREBY ACKNOWLEDGED TO BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. A COPY OF ANY SUCH PROCESS SO SERVED SHALL BE MAILED BY REGISTERED MAIL TO EACH PARTY AT ITS ADDRESS PROVIDED IN SECTION 10.4; PROVIDED, HOWEVER, THAT UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW, ANY FAILURE TO MAIL SUCH COPY SHALL NOT AFFECT THE VALIDITY OF THE SERVICE OF SUCH PROCESS. IF ANY AGENT SO APPOINTED REFUSES TO ACCEPT SERVICE, THE DESIGNATING PARTY HEREBY AGREES THAT SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST IT IN THE APPLICABLE JURISDICTION MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ITS ADDRESS PROVIDED IN SECTION 10.4. EACH PARTY HEREBY ACKNOWLEDGES THAT SUCH SERVICE SHALL BE EFFECTIVE AND BINDING IN EVERY RESPECT. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF ANY PARTY TO BRING ANY ACTION OR PROCEEDING AGAINST THE OTHER PARTY IN ANY OTHER JURISDICTION IF THE BANKRUPTCY COURT REFUSES TO ACCEPT JURISDICTION. NOTHING HEREIN SHALL LIMIT OR OTHERWISE AFFECT ANY CHOICE OF LAW

OR CHOICE OF VENUE MADE BY SELLER AND BUYER IN ANY OTHER AGREEMENT TO WHICH THEY ARE BOTH A PARTY.

Section 10.13. Expenses.

The Parties shall each bear their own expenses incurred in connection with this Agreement and each other document or certificate pursuant to this Agreement, including, without limitation, Seller Ancillary Documents and Buyer Ancillary Documents.

Section 10.14. Books and Records.

From and after the Closing Date, Buyer shall provide Seller with such non-privileged information in its possession as may be reasonably requested by Seller for periods prior to the Closing Date to enable Seller to prepare Tax Returns and other financial reports and otherwise in connection with further disposition of the Bankruptcy Case.

Section 10.15. General Release.

Effective upon the Closing Date, on behalf of itself and its estate, Seller acknowledges that it has no claim, counterclaim, setoff, recoupment, action, or cause of action of any kind or nature whatsoever (including, actions for avoidance, subordination, or recharacterization of any of Buyer's pre-Petition Date Claims, Encumbrances, Interests, and Liens) against Buyer and any of its current members, employees, agents, current managers, current directors, Affiliates, attorneys, or financial advisors (collectively, the "Buyer Group"), that directly or indirectly arise out of, are based on, or in any manner are connected with (i) the Credit Agreement and any of other pre-Petition Date agreements to which Buyer and Seller are (or were) parties and all, transactions referred to in such agreements, or (ii) the acquisition by Buyer of Claims and Liens in and against Seller (jointly, the "Released Claims"). Should any Released Claims nonetheless exist, Seller, on behalf of itself and its estate, hereby (i) releases and discharges Buyer from any liability whatsoever on such Released Claims and (ii) releases, waives, and discharges all such Released Claims against Buyer.

Section 10.16. Press Releases.

At and prior to the Closing, no Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of Buyer and the Company, which approval shall not be unreasonably withheld, except that any Party may make any announcement required by law or by order of the Bankruptcy Court after notice to Buyer and the Company and consultation with such Persons. After the Closing Date, no press releases or public announcement related to this Agreement and the transactions contemplated herein, or other announcements to the employees, customers, carriers, vendors, clients, or suppliers of the Business shall be issued without Buyer's prior written consent.

Section 10.17. Remedies.

Seller, on the one hand, and Buyer, on the other hand, acknowledge and agree that the other Party would be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year first above written.

BUYER: Patriarch Partners Agency Services, LLC
By _____
Name:
Title:

SELLER: American LaFrance, LLC
By _____
Name:
Title:

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “Agreement”), dated as of _____, 2008, is by and between American LaFrance, LLC, a Delaware limited liability company (“Seller”) and Patriarch Partners Agency Services, LLC, a Delaware limited liability company, (“Buyer”).

WHEREAS, pursuant to an Asset Purchase Agreement by and between Buyer and Seller as of _____, 2008 (as amended and in effect from time to time, the “Asset Purchase Agreement”), Buyer has purchased substantially all of the assets of Seller; and

WHEREAS, pursuant to the Asset Purchase Agreement, Seller has agreed to assign certain rights and agreements to Buyer, and Buyer has agreed to assume certain obligations of Seller, as set forth herein, and this Agreement is contemplated by the Asset Purchase Agreement;

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

(a) Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to them in the Asset Purchase Agreement.

(b) Assumption. Buyer hereby assumes and agrees to observe and perform all of the duties, obligations, terms, provisions, and covenants, and to pay and discharge all of the liabilities of Seller to be observed, performed, paid, or discharged in connection with the Assumed Liabilities. Buyer assumes no other liabilities, and the Parties hereto agree that all such other liabilities shall remain the sole responsibility of Seller.

(c) Terms of the Asset Purchase Agreement. The terms of the Asset Purchase Agreement are incorporated herein by this reference. If there is a conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

(d) Further Actions. Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other Party, such further instruments of transfer and assignment and to take such other action as such other Party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

(e) Governing Law; Counterparts. This Agreement shall be construed and enforced in accordance with the laws (other than the conflict-of-law rules) of the State of New York. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together will constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Assignment and Assumption Agreement on the date first above written.

BUYER:

Patriarch Partners Agency Services, LLC

By: _____

Name:

Title:

SELLER:

By: _____

Name:

Title:

EXHIBIT B
BID PROCEDURES ORDER

EXHIBIT C

BILL OF SALE

This Bill of Sale is made as of _____, 2008, by American LaFrance, LLC, a Delaware limited liability company, (“Seller”) for the benefit of Patriarch Partners Agency Services, LLC (“Buyer”).

Section 1. Transfer of Assets.

Effective at 11:59 p.m., Eastern time, on the date hereof, upon the terms and subject to the conditions set forth in that certain Asset Purchase Agreement dated as of _____, 2008 (as amended modified or supplemented, the “Asset Purchase Agreement”),¹ between Seller, Buyer, and the other seller parties thereto, Seller does hereby give, grant, bargain, sell, transfer, assign, convey, and deliver to Buyer all of Seller’s right, title and interest in and to the Assets.

Section 2. Miscellaneous.

(a) The Asset Purchase Agreement is incorporated herein by reference, shall continue in full force and effect as though set forth herein at length to the extent provided for in the Asset Purchase Agreement, and shall control in the event of any conflict with the terms of this Bill of Sale.

(b) THIS BILL OF SALE AND ALL DOCUMENTS, INSTRUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED PURSUANT TO THE TERMS AND PROVISIONS HEREOF WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE BANKRUPTCY CODE AND, TO THE EXTENT NOT INCONSISTENT WITH THE BANKRUPTCY CODE, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT OWING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN DELAWARE TO BE APPLIED.

(c) A facsimile counterpart signature to this Bill of Sale shall be acceptable and binding.

[Signature Page Follows]

¹ All capitalized terms not defined herein shall be given the meaning ascribed to them in the Asset Purchase Agreement.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized officer as of the day and year first above written.

By: _____
Name:
Title:

EXHIBIT D
SALE ORDER

Summary of Schedules to Asset Purchase Agreement

Schedule 1.1

Trademarks, Trade Names, URL's and Telephone Numbers

**All Trademarks, Trade Names, URL's and Telephone Numbers
Including the Following:**

[To Be Provided]

Schedule 1.2

Bid and Performances Bonds and Letters of Credit

[To Be Provided]

Schedule 1.4

Claims, Encumbrances, Interests and Liens

[To Be Provided]

Schedule 3.4

Intellectual Property Other Than Trade Secrets

**All Intellectual Property Other Than The Trade Secrets
Including the Following:**

**American LaFrance, LLC
Intellectual Property Portfolio
Current as of December 14, 2007**

Tab	Country	Case Type	Mark/Title	Status
1	US	US Trademark	CLEARPATH Serial No. 77/068,735 Filed: 12/20/2006 Matter No. 043150.00001	File Statement of Use-USA Due: 3/25/2008
2	US	US Patent	Assembly For Vehicle Body Panels Patent No: 5,466,034 Issued: 11/14/1995 Expires: 9/30/2013 Matter No. 043150.00001A	Issued – 11.5 year maintenance fee was paid 11/14/2007
3	Canada	Foreign Patent	Method and Assembly For Vehicle Body Panels Serial No. 2,132,290 Filed: 9/16/1994 Matter No. 043150.00001B	Pay Canadian Maintenance Fee-CANADA Due: 9/16/2008
4	US	US Patent	Outrigger Obstruction Detection System For Aerial Fire Trucks Serial No. 11/704,514 2537 Filed: 2/9/2007 Matter No. 043150.00010	Pending – Waiting for 1 st Office Action from PTO
6	US	US Trademark	CONDOR Serial No. 77/129,220 Filed: 3/13/2007 Matter No. 043150.00011	Check Status of Suspension - USA Due: 6/6/2008
7	US	US Trademark	LIBERTY Serial No. 78/551,613 Filed: 1/21/2005 Matter No. 043150.00012	File Statement of Use-USA Due: 3/7/2008
8	US	US Trademark	LIBERTY (stylized with bell design) Registration No. 3,166,502 Registered: 10/31/2006 Matter No. 043150.00013	Section 8 Renewal Due-USA Due: 10/31/2012

American LaFrance, LLC
Intellectual Property Portfolio
 Current as of December 14, 2007

Tab	Country	Case Type	Mark/Title	Status
9	US	US Trademark	MEDIC MASTER Registration No. 3,328,542 Registered: 11/6/2007 Matter No. 043150.00014	Section 8 Renewal Due-USA Due: 11/6/2013
10	US	US Trademark	MEDICMASTER Registration No. 2,662,372 Registered: 12/17/2002 Matter No. 043150.00015	Section 8 Renewal Due-USA Due: 12/17/2008
11	US	US Trademark	MEDICMASTER Registration No. 2,715,144 Registered: 5/13/2003 Matter No. 043150.00016	Section 8 Renewal Due-USA Due: 5/13/2009
12	US	US Trademark	METROPOLITAN Registration No. 2,449,920 Registered: 5/8/2001 Matter No. 043150.00017	File Trademark Renewal-USA Due: 5/8/2011
13	US	US Trademark	RESCUE MASTER Registration No. 1,851,080 Registered: 8/23/1994 Matter No. 043150.00018	File Trademark Renewal-USA Due: 8/23/2014
14	US	US Trademark	SILVER EAGLE Registration No. 2,532,493 Registered: 1/22/2002 Matter No. 043150.00019	Section 8 Renewal Due-USA Due: 1/22/2008
15	Canada	Foreign Trademark	SQURTI Registration No. 168722 Registered: 4/23/1970 Matter No. 043150.00020	Pay Renewal Fee Foreign Country-Canada Due: 4/23/2015
16	US	US Trademark	SQURTI Registration No. 879,879 Registered: 11/4/1969 Matter No. 043150.00021	File Trademark Renewal-USA Due: 11/4/2009

American LaFrance, LLC
Intellectual Property Portfolio
 Current as of December 14, 2007

Tab	Country	Case Type	Mark/Title	Status
17	US	US Trademark	TELE SQRIT Registration No. 939,763 Registered: 8/1/1972 Matter No. 043150.00022	File Trademark Renewal-USA Due: 8/1/2012
18	US	US Trademark	TWINFLOW (Stylized) Registration No. 975,880 Registered: 1/1/1974 Matter No. 043150.00023	File Trademark Renewal-USA Due: 1/1/2014
19	US	US Trademark	VANTAGE Registration No.: 2,494,771 Abandoned: 10/04/07 Matter No. 043150.00024	Abandoned
20	US	US Trademark	AMERICAN LAFRANCE and Design Registration No. 966,004 Registered: 8/14/1973 Matter No. 043150.00025	File Trademark Renewal-USA Due: 8/14/2013
21	US	US Trademark	LTI and Design Registration No. 1,063,147 Registered: 4/12/1977 Matter No. 043150.00026	File Trademark Renewal-USA Due: 4/12/2017
22	Saudi Arabia	Foreign Trademark	AMERICAN LAFRANCE and Design Registration No. 158/49 Registered: 1/1/1987 Matter No. 043150.00027	Pay Renewal Fee Foreign Country-Saudi Arabia Due: 8/12/2015
23	US	US Trademark	AMERICAN LAFRANCE w/EAGLE DESIGN Registration No. 2,201,823 Registered: 11/3/1998 Matter No. 043150.00028	File Trademark Renewal-USA Due: 11/3/2008
24	China	Foreign Trademark	AMERICAN LAFRANCE and Design (Class 01) Serial No. 5820102 Filed: 12/30/2006 Matter No. 043150.00029	Pending

American LaFrance, LLC
Intellectual Property Portfolio
 Current as of December 14, 2007

Tab	Country	Case Type	Mark/Title	Status
25	China	Foreign Trademark	AMERICAN LAFRANCE and Design (Class 09) Serial No. 5820115 Filed: 12/30/2006 Matter No. 043150.00029B	Pending
26	China	Foreign Trademark	AMERICAN LAFRANCE and Design (Class 12) Serial No. 5820114 Filed: 12/30/2006 Matter No. 043150.00029C	Pending
27	US	US Trademark	CRETE Serial No. 77/004,610 Filed: 9/21/2006 Matter No. 043150.00030	File Statement of Use-USA Due: 1/31/2008
28	US	US Trademark	AMERICAN LAFRANCE Registration No. 693,670 Registered: 3/1/1960 Matter No. 043150.00031	File Trademark Renewal-USA Due: 3/1/2010
29	Australia	Foreign Trademark	AMERICAN LAFRANCE Registration No. 711149 Registered: 7/11/1997 Matter No. 043150.00032	Pay Renewal Fee Foreign Country-Australia Due: 6/20/2016
30	Canada	Foreign Trademark	AMERICAN LAFRANCE Registration No. 197480 Registered: 2/15/1974 Matter No. 043150.00033	Pay Renewal Fee Foreign Country-Canada Due: 2/15/2019
31	Chile	Foreign Trademark	AMERICAN LAFRANCE Registration No.: 301768 Abandoned Matter No. 043150.00034	Abandoned
32	Mexico	Foreign Trademark	AMERICAN LAFRANCE Registration No. 613100 Registered: 5/31/1999 Matter No. 043150.00035	Pay Renewal Fee Foreign Country-Mexico Due: 5/19/2009

American LaFrance, LLC
Intellectual Property Portfolio
 Current as of December 14, 2007

Tab	Country	Case Type	Mark/Title	Status
33	US	US Trademark	AMERICAN LAFRANCE Registration No. 2,201,732 Registered: 11/3/1998 Matter No. 043150.00036	File Trademark Renewal-USA Due: 11/3/2008
34	Chile	Foreign Trademark	AMERICAN LAFRANCE Registration No. 769.652 Registered: 10/17/2006 Matter No. 043150.00037	Pay Renewal Fee Foreign Country-Chile Due: 10/17/2016
35	Chile	Foreign Trademark	AMERICAN LAFRANCE Registration No. 769.653 Registered: 10/17/2006 Matter No. 043150.00038	Pay Renewal Fee Foreign Country-Chile Due: 10/17/2016
36	Chile	Foreign Trademark	AMERICAN LAFRANCE Registration No. 769.654 Registered: 10/17/2006 Matter No. 043150.00039	Pay Renewal Fee Foreign Country-Chile Due: 10/17/2016
37	US	US Trademark	AMERICAN LAFRANCE EAGLE Registration No. 2,419,377 Registered: 1/9/2001 Matter No. 043150.00040	File Trademark Renewal-USA Due: 1/9/2011
38	US	US Trademark	CONDOR Registration No. 2,495,070 Registered: 10/2/2001 Matter No. 043150.00041	File Trademark Renewal-USA Due: 10/2/2011
39	US	US Trademark	KERSEY Registration No. 1,468,950 Registered: 12/15/1987 Matter No. 043150.00042	File Trademark Renewal-USA Due: 12/15/2007
40	US	US Trademark	KERSEY (in a circle design) Registration No.: 827,121 Abandoned: 4/11/07 Matter No. 043150.00043	Abandoned

American LaFrance, LLC
Intellectual Property Portfolio
 Current as of December 14, 2007

Tab	Country	Case Type	Mark/Title	Status
41	US	US Trademark	LADDER CHIEF Registration No. 858,135 Registered: 4/15/1969 Matter No. 043150.00044	File Trademark Renewal-USA Due: 4/15/2009
42	US	US Trademark	CONDOR BY AMERICAN LAFRANCE (stylized) w/condor design Serial No.: 78/853,947 Abandoned: 4/25/07 Matter No. 043150.00045	Abandoned
43	US	US Patent	Vehicle Mounted Aerial Lift Patent No: 5,211,245 Issued: 5/18/1993 Expires: 7/1/2011 Matter No. 043150.00046	Issued – 11.5 year maintenance fee was paid 9/30/2004
44	US	US Patent	Vehicle Mounted Aerial Lift Patent No: 5,301,756 Issued: 4/12/1994 Expires: 7/1/2011 Matter No. 043150.00047	Issued – 11.5 year maintenance fee was paid 10/4/2005
45	US	US Patent	Modular Compartments For Utility Vehicle Patent No: 5,617,696 Issued: 4/8/1997 Expires: 2/16/2013 Matter No. 043150.00048	11.5 Year Maintenance Fee Due-USA Due: 10/8/2008
46	US	US Patent	Modular Light Bar Patent No: 5,826,965 Issued: 10/27/1998 Expires: 8/21/2016 Matter No. 043150.00049	11.5 Year Maintenance Fee Due-USA Due: 4/27/2010

American LaFrance, LLC
Intellectual Property Portfolio
 Current as of December 14, 2007

Tab	Country	Case Type	Mark/Title	Status
47	US	US Patent	Vehicular Light Housing Patent No: D483,888 Issued: 12/16/2003 Expires: 12/16/2017 Matter No. 043150.00050	Issued
48	US	US Patent	Extendable, Elevatable, Rotatable, Collapsible Boom and Basket for Vehicles Patent No: 4,962,827 Issued: 10/16/1990 Expires: 7/18/2009 Matter No. 043150.00051	Issued – 11.5 year maintenance fee was paid 5/21/2002
49	US	US Patent	Modular Compartments for Utility Vehicle Patent No.: 5,421,645 Abandoned: 5,421,645 Matter No. 043150.00052	Abandoned

Schedule 3.7

Owned Real Property

(Lebanon County, PA)

PREMISES "A"

ALL THAT CERTAIN tract of land located in West Lebanon Township, Lebanon County and the Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an iron pin at the intersection of the Southern right-of-way line of Lehman Street (60.00 feet wide) and the Western right-of-way line of 18th Street (60.0 feet wide); thence along said Western right-of-way of 18th Street, South 8 degrees 23 minutes 30 seconds West a distance of 198.0 feet to an iron pin on the Northern right-of-way line of Lincoln Street (15.0 feet wide); thence along said Northern right-of-way line of Lincoln Street, North 81 degrees 36 minutes 30 seconds West a distance of 220.0 feet to a railroad spike; thence along lands of Mark L. and Joanne Leiss, North 8 degrees 23 minutes 30 seconds East a distance of 198.00 feet to a spike on said Southern right-of-way line of Lehman Street; thence along said Southern right-of-way Line of Lehman Street, South 81 degrees 36 minutes 30 seconds East a distance of 220.0 feet to the place of beginning.

CONTAINING 1.0 acres.

PREMISES "B"

ALL THAT CERTAIN tract of land located in West Lebanon Township, Lebanon County and the Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an iron pin at the intersection of the Southern right-of-way line of Church Street (50.0 feet wide) and the Western right-of-way line of 18th Street (60.00 feet wide); thence along said Western right-of-way line of 18th Street, South 8 degrees 23 minutes 30 seconds West a distance of 125.0 feet to an iron pin on the Northern right-of-way line of Garfield Alley (15.0 feet wide); thence along said Northern right-of-way line of Garfield Alley, North 81 degrees 36 minutes 30 seconds West a distance of 170.0 feet to an iron pin; thence along lands of David M. and Dianne L. Strohme, North 8 degrees 23 minutes 30 seconds East a distance of 125.00 feet to an iron pin on the Southern right-of-way line of Church Street; thence along said Southern right-of-way line of Church Street, South 81 degrees 36 minutes 30 seconds East a distance of 170.0 feet to the place of beginning.

CONTAINING 21,250 square feet (0.488 acres).

PREMISES "C"

ALL THAT CERTAIN tract of land located in West Lebanon Township, Lebanon County and the Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at the intersection point of the center line of Lehman Street (60 feet wide) and the center line of North 16th Street (50 feet wide); thence along said center line of North 16th Street, the following four courses and distances, South 25 degrees 08 minutes 03 seconds East a distance of 241.99 feet to a spike; (2) thence South 22 degrees 49 minutes 38 seconds East a distance of 228.06 feet to a spike; (3) thence South 200 I V 49" East a distance of 206.78 feet; (4) thence South 14 degrees 41 minutes 44 seconds East a distance of 119.82 feet to a spike; thence along Northern side of existing Conrail right-of-way, along a curve to the right having a radius of 5728.65 feet, an arc distance of 958.61 feet and a bearing of North 88 degrees 28 minute 47 seconds West a distance of 957.49 feet to a spike; thence along the center line of North 18th Street, North 08 degrees 23 minutes 20 seconds East a distance of 787.89 feet to a spike in said center line of Lehman Street; thence along said center line of Lehman Street, the following three courses and distances, South 81 degrees 53 minutes 18 seconds East a distance of 818.44 feet to a spike; (2) thence South 83 degrees 17 minutes 30 seconds East a distance of 267.25 feet to a spike; (3) South 86 degrees 58 minutes 01 second East 67.55 feet to the place of beginning.

CONTAINING 13.5167 acres.

Being Parcel Nos. 35:056J-062, 35:056J-258 and 35:056J-280

Being the same premises which Acqu-Chem, Inc. (formerly known as Aqua-Chem Holding, Inc.) a Delaware Corporation by Deed dated 5/24/1999 and recorded 5/28/1999 in Lebanon County in Deed Book 0350 Page 1143 conveyed unto Aerial Innovations Incorporated, a Pennsylvania corporation, its successors and assigns, in fee.

(Sanford, FL)

Block 12, and the West 1/2 of vacated Right of Way lying East of Block 12 per Resolution in Official Records Book 454, Page 188, M.M. SMITHS SUBDIVISION, according to the plat recorded in Plat Book 1, Page 55, of the Public Records of Seminole County, Florida, LESS the North 20 feet for Road Right of Way granted to City of Sanford in the Official Records Book 2401, Page 1398 and Official Records Book 2409, Page 1941.

Schedule 3.8

Material Contracts

[To Be Provided]

Schedule 3.10

Labor or Collective Bargaining Agreements

None

Schedule 3.11

Environmental Releases and Claims

[To Be Provided]

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

IN RE:	§	
	§	Chapter 11
	§	
AMERICAN LAFRANCE, LLC,	§	Case No. 08-10178 (BLS)
	§	
Debtor.	§	Related to Docket No. ____

ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF ASSETS OF DEBTOR OUTSIDE THE ORDINARY COURSE OF BUSINESS, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (D) GRANTING RELATED RELIEF

This matter having come before this Court on the *Motion for and Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (A) Authorizing the Sale of Substantially All of Its Assets; (B) Approving An Asset Purchase Agreement, Subject to Higher And/Or Better Offers; (C) Approving the Assumption And Assignment of Certain Executory Contracts and Unexpired Leases (D) Granting Related Relief* (the “Sale Motion”) filed by American LaFrance, LLC (“ALF,” “Debtor,” or “Seller”). In the Sale Motion, ALF sought permission to, among other things, (a) enter into that certain Asset Purchase Agreement between ALF and Patriarch Partners Agency Services, LLC or its assignee(s) (“Buyer” or “Patriarch”) (the “Agreement”)¹ attached hereto as Exhibit 1); (b) sell substantially all of its assets free and clear of all Liens, Claims, Encumbrances, and Interests, with such sale to be in accordance with the terms and conditions of the Agreement; (c) assume and sell and assign certain executory contracts and unexpired leases to the Buyer; and (d) granting related relief; and this Court having entered an order dated _____, 2008 (the “Bid Procedures

¹ All capitalized terms not defined herein shall be given the meaning ascribed to them in the Agreement (as defined below), the Sale Motion, or the Bid Procedures Order (as defined below).

Order” and attached thereto as Exhibit 1, the “Bid Procedures”) authorizing the Debtor to conduct, and approving the terms and conditions of, the Auction and Bid Procedures to consider higher and/or otherwise better offers for the Assets, establishing a date for the Auction, and approving, among other things, (a) the Bid Procedures in connection with the Auction; (b) the form and manner of notice of the Auction and Bid Procedures; and (c) procedures relating to certain Designated Contracts, including notice of proposed cure amounts; and the Court having established the date of the Sale Hearing; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Sale Motion, the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in this case, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, and the creditors and all other parties-in-interest thereof; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:²

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.

² All findings of fact and conclusions of law announced by the Court at the Sale Hearing and related to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith.

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. The Court has jurisdiction over this matter and over the property of the Debtor, including the Assets to be sold, transferred, or conveyed pursuant to the Agreement, and its estate pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this chapter 11 case and the Sale Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Sale Motion and the basis for the approvals and authorizations herein are (i) sections 102, 105, 363, 365, 1123, 1141, and 1146 of the Bankruptcy Code and (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014.

E. On January 28, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in possession and management of its business and property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

F. As evidenced by the proofs of service and publication filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing have been provided in accordance with sections 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, and 9014, the local rules of this Court, the procedural due-process requirements of the United States Constitution, and in compliance with the Bid Procedures Order. The Debtor also provided due and proper notice of the assumption, sale, and assignment of each Designated Contract to each non-debtor party under each such Designated Contract. Such notice was good and sufficient and appropriate under the particular circumstances.

No other or further notice of the Sale Motion, the Auction, the Sale Hearing, the assumption and assignment of the Designated Contracts, or of the entry of this Order is necessary or shall be required.

G. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation, (i) all entities that claim any interest in or lien on the Assets; (ii) all parties to Designated Contracts assumed and sold and assigned pursuant to this Order; (iii) all governmental taxing authorities that have, or as a result of the sale of the Assets may have, claims, contingent or otherwise, against the Debtor; (iv) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (v) all creditors (whether liquidated, contingent or unmatured) of the Debtor; (vi) all interested governmental, pension, and environmental entities; (vii) the Office of the United States Trustee; and (viii) all entities that have, within the past 12 months, expressed to the Debtor an interest in purchasing the Assets. Other parties interested in bidding on the Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Assets.

H. The Assets are property of the Debtor's estate and title thereto is vested in the Debtor's estate.

I. The Debtor has demonstrated a sufficient basis and the existence of exigent circumstances requiring it to enter into the Agreement, sell the Assets and assume and assign the Designated Contracts under sections 363, 365, 1123 and 1141 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtor's business judgment and in the best interests of the Debtor, its estate and the creditors thereof.

J. The Bid Procedures set forth in the Bid Procedures Order were non-collusive, substantively and procedurally fair to all parties and were the result of arm's-length negotiations between the Debtor and the Buyer.

K. The Debtor and its professionals have complied, in good faith, in all respects with the Bid Procedures Order. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Bid Procedures Order, the Debtor (i) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest and/or otherwise best offer to purchase all of the Debtor's assets, (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Assets, (iii) considered any bids submitted on or before the Bid Deadline, and (iv) commenced the Auction on March 28, 2008.

L. At the conclusion of the Auction, the Debtor announced that it had determined that the offer submitted by the Buyer in the Agreement was the highest and/or otherwise best offer, and the Buyer is the Successful Bidder for the Assets in accordance with the Bid Procedures Order or no bids were submitted on or before the Bid Deadline, other than the offer submitted by the Buyer in the Agreement. The Buyer submitted the highest and/or otherwise best offer, and the Buyer is the Successful Bidder for the Assets in accordance with the Bid Procedures Order. The Bid Procedures obtained the highest value for the Assets for the Debtor and its estate.

M. The offer of the Buyer, on the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtor pursuant to the

Agreement, (i) is the highest and/or best offer received by the Debtor; (ii) is fair and reasonable; (iii) is in the best interests of the Debtor's estate and the creditors thereof; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Assets; and (v) will provide a greater recovery for the Debtor's creditors and other interested parties than would be provided by any other practically available alternative.

N. The Buyer is a buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to all protections of sections 363(m) of the Bankruptcy Code with respect to all of the Assets. The Agreement was negotiated and entered into in good faith, based on arm's-length bargaining, and without collusion or fraud of any kind. The Auction was conducted in accordance with the Bid Procedures Order and in good faith within the meaning of section 363(m) of the Bankruptcy Code. Neither the Debtor nor the Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of or implicate section 363(n) of the Bankruptcy Code to the Agreement or to the consummation of the sale transaction and transfer of the Assets and Designated Contracts to Buyer. The Buyer is entitled to all the protections and immunities of section 363(m) of the Bankruptcy Code.

O. The Debtor has full power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets as contemplated by Agreement has been authorized and approved by the Debtor. Other than as may be expressly provided for in the Agreement, no consents or approvals are required by the Debtor to consummate such transactions.

P. The Debtor has advanced sound business reasons for seeking to enter into the Agreement and to sell and/or assume and assign the Assets, as more fully set forth in the Sale

Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtor's business judgment to sell the Assets and to consummate the transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any person, the transfer of the Assets to the Buyer and the assumption and assignment of the Designated Contracts is a legal, valid, and effective transfer of the Assets and any Designated Contracts.

Q. The terms and conditions of the Agreement, including the consideration to be realized by the Debtor pursuant to the Agreement, are fair and reasonable, and the transactions contemplated by the Agreement are in the best interests of the Debtor's estate.

R. Except as otherwise provided in the Agreement, the Assets shall be sold free and clear of all Liens, Claims, Encumbrances, and Interests (as defined in the Agreement) with such Liens, Claims, Encumbrances, and Interests to attach to the proceeds to be received by the Debtor in the same priority and subject to the same defenses and avoidability, if any, as before the Closing (as defined in the Agreement), and Buyer would not enter into the Agreement to purchase the Assets otherwise.

S. The transfer of the Assets to Buyer will be a legal, valid, and effective transfer of the Assets, and, except as may otherwise be provided in the Agreement, shall vest Buyer with all right, title, and interest of the Debtor to the Assets free and clear of any and all Liens, Claims, Encumbrances, and Interests. Except as specifically provided in the Agreement or this Order, the Buyer shall not assume or become liable for any Liens, Claims, Encumbrances, and Interests relating to the Assets being sold by the Debtor.

T. The transfer of the Assets to the Buyer free and clear of all Liens, Claims, Encumbrances, and Interests will not result in any undue burden or prejudice to holders of any Liens, Claims, Encumbrances, and Interests as all such Liens, Claims, Encumbrances, and Interests

of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Assets received by the Debtor in the order of their priority, with the same validity, force, and effect that they now have as against the Assets and subject to any claims and defenses the Debtor or other parties may possess with respect thereto. All persons having Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever against or in the Debtor or the Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Encumbrances, and Interests against the Buyer, any of its assets, property, successors or assigns, or the Assets.

U. The Debtor may sell the Assets free and clear of all Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Liens, Claims, Encumbrances, and Interests and (ii) non-debtor parties, who did not object, or who withdrew their objections, to the sale of the Assets and the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All objections to the Sale Motion have been resolved. Those holders of Encumbrances 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 Liens, Claims, Encumbrances, and Interests, if any, attach to the proceeds of the sale of the Assets ultimately attributable to the property against or in which they claim or may claim any Liens, Claims, Encumbrances, and Interests, with such Liens, Claims, Encumbrances, and Interests being subject to treatment as prescribed in the Plan filed by the Debtor or by separate order of this Court.

V. Not selling the Assets free and clear of all Liens, Claims, Encumbrances, and Interests would adversely impact the Debtor's estate, and the sale of Assets other than one free

and clear of all Liens, Claims, Encumbrances, and Interests would be of substantially less value to the Debtor's estate.

W. The Debtor and the Buyer have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), (B) and 365(f) of the Bankruptcy Code, in connection with the sale and the assumption and assignment of the Designated Contracts. The Buyer has demonstrated adequate assurance of future performance with respect to the Designated Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code. The assumption and assignment of the Designated Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtor, its estate, creditors and other parties-in-interest thereof, and represents the exercise of sound and prudent business judgment by the Debtor.

X. The Designated Contracts are assignable notwithstanding any provisions contained therein to the contrary. The Debtor has provided for the cures and/or other payments or actions required to assume and assign the Designated Contracts to the Buyer. The Buyer has provided adequate assurance of its future performance under the Designated Contracts and the proposed assumption and assignment of the Designated Contracts.

Y. In the absence of a stay pending appeal, the Buyer will be acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Agreement at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004 and 6006.

Z. The transactions contemplated under the Agreement do not amount to a consolidation, merger, or *de facto* merger of the Buyer and the Debtor and/or the Debtor's estate, there is not substantial continuity between the Buyer and the Debtor, there is no continuity of

enterprise between the Debtor and the Buyer, the Buyer is not a mere continuation of the Debtor or its estate, and the Buyer does not constitute a successor to the Debtor or its estate.

AA. The sale of the Assets outside of a plan of reorganization pursuant to the Agreement neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The sale does not constitute a *sub rosa* chapter 11 plan.

BB. Pursuant to the Agreement, the Debtor is providing the Buyer with a general release of claims and the Buyer is providing fair value for the release.

CC. The Buyer is a secured creditor of the Debtor, holding Liens and Claims in and against the Debtor and its estate arising in connection with the various prepetition loan and security agreements, as amended, and related documents, instruments, and agreements and the DIP Financing Amendment. The Buyer holds an allowed secured Claim as of the Petition Date in the amount of \$154,467,082.09 pursuant to the Credit Agreement and an allowed secured Claim of \$_____ pursuant to the DIP Financing Amendment (collectively, the "Allowed Claim"), and was authorized to credit bid any or all of such Allowed Claim at the Auction.

DD. The Buyer's credit bid pursuant to the Agreement was a valid and proper offer pursuant to the Bid Procedures Order and sections 363(b) and 363(k) of the Bankruptcy Code.

EE. The total consideration provided by the Buyer for the Assets is the highest and/or best offer received by the Debtor, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance, Act and (c) reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Assets.

FF. Time is of the essence in consummating the sale. To maximize the value of the Assets, it is essential that the sale of the Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the 10-day stays imposed by Bankruptcy Rules 6004 and 6006.

GG. Other than the Assumed Liabilities and its obligations under the Agreement, the Buyer shall have no obligation with respect to any liability of the Debtor.

HH. The transactions contemplated by the Agreement were under or in contemplation of a plan to be confirmed under section 1129 of the Bankruptcy Code in that the net proceeds of the Asset Sale are essential and required to fund any chapter 11 plan for ALF.

NOW, THEREFORE, BASED ON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted in its entirety, subject to the terms and conditions contained herein.

2. All objections and responses to the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. If any such objection or response was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied.

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004 and 6006.

Approval of Sale

4. The sale of the Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), the credit bid by the Buyer and the transactions contemplated thereby are approved in all respects.

5. The sale of the Assets and the consideration provided by the Buyer under the Agreement, including the Credit Bid Amount, is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Buyer is hereby granted and is entitled to all of the protections provided to a good-faith buyer under section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Designated Contracts as part of the sale of the Assets pursuant to section 365 of the Bankruptcy Code and this Order.

7. The Debtor is authorized and directed to fully assume, perform under, consummate, and implement the terms of the Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Agreement and this Order and sale of the Assets contemplated thereby including, without limitation, deeds, assignments, stock powers, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer, or reducing to possession any or all of the Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Agreement, without any further corporate action or orders of this Court. The Buyer shall have no obligation to proceed with the Closing of the Agreement until all conditions precedent to its obligations to do so have been met, satisfied or waived.

8. The Debtor and each other person or entity having duties or responsibilities under the Agreement, any agreements related thereto or this Order, and its respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and

empowered, subject to the terms and conditions contained in the Agreement, to carry out all of the provisions of the Agreement and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement, and any related agreements; to take any and all actions contemplated by the Agreement, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The officers, directors, or any other authorized representative of the Debtor is authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtor is further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Agreement, any related agreements and this Order, including amended and restated limited-liability-company agreements, certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of

all applicable governmental units or as any officer of the Debtor may determine are necessary or appropriate. The execution of any such document or the taking of any such action is deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporation laws of the state of Delaware and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the Agreement, any related agreements and this Order, and the transactions contemplated thereby and hereby.

9. Effective as of the Closing, (a) the sale of the Assets by the Debtor to the Buyer shall constitute a legal, valid, and effective transfer of the Assets notwithstanding any requirement for approval or consent by any person and shall vest Buyer with all right, title, and interest of the Debtor in and to the Assets, free and clear of all Liens, Claims, Encumbrances, and Interests of any kind, pursuant to sections 363(f) and (b) of the Bankruptcy Code, the assumption of any Assumed Liabilities by the Buyer shall constitute a legal, valid and effective delegation of any Assumed Liabilities to the Buyer and shall divest the Debtor of all liability with respect to any Assumed Liabilities.

10. The sale of the Assets is not subject to avoidance pursuant to section § 363(n) of the Bankruptcy Code.

Transfer of Assets

11. Except to the extent specifically provided in the Agreement, upon the Closing, pursuant to section 1141(c) of the Bankruptcy Code, the Debtor is authorized, empowered, and directed, pursuant to sections 105, 363(b), 1123, and 1141 of the Bankruptcy Code, to sell the Assets, including those within the Assignment and Assumption Agreement, to the Buyer. The

sale of the Assets shall vest Buyer with all right, title, and interest of the Debtor to the Assets free and clear of any and all Liens, Claims, Encumbrances, and Interests and other liabilities and claims, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity, or otherwise, with all such Liens, Claims, Encumbrances, and Interests to attach only to the proceeds of the sale (if any) with the same priority, validity, force, and effect, if any, as they now have in or against the Assets, subject to all claims and defenses the Debtor may possess with respect thereto. Following the Closing Date, no holder of any Liens, Claims, Encumbrances, and Interests in the Assets shall interfere with the Buyer's use and enjoyment of the Assets based on or related to such Liens, Claims, Encumbrances, and Interests, or any actions that the Debtor may take in its chapter 11 case and no person shall take any action to prevent, interfere with, or otherwise enjoin consummation of the transactions contemplated in or by the Agreement or this Order.

12. The provisions of this Order authorizing the sale of the Assets free and clear of Liens, Claims, Encumbrances, and Interests, other than Assumed Liabilities, shall be self-executing, and neither the Debtor nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order. However, the Debtor and the Buyer, and each of their respective officers, employees, and agents are authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtor or the Buyer deem necessary or appropriate to implement and effectuate the terms of the

Agreement and this Sale Order. Moreover, effective as of the Closing, the Buyer, its successors and assigns, shall be designated and appointed the Debtor's true and lawful attorney and attorneys, with full power of substitution, in the Debtor's name and stead, on behalf and for the benefit of the Buyer, its successors and assigns, to demand and receive any and all of the Assets and to give receipts and releases for and in respect of the Assets, or any part thereof, and from time to time to institute and prosecute in the Debtor's name, for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, that the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Assets, and to do all acts and things with respect to the Assets that the Buyer, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are irrevocable by the Debtor.

13. On or before the Closing Date, the Debtor's creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens, Claims, Encumbrances, and Interests of any kind against the Assets, as such Liens, Claims, Encumbrances, and Interests may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Liens, Claims, Encumbrances, and Interests in or against the Assets shall not have delivered to the Debtor prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Encumbrances, and Interests that the person or entity has with respect to the Assets, the Debtor is authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to such Assets prior to the Closing, and the Buyer is authorized to file such documents after Closing.

14. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtor with respect to the Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been and are directed to be transferred to the Buyer as of the Closing Date.

15. All of the Debtor's interests in the Assets to be acquired by the Buyer under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Buyer. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Assets acquired by the Buyer under the Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Assets to the Buyer.

16. Except as expressly provided in the Agreement, the Buyer is not assuming nor shall it or any affiliate of Buyer be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtor in any way whatsoever relating to or arising from the Debtor's ownership or use of the Assets prior to the consummation of the transactions contemplated by the Agreement, or any liabilities calculable by reference to the Debtor or its operations or the Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Agreement. Such liabilities, debts, and obligations are extinguished insofar as they may give rise to liability, successor or otherwise, against Buyer or any affiliate of the Buyer.

17. Except as otherwise provided in the Agreement, on the Closing Date, each creditor of the Debtor is authorized and directed to execute such documents and take all other actions as may

be necessary to release their respective Interests or Claims against the Assets, if any, as may have been recorded or may otherwise exist.

18. Except as otherwise expressly provided in the Agreement, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Assets are directed to surrender possession of the Assets to the Buyer on the Closing Date or at such time thereafter as the Buyer may request.

Designated Contracts

19. The Assignment and Assumption Agreement is valid and binding, in full force and effect, and enforceable in accordance with its terms.

20. Subject to the terms of the Agreement, the Assumption and Assignment Agreement and the occurrence of the Closing Date, the assumption by the Debtor of the Designated Contracts and the sale and assignment of such agreements to the Buyer, as provided for or contemplated by the Agreement, is authorized and approved pursuant to sections 363, 365, 1123(a)(5)(D) and 1141(c) of the Bankruptcy Code.

21. The Designated Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtor and sold and assigned to the Buyer at the Closing, pursuant to sections 363 and 365 of the Bankruptcy Code, subject only to (a) the payment of all cures and/or other payments or actions required to assume and assign the Designated Contracts to the Buyer; and (b) the Buyer's right to exclude Designated Contracts from the definition of Designated Contracts in accordance with the terms of the Agreement. To the extent the Buyer excludes any Designated Contracts from the definition of Designated Contracts, the Debtor shall file a revised schedule to the Agreement with the Court and provide proper and adequate notice thereof.

22. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested in all right, title and interest of each Designated Contract. The Debtor shall cooperate with, and take all actions reasonably requested by, the Buyer to effectuate the foregoing.

23. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order, the Debtor shall promptly pay or cause to be paid to the parties to any Designated Contracts the requisite Cure Amounts, if any, set forth in the notice served by the Debtor on each of the parties to the Designated Contracts, except to the extent that a cure amount was amended on the record of the Sale Hearing (the “Cure Amounts”), following the assumption and assignment thereof. The Cure Amounts are fixed at the amounts set forth in the notice served by the Debtor, or the amounts set forth on the record of the Sale Hearing, as the case may be, and the non-debtor parties to the Designated Contracts are forever bound by such Cure Amounts.

24. All defaults or other obligations under the Designated Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured by payment of the Cure Costs.

25. Any provision in any Designated Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtor is unenforceable, and all Designated Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Cost, if any. No sections or provisions of any Designated Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor third party to the Designated Contracts

shall have any force and effect with respect to the sale transaction and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code and no assignment of any Designated Contract pursuant to the terms of the Agreement shall in any respect constitute a default under any Designated Contract. The non-Debtor party to each Designated Contract shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Buyer shall enjoy all of the rights and benefits under each such Designated Contract as of the applicable date of assumption without the necessity of obtaining such non-Debtor party's written consent to the assumption or assignment thereof.

26. The Buyer has satisfied all requirements under sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under the Designated Contracts.

27. The Debtor and its estate shall be relieved of any liability for any breach of any of the Designated Contracts occurring from and after Closing, pursuant to and in accordance with section 365(k) of the Bankruptcy Code.

Additional Provisions

28. 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 Agreement and this Order.

29. The Buyer has not assumed or is otherwise not obligated for any of the Debtor's liabilities other than the Assumed Liabilities as set forth in the Agreement, and the Buyer has not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as

defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all holders of Liens, Claims, Encumbrances, and Interests based on or arising out of liabilities retained by the Debtor are hereby enjoined from taking any action against the Buyer or the Assets to recover any Liens, Claims, Encumbrances, and Interests or on account of any liabilities of the Debtor other than Assumed Liabilities pursuant to the Agreement. All persons holding or asserting any Liens, Claims, Encumbrances, and Interests in the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens, Claims, Encumbrances, and Interests or cause of action against the Buyer or the Assets for any liability associated with the Excluded Assets.

30. The Buyer is not a “successor” to the Debtor or its estate by reason of any theory of law or equity, and the Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of the Debtor and/or its estate including, without limitation, any bulk-sales law, successor liability or similar liability except as otherwise expressly provided in the Agreement. Except to the extent the Buyer assumes the Assumed Liabilities pursuant to the Agreement, neither the purchase of the Assets by the Buyer or its affiliates, nor the fact that the Buyer or its affiliates are using any of the Assets previously operated by the Debtor, will cause the Buyer or any of its affiliates to be deemed a successor in any respect to the Debtor’s business within the meaning of any foreign, federal, state, or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule, or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products-liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine, or under any product-warranty liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine. Except to the extent expressly included in the Assumed Liabilities, Buyer and its affiliates shall have no

liability or obligation under the WARN Act (29 U.S.C. §§ 210 *et seq.*) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state, or local labor, employment, or environmental law by virtue of the Buyer's purchase of the Assets or assumption of the Assumed Liabilities.

31. Except to the extent expressly included in the Assumed Liabilities, pursuant to sections 105, 363, 1123(a)(5)(D) and 1141(c) of the Bankruptcy Code, all persons and entities, including, without limitation, the Debtor, all debt security holders, equity security holders, the Debtor's employees or former employees, governmental, tax, and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding any Lien, Claim, Encumbrance, and Interest of any kind or nature whatsoever against, in or with respect to the Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtor, the Assets, the operation of the Debtor's business prior to the Closing Date or the transfer of the Assets to the Buyer, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Lien, Claim, Encumbrance, and Interest against the Buyer or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates and representatives (each of the foregoing in its individual capacity), or the Assets. To avoid doubt, the foregoing shall not prevent the Debtor, its estate, successors, or permitted assigns from pursuing claims, if any, against the Buyer and/or its successors and assigns in accordance with the terms of the Agreement.

32. The general release set forth in section 10.15 of the Agreement is approved in its entirety.

33. Subject to the terms of the Agreement, the Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtor and the Buyer, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates the Agreement and any related agreements.

34. The failure specifically to include any particular provision of the Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision. It is the intent of the Court, the Debtor and the Buyer that the Agreement and any agreement related thereto are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

35. No bulk-sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Agreement.

36. Pursuant to section 1146(a) of the Bankruptcy Code, the transactions contemplated in the Agreement were under or in contemplation of a plan to be confirmed under section 1129 of the Bankruptcy Code in that the net proceeds of the Asset Sale are essential and required to fund a chapter 11 plan for ALF and, therefore, are exempt from any transfer, stamp, or similar tax or any so-called "bulk-sale" law in all necessary jurisdictions arising as a result of or in connection with the Asset Sale or otherwise.

37. To the extent any provisions of this Order conflict with the terms and conditions of the Agreement, this Order shall govern and control.

38. Nothing in this Order shall alter or amend the Agreement and the obligations of the Debtor and Buyer thereunder.

39. This Order and Agreement shall be binding on and govern the acts of all persons and entities, including without limitation, the Debtor and the Buyer, their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, all creditors of the Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, 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 in or to the Assets.

40. The provisions of this Order are non-severable and mutually dependent.

41. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the chapter 11 case, or in any subsequent or converted case of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

42. Notwithstanding Bankruptcy Rules 6004, 6006, 7062, and 9021, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtor and the Buyer are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any person or entity obtaining a stay pending appeal, if the Debtor and the Buyer close under the Agreement, the Buyer shall be deemed to be acting in "good faith" and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the

transactions under and pursuant to the Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

43. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bid Procedures Order, the Agreement in all respects and to decide any disputes concerning this Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, without limitation, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Assets and any Designated Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, Claims, Encumbrances, and Interests. To the extent there are any inconsistencies between the terms of this Order and the Agreement, the terms of this Order shall control.

Dated: _____
Wilmington, Delaware

The Honorable Brendan Linehan Shannon