

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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In re: : Chapter 11
:
PLASTECH ENGINEERED : Case No. 08-42417 (PJS)
PRODUCTS, INC., et al.,¹ :
: Jointly Administered
Debtors. :
: Hrg Date: 6/18/08 at 9:30 a.m.
: Obj. Due: 6/11/08 at 4:00 p.m.
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**DEBTORS' MOTION FOR AN ORDER (A) APPROVING THE PROPOSED
SALE(S) OF ONE OR MORE OF THE DEBTORS' BUSINESS UNITS
AND/OR MISCELLANEOUS ASSETS, (B) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
NON-RESIDENTIAL REAL PROPERTY LEASES, AND (C) GRANTING
CERTAIN RELATED RELIEF**

The debtors and debtors in possession in the
above-captioned cases (collectively, the "Debtors")
hereby move, pursuant to sections 105, 363 and 365 of
title 11 of the United States Code (the "Bankruptcy
Code") and Rules 2002, 6004 and 6006 of the Federal
Rules of Bankruptcy Procedure (the "Bankruptcy Rules"),
for entry of an order authorizing (i) the sale(s) of one
or more of the Debtors' Business Units (as defined
below) and/or Miscellaneous Assets (as defined below)

¹ The Debtors are the following entities: Plastech Engineered Products, Inc., LDM Technologies, Inc., Plastech Frenchtown, Inc., Plastech Decorating Systems, Inc., Plastech Exterior Systems, Inc., Plastech Romulus, Inc., MBS Polymet, Inc., LDM Holding Canada, Inc., and LDM Holding Mexico, Inc.

free and clear of liens, claims, interests and encumbrances (the "Sales" and each a "Sale"); (ii) the assumption and assignment of certain executory contracts and unexpired leases as set forth in the Stalking Horse Agreement(s) (defined below) or such other agreement(s) to be entered into by the Debtors and another Successful Bidder(s) (defined below); and (iii) granting related relief. In support of the Motion, the Debtors state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested here are Bankruptcy Code sections 105, 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9019.

BACKGROUND

A. The Bankruptcy Cases

3. On February 1, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court.

The factual background regarding the Debtors, including their business operations, their capital structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Declaration of Peter Smidt, Executive Vice President, Finance, and Chief Financial Officer of Plastech Engineered Products, Inc. in Support of Chapter 11 Petitions and First Day Pleadings (Docket No. 12) (the "Smidt Declaration"), which is fully incorporated herein by reference.²

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On February 8, 2008, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") in these chapter 11 cases pursuant to Bankruptcy Code section 1102.

B. The Debtors' Prepetition Financing and the DIP Facility

(1) The Debtors' Prepetition Financing

6. As set forth in the Smidt Declaration, in February 2007, the Debtors refinanced their existing debt (the "Refinancing"). In connection with the Refinancing, the Debtors entered into the Revolving Credit Facility,

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Smidt Declaration.

the First Lien Term Loan and the Second Lien Term Loan, all of which are defined below.

7. Specifically, on February 12, 2007, the Debtors entered into a new revolving credit facility (the "Revolving Credit Facility") with various lenders (including all collateral, administrative and other agents, the "Revolving Lenders") and (i) Goldman Sachs Credit Partners L.P. ("Goldman") as lead arranger, syndication agent, and administrative agent; (ii) Wells Fargo Foothill, Inc., as collateral agent; and (iii) Bank of America, N.A., Comerica Bank, and Wachovia Capital Finance Corporation (Central) as co-documentation agents.

8. The Revolving Credit Facility was an asset based loan pursuant to which the Debtors were able to borrow up to \$200 million, subject to a formula and available collateral. It was secured by a first lien on the Debtors' "Liquid Collateral" (as defined in that certain Intercreditor Agreement, dated February 12, 2007 (the "Intercreditor Agreement")) which Liquid Collateral included, but was not limited to: all accounts; all chattel paper; all instruments; letter of credit rights; payment intangibles; receivables; deposit accounts; and all inventory. The Debtors also had obligations totaling \$13 million under pre-petition letters of credit (the

"Letters of Credit") issued under the Revolving Credit Facility.

9. Also on February 12, 2007, the Debtors entered into a first lien term loan (the "First Lien Term Loan"), with various lenders and with Goldman as lead arranger, syndication agent, administrative agent, and collateral agent. The First Lien Term Loan was secured by a first lien on "Fixed Collateral," with a second lien on "Liquid Collateral." The term "Fixed Collateral" included, but was not limited to: Net Available Cash Account (as defined in the First Lien Term Loan); all equipment; all fixtures; fee interests in real property; intellectual property; general intangibles; and stock collateral and equity interests, all as further specified in the Intercreditor Agreement. The First Lien Term Loan was fully drawn as of the Petition Date in the amount of approximately \$265 million.

10. Finally, the Debtors also entered into a second lien term loan (the "Second Lien Term Loan" and together with the First Lien Term Loan, the "Term Loan Facilities") with various lenders and with (i) Goldman as lead arranger and syndication agent; and (ii) the Bank of New York as administrative agent and collateral agent. The Second Lien Term Loan was secured by a second lien on the Fixed Collateral and a lien junior to the First Lien

Term Loan lenders' second lien on Liquid Collateral. As of the Petition Date, the Second Lien Term Loan was fully drawn in the amount of \$100 million.

(2) The Debtors' DIP Facility

11. Pursuant to the Order (I) Extending Interim Financing Period Under Second Interim Order Authorizing Debtors-In-Possession To Obtain Financing; (II) Authorizing Transfer Of DIP Facility To New DIP Lender; (III) Authorizing Debtors To Obtain Further Interim Financing Pursuant To Second DIP Credit Agreement; And (IV) Scheduling Final Hearing (Docket No. 954) (the "Interim DIP Order") and the Final Order (I) Authorizing Debtors-In-Possession To Obtain Financing; And (II) Authorizing Transfer Of DIP Facility To New DIP Lenders (Docket No. 1216) (the "Final DIP Order"), certain of the Debtors' major customers purchased a 100% participation in any remaining pre-petition loans under the Revolving Credit Facility, cash collateralized the Debtors' reimbursement obligations in respect of the Letters of Credit, purchased the post-petition loans under the Debtors' existing postpetition financing facility, and provided the Debtors with additional liquidity (the "Customer Financing"). The Interim DIP Order requires, among other things, certain deadlines and milestones by which the Debtors must consummate either

(i) a sale of some or all of their assets and/or business divisions or (ii) a restructuring of their businesses pursuant to a plan of reorganization. See Interim Order at ¶ 9.

RELIEF REQUESTED

12. By this Motion, the Debtors seek entry of an order(s): (i) authorizing the Sale(s) of one or more of the Debtors' Business Units (as defined below) and/or Miscellaneous Assets (as defined below) to a Successful Bidder (as defined below), pursuant to a Stalking Horse Agreement(s) or such other agreement that the Debtors may enter into with a Successful Bidder(s) (such a transaction with a Successful Bidder, the "Competing Transaction"); and (ii) authorizing the assumption and assignment of executory contracts and unexpired non-residential real property leases to the Successful Bidder(s) pursuant to an order approving the Sale(s) (the "Sale Order") and/or pursuant to an exercise of Designation Rights (as defined below).

BASIS FOR RELIEF

A. Approval of Sale Process and Bid Procedures

13. The events leading up to the Debtors' emergency filing of these chapter 11 cases on the Petition Date are well known to this Court and to the Debtors' suppliers, creditors, and other parties in

interest, and such events are set forth in greater detail in the Smidt Declaration. Following a series of interim financing orders, on May 1, 2008 the Final DIP Order was entered by the Court approving the Customer Financing through August 31, 2008.

14. In furtherance of their obligation to maximize value and in accordance with their obligations under the Customer Financing facility, on May 16, 2008 the Debtors filed the Debtors' Motion For An Order (A) Establishing Bidding Procedures Relating To The Sale Of Some Or All Of The Debtors' Business Units And/Or Miscellaneous Assets Or Consummation Of An Alternative Transaction, (B) Authorizing The Debtors To Enter Into Stalking Horse Agreements In Connection With Sale Of One Or More Business Units, (C) Approving Break-Up Fee And Expense Reimbursement In Connection Therewith, (D) Scheduling A Hearing To Consider The Proposed Sale(s) And Approving The Form And Manner Of Notice Thereof, (E) Permitting Credit Bidding Pursuant To Bankruptcy Code Section 363(k), And (F) Granting Certain Related Relief (Docket No. 1383) (the "Bid Procedures Motion"). On May 28, 2008, the Court entered an order approving the relief requested in the Bid Procedures Motion (Docket No. 1462) (the "Bid Procedures Order").

15. Pursuant to the Bid Procedures Order the Court (A) approved procedures for (i) submitting bids for any or all of the Debtors' Business Units (as defined below) or Miscellaneous Assets (as defined below) or for consummation of an Alternative Transaction (as defined in the Bid Procedures Motion) (the "Bids"), (ii) conducting auctions with respect to any Business Units or Miscellaneous Assets on which the Debtors receive more than one Bid ("Competing Bids"), (iii) providing notice with respect to the Sale(s), and (B) authorized credit bidding in connection with the Sale(s) to the extent permitted by Bankruptcy Code section 363(k), (B) authorized, but did not require, the Debtors to (i) enter into a "stalking horse" agreement(s) (a "Stalking Horse Agreement") with a bidder or bidders (each, a "Stalking Horse Bidder" and collectively, the "Stalking Horse Bidders") for one or more of the Debtors' Business Units, for the purpose of establishing a minimum acceptable bid at which to begin the Auctions (as defined in the Bid Procedures Motion); and (ii) provide a Stalking Horse Bidder or Bidders with a fee(s) of up to but not greater than 2.5% of the purchase price set forth in the Stalking Horse Agreement(s), (D) set June 11, 2008 as the deadline for any potential Stalking Horse Bidder to waive or satisfy any financial or due diligence conditions to

closing (the "Conditions Deadline"), (E) set June 13, 2008 at 5:00 p.m. prevailing Eastern time as the deadline for any Qualified Bidder (as defined below) to submit a Qualified Bid (as defined below) for any or all of the Debtors' assets or equity interests, (F) scheduled the Auctions for any or all of the Debtors' Business Units and/or Miscellaneous Assets as June 16, 2008, and (G) set the sale hearing(s) on any Qualified Bids for which the Debtors are prepared to seek Court approval to commence at 9:30 a.m. on June 18, 2008 as may be adjourned or continued (the "Sale Hearing").

16. Pursuant to the Bid Procedures Order, the Debtors have sought and will continue to seek (I) transactions relating to (A) those portions of the Debtors' operations and those assets relating to (i) the Debtors' interior and underhood business (the "Interiors Business"); (ii) the manufacture of plastic-based automotive exteriors components (the "Exteriors Business"); (iii) automotive stamping manufacturing (the "Stamping Business"); and (iv) carpet installation business (the "Carpet Business", and together with the Interiors Business, the Exteriors Business and the Stamping Business, the "Business Units") and/or (B) the Debtors' various assets including but not limited to (i) the Debtors' 51% equity interest in TrimQuest, LLC, a

Michigan limited liability company, including all rights in connection therewith (the "TrimQuest Membership Interest"); (ii) the Debtors' stock and/or equity interest in any or all of Plastech's direct or indirect subsidiaries (the "Equity Interests"); (iii) any of the Debtors' plants or facilities (the "Facilities"); and (iv) any or all of the Debtors' miscellaneous capital assets (the "Capital Assets" and together with the TrimQuest Membership Interests, the Equity Interests and the Facilities, the "Miscellaneous Assets") or (II) any other alternative transaction (including a plan of reorganization or financing thereof) (an "Alternative Transaction").

B. Status of Sale Process

17. Since the commencement of these cases, the Debtors have maintained that a standalone plan of reorganization may provide their creditors and equity constituencies with greater value than a sale of substantially all or some of their businesses and/or, assets. To that end, and as described in more detail at the May 23, 2008 hearing on the Bid Procedures Motion, the Debtors have been soliciting and continue to solicit financing and sponsors for such a standalone plan. Such a standalone plan, however, would likely have required significant litigation with Johnson Controls, Inc.

("JCI") regarding the terms of various agreements and outstanding disputes under such agreements.

18. Notwithstanding the Debtors' belief that such litigation would have been successful, the Debtors' major creditor constituencies pursued and ultimately favored the estates pursuing potential sale transactions with respect to the Debtors' Business Units, including a sale of the Interiors Business to a newly formed company by Johnson Controls, Inc. ("JCI") and assets contributed by the Term Lenders as a result of a proposed "credit bid". Accordingly, consistent with their obligation to maximize value for the creditors and their stakeholders, the Debtors temporarily set aside pursuing litigation with JCI and entered into negotiations with JCI, the Term Lenders, the Committee and their other major customers, Ford Motor Company ("Ford"), Chrysler, LLC on behalf of itself, Chrysler Motors LLC and Chrysler Canada Inc. (collectively, "Chrysler") and General Motors Corporation ("GM" and together with JCI, Ford and Chrysler, the "Major Customers") regarding a potential Sale(s) to explore the value that such Sale(s) might bring to the Debtors' estates and creditors. Although no definitive agreements have yet been reached, and any such agreements would still be subject to higher or otherwise better

offers and an auction process, the current status of the Debtors solicitation of offers is as follows:

19. Sale of the Interiors Business.

Currently, the Debtors are negotiating with JCI and the Term Lenders regarding a form of asset purchase agreement that would provide for a sale of substantially all of the assets of the Debtors' Interiors Business to a newly formed company.³ A draft of the Interiors APA is attached hereto as Exhibit B (the "Draft Interiors APA"). Although subject to change, a summary of certain of the significant terms of the Draft Interiors APA are as follows⁴:

<u>Consideration:</u>	Cash in the amount of \$[] million plus a credit bid by the Term Lenders in a yet to be determined amount plus the value of inventory and the assumption of certain liabilities.
<u>Purchased Assets:</u>	The Debtors' 51% interest in Trimquest LLC, all of the fixed assets located at the

3 Assuming, as is anticipated, that the Term Lenders direct one or more of their agents to credit bid at the Auctions, the Term Lenders and/or their agents may make supplemental disclosures relating to any bidding arrangements they may be party to, in order to apprise the Court and parties in interest of facts that may be relevant to any motion of the Debtors seeking approval of any such bid following the Auctions, including, without limitation, arrangements concerning the distribution of proceeds from any such credit bid.

4 The Draft Interiors APA is still being negotiated and thus subject to change. In addition, the summary is in all respects superseded by the terms and conditions set forth in Exhibit A attached hereto.

interiors facilities (and Lansing), certain owned real property, certain of the Debtors' corporate facilities, inventory and Designation Rights.

Assumed Contracts: All local collective bargain agreements covering the Interiors Business facilities (and the Debtors' Lansing facility) as well as the National Agreement to the extent it applies to or is incorporated into such local collective bargain agreements as well as other contracts and leases, which will be identified more fully in schedules to be subsequently filed with the Court.

Assumed Liabilities: Cure costs, certain first priority lien claims and other Debtor obligations related to the Interiors Business.

Excluded Assets: Accounts receivable, fixed and liquid assets related to Business Units other than the Interiors Business, and actions under Chapter 5 of the Bankruptcy Code.

Closing Conditions: No financing or due diligence conditions; entry of various orders and settlements; no material breach of Debtors' representations and warranties.

20. Sale of the Exteriors Business Unit.

Prior to entry of the Bid Procedures Order, the Debtors had commenced negotiations with and provided due diligence materials to potential interested bidders for

the Debtors' Exteriors Business. In connection therewith, the Debtors provided certain interested parties with an asset purchase agreement substantially in the form attached hereto as Exhibit C (the "Form Exteriors APA"). In connection with such solicitation, the Debtors expressed a preference for bidders that would be prepared to maintain operations at the facilities in which the Exteriors Business was being conducted and in connection therewith assume any existing local collective bargain agreements and maintain jobs.

21. At present, the Debtors continue to receive expressions of interest in the Exteriors Business and are negotiating with various parties regarding a proposed mark-up and form of asset purchase agreement. To date, however, no agreement has been reached with any potential purchaser of the Exteriors Business, nor do the Debtors believe that there is sufficient agreement on terms and conditions to warrant the filing of one proposed agreement as opposed to another. In that regard, the Debtors believe that it is important, however, for parties in interest to be aware of the following:

Facility Closings: At present some or all of the facilities (except Lansing) may be closed and the potential purchaser(s)' predominate interest is in the machinery and

equipment located in such facilities. In that regard, the Debtors have provided WARN notices to employees at such facilities.

Labor Matters: Presently the Debtors anticipate that they may need to reject any local collective bargains covering the Exteriors Business facilities. In that regard, the Debtors maintain that the anticipated Sale(s), as presently structured, would not trigger the Successorship Clause (as defined below) in the National Agreement (as defined below).

Designation Rights: To date, potential buyers have expressed an interest in purchasing Designation Rights (as defined below) to various executory contracts and equipment leases.

22. Sale of the Stamping Business. Prior to entry of the Bid Procedures Order, the Debtors had commenced negotiations with and provided due diligence materials to potential interested bidders for the Debtors' Stamping Business. In connection therewith, the Debtors provided certain interested parties with an asset purchase agreement substantially in the form attached hereto as Exhibit D (the "Form Stamping APA"). In connection with such solicitation, the Debtors expressed a preference for bidders that would be prepared to maintain operations at the facilities in which the Stamping Business was being conducted and in connection

therewith assume any existing local collective bargain agreements and maintain jobs.

23. At present, the Debtors continue to receive expressions of interest in the Stamping Business and are negotiating with various parties regarding a proposed mark-up and form of asset purchase agreement. To date, however, no agreement has been reached with any potential purchaser of the Stamping Business, nor do the Debtors believe that there is sufficient agreement on terms and conditions to warrant the filing of one proposed agreement as opposed to another. In that regard, the Debtors believe that it is important for parties in interest to be aware that presently bidders are interested in purchasing the owned real property and maintaining operations at two, if not all three of the Stamping Business facilities.

24. **Remaining Business Unit and Miscellaneous Assets.** Finally, the Debtors continue to solicit interest not only in the above mentioned Business Units, but also in all of their remaining assets, including the Carpet Business, as well as financing for a standalone plan of reorganization. If and when any such agreements are tentatively reached, the Debtors will file notice of the agreement(s).

C. Executory Contracts and Leases

25. In connection with the potential Sale(s) transactions, the Debtors have been negotiating with the various interested parties regarding which, if any, executory contracts and unexpired leases of real property they wish to seek to have assumed and assigned to them. In addition, the Debtors have offered to sell or convey as part of any transactions Designation Rights (as defined below).

26. To facilitate the potential purchaser(s)' determination, substantially contemporaneously herewith the Debtors have filed two motions: (i) the Debtors' Motion For Order Pursuant To 11 U.S.C. §§ 105(a), 363 And 365(a) And Fed. R. Bankr. P. 6006 Fixing Cure Amounts For The Debtors' Executory Contracts (the "Contract Cure Motion"); and (ii) the Debtors' Motion For Order Pursuant To 11 U.S.C. §§ 105(a), 363 And 365(a) And Fed. R. Bankr. P. 6006 Fixing Cure Amounts For The Debtors' Unexpired Non-Residential Real Property Leases (the "Lease Cure Motion" and, together with the Contract Cure Motion, the "Cure Motions"). By the Cure Motions, the Debtors seek to fix the cure amounts associated with the contracts and leases listed in the exhibits to those Motions, so that the potential purchaser(s) can make a determination as to (i) which contracts to have immediately assumed and

assigned and (ii) which contracts and leases the potential purchaser(s) may wish to consider further and exercise Designation Rights (as defined below) following the closing of any such Sale(s).

D. Contingency of Sale(s) on Settlements

27. As the Debtors have advised the Court at various hearings, the major parties -- the Major Customers, Term Lenders, Committee and the company's majority shareholder -- have been negotiating settlements for which they will seek Court approval by separate motion(s). Consummation of those settlements and some or all of the transactions are expected to be conditioned on approval of both certain Sales and the settlements.

E. Potential Tax Consequences on Estates

28. Finally, throughout the negotiations with potential bidders and interested parties, the Debtors have been mindful of the fact that a sale of their Business Units and/or Miscellaneous Assets may have tax consequences. In particular, at the present time, the Debtors are not certain what assets will be purchased and for what consideration. This issue is complicated by the fact that there might be credit bidding by the Term Lenders and others at auction and that various potential

purchasers are likely to assume certain liabilities, yet to be quantified.

29. Depending upon the amount of consideration received and the manner in which that consideration is allocated among the Debtors, a sale of the Debtors' assets might result in the Debtors' estates being subject to a potentially significant tax claim, which could in turn be an administrative expense. At present, however, the Debtors believe that no such tax liability will exist because the estimated fair market value of the Debtors' assets is less than the basis of the Debtors' assets and the amount of losses to which the Debtors are entitled.

30. In sum, pursuant to this Motion, the Debtors seek approval of one or more Sale(s) of the Business Units and/or Miscellaneous Assets and the assumption and assignment of certain executory contracts to the Successful Bidder or Bidders at the Final Auction (as defined in the Bid Procedures Motion), provided that, the Debtors do not receive a higher or otherwise better offer with respect to their entire business and/or standalone plan. In that regard, the Debtors are further seeking authority to sell to one or more Successful Bidder(s) the right to designate certain of the Debtors' executory contracts and unexpired non-residential real property leases on or after the closing date of such

Sale(s) pursuant to the Sale Order(s) or pursuant to separate notice and order following the proposed closing date (the "Designation Rights"). And finally, if necessary, the Debtors will seek certain findings necessary to effectuate any such Sales without incurring administrative liabilities to taxing authorities and various unions.

APPLICABLE AUTHORITY

31. Assuming that the Debtors do not receive a higher or otherwise better offer to pursue a standalone plan of reorganization, the Debtors will request that the Court approve the Sale(s) of one or more of the Business Units and/or one or more of the Miscellaneous Assets to the Successful Bidder(s) pursuant to Bankruptcy Code sections 105, 363 and 365, pursuant to a form of Sale Order similar to that attached hereto as Exhibit A and as may be amended or modified prior to the Sale Hearing. The Debtors submit that such Sale(s) is in the Debtors' best interests and should be approved.⁵

A. Sale Pursuant to Bankruptcy Code Section 363(b)(1)

32. Bankruptcy Code section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and

⁵ The Debtors reserve the right to file a supplemental memorandum of law in support of the Sale Relief at a later date.

a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Bankruptcy Code section 105(a) provides in relevant part: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

33. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code section 363 and prior to obtaining a confirmed plan or reorganization if it demonstrates a sound business purpose for doing so. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (concluding that a sale of assets may be authorized if a "sound business purpose dictates such action"); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); Lounds v. Boyd (In re Lands), 1998 U.S. Dist. LEXIS 10925, *5 (E.D. Mich. June 23, 1998) (finding that approval of a contested sale under Bankruptcy Code section 363(b)(1) must be based on the best interests of the estate); In re Coastal Indus., Inc., 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986) (following Sixth Circuit's business judgment standard for sales under Bankruptcy Code Section 363(b)(1)).

34. Courts, including the Sixth Circuit, have applied four factors in determining whether a sound business justification exists: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. Stephens Indus., 789 F. 2d at 390; Lionel Corp., 722 F.2d at 1070.

35. As explained above and set forth below and as will be set forth at the Sale Hearing, the Debtors have determined that their best opportunity to maximize creditor recoveries is to sell one or more of the Business Units and/or one or more of the Miscellaneous Assets to a Successful Bidder(s). Accordingly, it is a valid exercise of the Debtors' business judgment to seek approval of such Sale(s) of one or more of the Business Units and/or one or more of the Miscellaneous Assets.

B. Sale Free and Clear Pursuant to Section 363(f)

36. Bankruptcy Code section 363(f) provides:

The Trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if -

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) 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).

37. Therefore, pursuant to Bankruptcy Code section 363, the Debtors may sell the Business Units and/or the Miscellaneous Assets free and clear of all liens, claims, and encumbrances. The Debtors submit that pursuant to Bankruptcy Code section 363(f) any sale for which they seek Court approval will satisfy one of the provisions set forth above. See, e.g., In re Wolverine Radio Co., 930 F.2d 1132, 1148 (6th Cir. 1991) (noting that "the language of section 363(f) is in the disjunctive and the sale free and clear of the interest concerned can occur if any one of the conditions of section 363(f) have been met"); In re Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (noting that section 363(f) is written in the disjunctive, not the conjunctive and accordingly "if any of the five conditions of § 363(f) are met, the Trustee has the authority to conduct the sale free and clear of all liens").

38. Specifically, the Debtors believe that, among other things, they will have either (i) the requisite lienholder's consent to such sale or (ii) the existing lien, claim, or encumbrance will be adequately protected by its attachment to the net proceeds of the Sale(s), subject to any claims and defenses the Debtors may possess with respect thereto, or the proposed purchaser(s) will take the assets subject to claims, liens and encumbrances (the "Permitted Encumbrances"). Therefore, the Debtors maintain that a sale of the Business Units and/or the Miscellaneous Asset(s) to a Successful Bidder(s) satisfies Bankruptcy Code section 363(f).

C. The Successful Bidder(s) Should be Granted the Protection of Bankruptcy Code Section 363(m)

39. As will be set forth in further detail at the Sale Hearing, the Debtors also maintain that any Successful Bidder(s) will be entitled to the protections afforded by Bankruptcy Code section 363(m).

40. Specifically, Bankruptcy Code section 363(m) provides that:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith,

whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

41. While the Bankruptcy Code does not define "good faith", the Sixth Circuit Court of Appeals in Made in Detroit, Inc. v. Official Comm. Of Unsecured Creditors of Made in Detroit, Inc. (In re Made in Detroit, Inc.), 414 F.3d 576, 581 (6th Cir. 2005) has held that:

'to show a lack of good faith, the debtor must demonstrate that there was fraud or collusion between the purchase and seller or other bidders, or that the purchaser's actions constituted an attempt to take grossly unfair advantage of other bidders. The good faith requirement speaks to the integrity of [the purchaser's] conduct in the course of the sale proceedings.'

Id. at 581 (citations omitted).

42. As the Debtors will demonstrate at any Sale Hearing, over the last months and weeks, the Debtors have spent a considerable amount of time and resources negotiating the various proposed transactions at arm's-length, with give and take on both sides. Under the circumstances, this Court should find that the Successful Bidder on any Sale(s) of a Business Unit or with respect to any Miscellaneous Asset(s) is entitled to all of the protections of Bankruptcy Code section 363(m).

D. Any Agreement(s) Will not be the Subject of Collusive Bidding Under Bankruptcy Code Section 363(n)

43. As set forth above, the Debtors have been negotiating with various potential bidders and other interested parties at arm's-length and in good faith regarding the Sale(s) of one or more Business Units and/or Miscellaneous Assets. Moreover, the Debtors do not believe that any Sale(s) will be the result of collusion or other bad faith between bidders or that the sale price under any such agreement(s) has been or will be controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code section 363(n).

44. As will be set forth in further detail at the Sale Hearing, the agreement(s) with any Successful Bidder(s) will be and has been negotiated, proposed, and entered into by the Debtors and the proposed purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor any potential purchaser have engaged in any conduct that would cause or permit an agreement(s) for the Sale(s) of one or more of the Business Units and/or Miscellaneous

Assets to be avoided under Bankruptcy Code section 363(n).

E. Successorship Clause of National Agreement with UAW

45. Certain of the facilities associated with the Exteriors Business (collectively, the "Exteriors Facilities") are subject to that certain National Agreement (the "National Agreement") between Plastech Engineered Products, Inc. and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"). At present, the Debtors anticipate that a sale of the Exteriors Business will not include a sale, assignment or other transfer of any of the Exteriors Facilities or any material part thereof, but instead be a sale of certain tooling, equipment and contract rights.

46. The National Agreement provides in part that:

This Agreement, including all letters, side agreements, benefit plan agreements, etc., shall be binding upon the company and its successors and assigns. The company agrees that it will not sell the facilities, or any material part thereof, unless the buyer of such facilities, as a condition of any such sale, agrees to hire the existing work force and assume this agreement and all letters and related agreements as described above.

National Agreement at page 3, § 2.1 (emphasis added)
(the "Successorship Clause").

47. Under longstanding principles of labor law, a purchaser of assets is generally not required to assume the seller's collective bargaining agreements. NLRB v. Burns Int'l Sec. Servs., 406 U.S. 272 (1972). As explained by the Supreme Court in Burns, "[s]addling . . . an employer with the terms and conditions of employment contained in the old collective bargaining contract . . . may discourage and inhibit the transfer of capital." 406 U.S. at 288; see also Wood v. Int'l Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 406, 807 F.2d 493, 500 (6th Cir. 1986) (holding purchaser of failing warehouse was not bound by seller's collective bargaining agreement, recognizing purchaser would not have completed transaction if it would have been required to adopt the agreement).

48. Successors and assigns clauses contained in collective bargaining agreements such as the Successorship Clause here are an exception to this well-established policy favoring the free transfer of assets. Accordingly, courts and arbitrators have held that the mere existence of such a clause in a collective bargaining agreement does not obligate the seller to

obtain an assumption of the agreement by a purchaser. Rather, the clause must clearly and unambiguously impose an obligation on the seller to condition the sale of the company or operation on the assumption of the labor contract. See, e.g., Central States, Southeast and Southwest Areas Pension Fund v. PYA/Monarch of Texas Inc., 851 F.2d 780, 783 (5th Cir. 1988) (holding provision that merely recites that the agreement is binding on the employer's successors and assigns does not obligate a seller to require a purchaser to assume its collective bargaining agreement); Kroger Co., 78 Lab. Arb. 569 (Howlett, Arb.) (1982) (finding successors and assigns clause in seller's collective bargaining agreement did not obligate purchaser of one of seller's warehouses to adopt the agreement where the clause was not clearly intended to include a transfer of only a part of seller's operations); Gallivan's, Inc., 79 Lab. Arb. 253 (1982) (Gallagher, Arb.) (denying union's grievance asserting that proposed sale of restaurant violated the successors and assigns clause of the collective bargaining agreement where the clause did not "clearly and unambiguously" oblige the seller to obtain an assumption of the labor agreement from the purchaser).

49. Here, the Successorship Clause is clear on its face that it does not obligate the Debtors to require

a purchaser to assume the National Agreement unless there is a sale of "the facilities, or any material part thereof." As noted above, the Debtors presently believe that a sale of the Exteriors Business will not include a transfer of the Exteriors Facilities or any material part of such facilities. Therefore, if the Sale(s) transpire as expected, the Debtors will seek a finding in the Sale Order stating that (i) the Successorship Clause does not obligate Debtors to require a Successful Bidder to assume the National Agreement; (ii) the Debtors have not violated the Successorship Clause or the National Agreement in consummating such Sale; and (iii) the Successful Bidder is not bound by the National Agreement.

F. Authorization of Assumption and Assignment of Executory Contracts and Unexpired Non-Residential Real Property Leases

50. To enhance the value of the Sale to the Debtors, the Debtors request approval under Bankruptcy Code section 365 of the Debtors' assumption and assignment of the certain of the Debtors' executory contracts (the "Assumed Executory Contracts") and unexpired non-residential real property leases (the "Assumed Leases") to the Successful Bidder(s). The Debtors further request that the Sale Order(s) provide that the Assumed Executory Contracts or Assumed Leases

and the Assumed Leases will be transferred to, and remain in full force and effect for the benefit of the Successful Bidder(s) notwithstanding any provisions in the Assumed Executory Contracts, including those described in Bankruptcy Code sections 365(b)(2) and (f)(1) and (3), that prohibit such assignment.

51. As set forth above, substantially contemporaneously with the filing of this Motion, the Debtors have filed the Cure Motions seeking to fix the cure amounts associated with certain of the Debtors' executory contracts and unexpired real property leases, including the Assumed Executory Contracts and Assumed Leases. The Cure Motions set forth deadlines and procedures for contract and lease parties to contest the cure amounts set forth in the Cure Motions, and set a hearing date of June 26, 2008 for all unresolved objections relating to cure amounts. Accordingly, parties to Assumed Executory Contracts and Assumed Leases will have received notice of any proposed assumption and assignment and cure amounts pursuant to this Motion and the Cure Motions.

52. Bankruptcy Code section 365(f)(2) provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if –

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under section 365(a), 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). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing, in pertinent part that:

(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).

53. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." EBG Midtown S. Corp. v. McLaren/Hart Env. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); In re Rachels Indus., Inc., 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); see also In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) ("[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"); Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

54. 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) (adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding).

55. The Debtors will present facts at the Sale Hearing to show the financial wherewithal of the Successful Bidder(s) to perform under the Assumed Executory Contracts and Assumed Leases. Thus, the Sale Hearing will afford the Court and other interested parties the opportunity to evaluate the ability of the Successful Bidder(s) to provide adequate assurance of future performance under the Assumed Executory Contracts and Assumed Leases, as required under Bankruptcy Code section 365(b) (1) (C).

56. Further, as set forth above, the Debtors will give notice to all parties to the Assumed Executory Contracts and Assumed Leases of their intention to assume the Assumed Executory Contracts and/or Assumed Leases and, pursuant to the Cure Motions, what the Debtors believe are the Cure Amounts. Accordingly, the Court should authorize the Debtors to assume and assign the Assumed Executory Contracts and Assumed Leases to a Stalking Horse Bidder(s) or other Successful Bidder(s) and/or Assumed Leases whether pursuant to the Sale Order or upon an exercise of Designation Rights.

G. Designation Rights are Property of the Debtors' Estates and May Therefore be Sold Pursuant to Bankruptcy Code Section 363

57. At the Sale Hearing, the Debtors also anticipate requesting Court authority to sell Designation Rights with respect to various executory contracts and leases. As has been recognized by many courts, "the sale of designation rights is fully permissible in bankruptcy cases, and that there is nothing in either bankruptcy or non-bankruptcy law that prohibits this plainly salutary means for making available for the benefit of creditors the underlying economic value in a debtor's leases." In re Ames Dep't Stores, Inc., 287 B.R. 112, 116 (Bankr. S.D.N.Y. 2002). Moreover, and as the Ames court has noted, "[i]t is undisputed that the sale of designation rights . . . would make a great deal of business sense for the Debtors' creditors generally, and, if permissible, would easily pass muster under all of the traditional factors that a court looks to under any motion for approval of a transaction under section 363(b). Id. at 116. See also In re Montgomery Ward, Case No. 00-4667 (Bankr. D. Del. March 1, 2001) (approving the sale of designation rights to a third party and noting that the sale of designation rights "shows that creativity has been used to come up with a

transaction which will yield the most value to a debtor's estate. And I think market conditions call for creativity . . . We have something that's completely different by there's nothing intrinsically wrong with this transaction. In fact, there's a lot that recommends it as being a good thing. It certainly is creating value, greater value than could be gotten from different types of transactions.") (partial transcript attached as Exhibit E).

58. Designation Rights may be sold to a purchaser because (i) the Debtors maintain a economic interest in the value of their executory contracts and leases and (ii) leasehold interests and their proceeds are property of the Debtors' estates, and accordingly the Designation Rights are property of the Debtors' estates under Bankruptcy Code section 541 that may be sold to a third party pursuant to Bankruptcy Code section 363. Id. at 119. See also Alamo Land & Cattle Co. v. Arizona, 424 U.S. 295, 303, 47 L. Ed. 2d 1, 96 S. Ct. 910 (1976) (concluding, in a non-bankruptcy context, that parties maintain economic interests in their leaseholds and holding that a party's interest in the economic value of a lease is property capable of being protected under the Fifth Amendment to the Constitution).

59. Additionally, by selling the Designation Rights, the Debtors are not transferring their Bankruptcy Code section 365 powers but instead the Debtors will take all actions to assume and assign or reject executory contracts and unexpired leases consistent with Bankruptcy Code section 365 and thus such argument is not grounds to deny any sale of Designation Rights. Ames 287 B.R. at 125-26.

60. Moreover, and as the Ames court noted, the concept of designation rights "is hardly novel; it has been repeatedly approved, in at least 15 instances, and in the only two reported decisions that have addressed the matter." Id. at 117. See, e.g., In re Ernst Home Ctr., Inc., 209 B.R. 974 (Bankr. W.D. Wash. 1997) (Overstreet, J.), appeal dismissed, BC Brickyard Assoc., Ltd. v. Ernst Home Ctr., Inc. (In re Ernst Home Ctr., Inc.), 221 B.R. 243 (B.A.P. 9th Cir 1998). See also In re Tweeter Home Entertainment Group, Inc., Case No. 07-10787 (Bankr. D. Del. July 16, 2007) (approving a sale of assets that included designation rights for the debtors' executory contracts and non-residential real property leases); In re Radnor Holdings Corp., Case No. 06-10894 (Bankr. D. Del. Nov. 21, 2006) (same); In re Levitz Home Furnishings, Inc., Case No. 05-45189 (Bankr. S.D.N.Y. Dec. 14, 2005) (same). Indeed, to the best of the

Debtors' knowledge, no court in any reported or unreported case has found that Designation Rights may not be sold by a debtor pursuant to Bankruptcy Code section 363.

61. Accordingly, to the extent that any party objects on such ground against the overwhelming weight of authority, such objection should be overruled. Furthermore, to the extent that any executory contract party objects to the assumption and assignment of their contract or lease pursuant to an exercise of Designation Rights, such objection is properly made when such Designation Rights are exercised and the Debtors file a motion to assume and assign such contract or lease. See Ames, 287 B.R. at 115 ("While the Court notes that a sale of designation rights with respect to leases cannot and does not result in an exemption from the requirements of section 365 (including, inter alia, the showings that need to be made in connection with extensions of the time to assume or reject under section 365(d)(4), or incident to any ultimate assumption and assignment of a given lease) -- as to which the rights of lessors necessarily must be honored -- those matters can be addressed separately, in connection with associated requests for section 365(d)(4) extensions, and at such time as the

assignment (and, if applicable, assumption) of a particular lease is proposed.").

62. No previous request for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE the Debtors respectfully request entry of an order approving and authorizing (i) the Sale(s) of one or more of the Debtors' Business Units and/or Miscellaneous Assets free and clear of liens, claims, interests and encumbrances; (ii) establishing procedures for the assumption and assignment of Assumed Executory Contracts and Assumed Leases including pursuant to an exercise of Designation Rights; and

(iii) granting such other and further relief as is just.

Dated: Detroit, Michigan
 May 29, 2008

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

- - - - - x
In re: : Chapter 11
:
PLASTECH ENGINEERED : Case No. 08-42417 (PJS)
PRODUCTS, INC., et al.,¹ :
: Jointly Administered
Debtors. :
:
- - - - - x

ORDER GRANTING DEBTORS' MOTION FOR AN ORDER
(A) APPROVING THE PROPOSED SALE(S) OF ONE OR MORE OF
THE DEBTORS' BUSINESS UNITS AND/OR MISCELLANEOUS ASSETS,
(B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED NON-
RESIDENTIAL REAL PROPERTY LEASES, AND (C) GRANTING
CERTAIN RELATED RELIEF

Upon the motion (the "Motion")² of the Debtors pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an

¹ The Debtors are the following entities: Plastech Engineered Products, Inc., LDM Technologies, Inc., Plastech Frenchtown, Inc., Plastech Decorating Systems, Inc., Plastech Exterior Systems, Inc., Plastech Romulus, Inc., MBS Polymet, Inc., LDM Holding Canada, Inc., and LDM Holding Mexico, Inc.

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion, the Bid Procedures or the Agreement.

order authorizing the sale(s) of one or more of the Debtors' Business Units and/or Miscellaneous Assets free and clear of liens, claims, interests and encumbrances (the "Sales" and each a "Sale"); (ii) the assumption and assignment of certain executory contracts and unexpired leases as set forth in the Stalking Horse Agreement(s) (defined below) or such other agreement to be entered into by the Debtors and another Successful Bidder(s) (defined below); and (iii) granting related relief; and the Court having entered on May 28, 2008 the Order (A) Establishing Bidding Procedures Relating to the Sale of Some or All of the Debtors' Business Units and/or Miscellaneous Assets or Consummation of an Alternative Transaction, (B) Authorizing the Debtors to Enter Into Stalking Horse Agreements in Connection with Sale of One or More Business Units, (C) Approving Break-Up Fee and Expense Reimbursement In Connection Therewith, (D) Scheduling a Hearing to Consider the Proposed Sale(s) and Approving the Form and Manner of Notice Thereof, (E) Permitting Credit Bidding Pursuant to Bankruptcy Code Section 363(k), and (F) Granting Certain Related Relief (the "Bid Procedures Order"), authorizing the Debtors to

proceed with the bidding procedures set forth therein and approving the Break-Up Fee and Expense Reimbursement (the "Bid Procedures") and the form of notice of the hearing on the Sale Motion; and the Court having conducted a hearing on the Motion on June 18, 2008, (the "Sale Hearing"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding approval of the Agreement, and the transactions contemplated thereby (the "Transactions"); and the Court having reviewed and considered the Motion and objections thereto, and the arguments of counsel made, and the evidence adduced, at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and upon the record of the Sale Hearing and these chapter 11 cases, and after due deliberation thereon, and good cause appearing therefore;

THE COURT HEREBY FINDS DETERMINES AND CONCLUDES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent

any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact.

B. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. The statutory predicates for the Motion are Bankruptcy Code sections 105, 363 and 365 and Bankruptcy Rules 2002, 6004, 6006, 9014 and 9019.

D. As evidenced by the affidavits of service filed with the Court, written notice of the Sale Hearing was transmitted to: (a) all entities known to have expressed an interest in a transaction with respect to all or part of the Assets at any time; (b) all entities known to have asserted any lien, claim, interest or

encumbrance in or upon any of the Miscellaneous Assets;
(c) all federal, state and local regulatory or taxing
authorities or recording offices which have a reasonably
known interest in the relief requested by this Motion;
(d) all non-residential real property lessors; (e) the
United States Attorney's office; (f) the Securities and
Exchange Commission; (g) the Internal Revenue Service;
(h) counsel for the Committee; and (i) counsel for the
Major Customers.

E. As evidenced by the affidavits of service
filed with the Court notice of the Sale Hearing was
published in *The Wall Street Journal* or *The New York
Times* and such local newspapers as the Debtors deemed
appropriate on _____, 2008.

F. Based upon the affidavits of service filed
with the Court: (a) notice of the Motion, the Bid
Procedures, the Bid Procedures Order, the Sale Hearing
and of the Debtors' intention to assume and assign the
Assumed Executory Contracts and the Assumed Leases, was
adequate and sufficient under the circumstances of these
chapter 11 cases and these proceedings and complied with
the various applicable requirements of the Bankruptcy

Code and the Bankruptcy Rules; and (b) a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities.

G. The Debtors provided notice of the sale of the Business Units and/or Miscellaneous Assets to Purchaser and to each of the entities that expressed a bona fide interest in the Business Units and/or Miscellaneous Assets. The Debtors and their professionals marketed the Business Units and/or Miscellaneous Assets and conducted the sale process in accordance with the Bid Procedures. Based upon the record of these proceedings, all creditors and equityholders, all other parties-in-interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Business Units and/or Miscellaneous Assets.

H. Subject to the entry of this Order, each Debtor (i) has full power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Business Units and/or Miscellaneous Assets by the Debtors has been duly and validly authorized by all necessary company action of each of

the Debtors, (ii) has all of the power and authority necessary to consummate the Transactions contemplated by the Agreement, (iii) has taken all company action necessary to authorize and approve the Agreement and the consummation by such Debtors of the Transactions. No consents or approvals, other than those expressly provided for in the Agreement or this Order, are required for the Debtors to close the Sale and consummate the Transactions.

I. Emergent circumstances and sound business reasons exist for the Debtors' Sale of the Business Units and/or Miscellaneous Assets pursuant to the Agreement. Entry into the Agreement and consummation of the Transactions constitute the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Business Units and/or Miscellaneous Assets to Purchaser. Such business reasons include, but are not limited to, the following:

(i) the Agreement constitutes the highest or otherwise

best offer for the Business Units and/or Miscellaneous Assets; (ii) the Agreement and the closing thereon will present the best opportunity to realize the value of the Business Units and/or Miscellaneous Assets and avoid decline and devaluation of the Debtors' business; (iii) there is substantial risk of deterioration of the value of the Business Units and/or Miscellaneous Assets if the Sale is not consummated promptly; and (iv) the Agreement and the closing thereon will provide a greater recovery for the Debtors' creditors than would be provided by any other presently available restructuring alternative.

J. The Agreement and the Transactions were negotiated and have been and are undertaken by the Debtors and Purchaser at arms' length without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). An auction was conducted in accordance with the Bid Procedures Order on June 16, 2008, at which Purchaser was declared the highest or otherwise best bidder. The auction was conducted at arms' length and in good faith within the meaning of Bankruptcy Code section 363(m). As a result of the foregoing, the Debtors and Purchaser are entitled

to the protections of Bankruptcy Code section 363(m). Moreover, neither the Debtors nor Purchaser engaged in any conduct that would cause or permit the Agreement, the consummation of the Transactions or the assumption and assignment of the Assumed Executory Contracts and Assumed Leases to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n).

K. The Sale does not constitute a sub rosa chapter 11 plan for which approval has been sought without the protections afforded by a disclosure statement.

L. The sale price under the Agreement was not controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code section 363(n). The Purchase Agreement was negotiated, proposed, and entered into by the Debtors and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Purchase Agreement or any part of the Transactions to be avoided under section 363(n) of the Bankruptcy Code.

M. The Successorship Clause does not obligate Debtors to require the Proposed Purchaser or other Successful Bidder to assume the National Agreement in connection with the Sale and other Transactions contemplated by the Agreement and approved pursuant to this Order. The Purchaser is not bound by the National Agreement and the Debtors have not violated the Successorship Clause or the National Agreement as a result of the Transactions and the Sale.

N. [Purchaser is a creditor of the Debtors, holding valid Liens, Claims, Interests and Encumbrances in, on and against the Debtors, their estates and property of the estates, arising in connection with [_____]. A portion of the Purchase Price paid by Purchaser for the Business Unit and/or Miscellaneous Asset was a credit bid in the amount of \$_____, which credit bid was valid and proper pursuant to the Bidding Procedures and Bankruptcy Code sections 363(b) and 363(k) (the "Credit Bid").]

O. The total consideration provided by Purchaser for the Business Units and/or Miscellaneous Assets is the highest or otherwise best offer received by the

Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and Uniform Fraudulent Conveyance Act, and (b) fair value under the Uniform Fraudulent Transfer Act ((a) and (b) together "Value") for the Business Units and/or Miscellaneous Assets.

P. Purchaser would not have entered into the Agreement and would not consummate the Transactions, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Business Units and/or Miscellaneous Assets to Purchaser and the assignment of the Assumed Executory Contracts and Assumed Leases to Purchaser was not free and clear of all Liens, Claims, Interests and Encumbrances, or if Purchaser would, or in the future could, be liable for any of such Liens, Claims, Interests and Encumbrances. A sale of the Business Units and/or Miscellaneous Assets other than one free and clear of Liens, Claims, Interests and Encumbrances would adversely impact the Debtors' estates, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale. Therefore, the Sale contemplated by the

Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

Q. The Debtors may sell the Business Units and/or Miscellaneous Assets free and clear of all Liens, Claims, Interests and Encumbrances, because, with respect to each creditor asserting a Lien, Claim or Interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) has been satisfied. Those holders of Liens, Claims, Interests and Encumbrances who did not object or who withdrew their objections to the Sale or the Sale Motion are deemed to have consented to the Sale Motion and Sale pursuant to Bankruptcy Code § 363(f)(2). Those holders of Liens, Claims, Interests and Encumbrances who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f) and are adequately protected by having their Liens, Claims, Interests and Encumbrances attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they assert a Lien, Claim or Interest with the

same rights and priorities that they held against the Business Units and/or Miscellaneous Assets.

R. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Executory Contracts and Assumed Leases to Purchaser in connection with the consummation of the Sale, and the assumption, assignment, and sale of the Assumed Executory Contracts and Assumed Leases is in the best interests of the Debtors, their estates, their creditors, and all parties in interest. The Assumed Executory Contracts and Assumed Leases being assigned to Purchaser are an integral part of Business Units and/or Miscellaneous Assets being purchased by Purchaser, and accordingly, such assumption, assignment, and sale of Assumed Executory Contracts and Assumed Leases are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

S. Purchaser has provided adequate assurance of cure of any default existing prior to the Closing under any of the Assumed Executory Contracts and Assumed Leases, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided adequate

assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Executory Contracts and Assumed Leases within the meaning of Bankruptcy Code section 365(b)(1)(B). Purchaser has provided adequate assurance of its future performance of and under the Assumed Executory Contracts and Assumed Leases, within the meaning of Bankruptcy Code section 365(b)(1)(C).

T. Immediately prior to the entry of this Order, Purchaser was not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between Purchaser and any of the Debtors. Pursuant to the Agreement, Purchaser is not purchasing all of the Debtors' assets in that Purchaser is not purchasing any of the Excluded Assets, and Purchaser is not holding itself out to the public as a continuation of the Debtors. Those of the Debtors' employees who are to be employed by Purchaser pursuant to Section [____] of the Agreement, are being hired under new employment

contracts or other arrangements to be entered into or to become effective at or after the time of the Closing. The Transactions do not amount to a consolidation, merger or *de facto* merger of Purchaser and the Debtors and/or the Debtors' estates, there is not substantial continuity between Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and Purchaser, Purchaser is not a mere continuation of the Debtors or the Debtors' estates, and Purchaser does not constitute a successor to the Debtor or the Debtors' estates.

U. The transfer of the Business Units and/or Miscellaneous Assets Purchaser will be a legal, valid, and effective transfer of the Business Units and/or Miscellaneous Assets, and will vest Purchaser with all right, title, and interest of the Debtors to the Business Units and/or Miscellaneous Assets free and clear of all Liens, Claims, Interests and Encumbrances, including but not limited to all Claims arising under doctrines of successor liability.

V. Time is of the essence in consummating the Sale. Accordingly, to maximize the value of the

Debtors' assets, it is essential that the sale of the Business Units and/or Miscellaneous Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

W. Approval of the Agreement and assumption, assignment, and sale of the Assumed Executory Contracts and Assumed Leases, and consummation of the Sale of the Business Units and/or Miscellaneous Assets at this time are in the best interests of the Debtors, their creditors, their estates, and all parties in interest.

Based upon all of the foregoing, and after due deliberation,

THE COURT ORDERS, ADJUDGES, AND DECREES THAT:

1. The relief requested in the Motion is GRANTED in the manner and to the extent provided herein.

2. All objections and responses concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing and to the extent any such objection or response was not otherwise withdrawn, waived, or settled, it is,

and all reservations of rights or relief requested therein, overruled and denied.

3. The Agreement (including without limitation the Credit Bid), the Transactions, and the Sale of the Business Units and/or Miscellaneous Assets to Purchaser, are hereby approved and authorized in all respects.

4. The consideration provided by Purchaser for the Business Units and/or Miscellaneous Assets under the Agreement, including the portion of the consideration that consisted of a credit bid under Bankruptcy Code section 363(k), shall be deemed for all purposes to constitute value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision, of the Bankruptcy Code.

5. The Transactions are undertaken by Purchaser in good faith, Purchaser is a purchaser in good faith of the Business Units and/or Miscellaneous Assets as that term is used in Bankruptcy Code section 363(m), and Purchaser is entitled to all of the

protections afforded by Bankruptcy Code section 363(m); accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale of the Business Units and/or Miscellaneous Assets to Purchaser (including the assumption, assignment, and sale of any of the Assumed Executory Contracts and Assumed Leases), unless such authorization is duly stayed pending such appeal.

6. The Debtors are authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the sale of the Business Units and/or Miscellaneous Assets to Purchaser (including, without limitation, to convey to Purchaser any and all of the Business Units and/or Miscellaneous Assets intended to be conveyed) and the Closing of the Transactions in accordance with the Motion, the Agreement and this Order; and (ii) perform, consummate, implement and close fully the Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement. The parties shall have no obligation to proceed with the

Closing of the Agreement until all conditions precedent to their obligations to do so as set forth in Article [___] thereof have been met, satisfied or waived.

7. The Purchaser is authorized and directed at Closing to remit or cause to be remitted to: [allocation of Purchase Price].

8. Upon the Closing, Purchaser shall:
(i) assume and agrees to pay, perform and otherwise discharge, the Assumed Liabilities pursuant to Section [___] of the Agreement, with such assumption of liabilities constituting a portion of the Purchase Price paid by Purchaser for the Business Units and/or Miscellaneous Assets; and (ii) advance or reimburse Sellers, those amounts identified in Section [___] of the Agreement as set forth therein.

9. Purchaser is hereby authorized in connection with the consummation of the Sale to allocate the Business Units and/or Miscellaneous Assets and the Assumed Executory Contracts or Assumed Leases among its affiliates, designees, assignees, and/or successors in a manner as it in its sole discretion deems appropriate and to assign, sublease, sublicense, transfer or

otherwise dispose of any of the Business Units and/or Miscellaneous Assets or the rights under any Assumed Executory Contract or Assumed Lease to its affiliates, designees, assignees, and/or successors with all of the rights and protections accorded under this Order and the Agreement, and the Debtors shall cooperate with and take all actions reasonably requested by Purchaser to effectuate any of the foregoing.

10. The Debtors are hereby authorized, effective only as of the Closing and in accordance with Bankruptcy Code sections 365(b)(1) and (f)(2), to:

(A) assume the Assumed Executory Contracts and Assumed Leases; (B) sell, assign and transfer to Purchaser each of the Assumed Executory Contracts and Assumed Leases in each case free and clear of all Liens, Claims, Interests and Encumbrances; and (C) execute and deliver to Purchaser, such assignment documents as may be necessary to sell, assign and transfer the Assumed Executory Contracts and Assumed Leases.

11. After the Closing Date, Purchaser may designate additional contracts and leases for assumption and assignment, solely pursuant to the provisions of

Section [____] of the Agreement. Any such additional contracts and leases assumed by Debtors and assigned to Purchaser pursuant to Section [____] of the Purchase Agreement shall be deemed Assumed Executory Contracts and Assumed Leases hereunder.

12. The Assumed Executory Contracts and Assumed Leases, upon assignment to Purchaser, shall be deemed valid and binding, in full force and effect in accordance with their terms. Upon the Closing, in accordance with Bankruptcy Code sections 363 and 365, Purchaser shall be fully and irrevocably vested in all right, title and interest of each Assumed Executory Contract and Assumed Lease.

13. Pursuant to Bankruptcy Code section 365(k), the Debtors and their estates are not liable for any breach of any Assumed Executory Contract or Assumed Lease that occurs or arises after such assignment to and assumption by Purchaser.

14. All defaults or other obligations of the Debtors under the Assumed Executory Contracts and Assumed Leases arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses

or any default provisions of the kind specified in Bankruptcy Code section 365(b)(2)) shall be deemed cured by the payment or other satisfaction of the Cure Costs in the amounts set forth in the Cure Motions (the "Cure Amounts"). The Cure Amounts are hereby fixed at the amounts set forth in the Cure Motions, as may be modified by the orders granting such Cure Motions, and the non-Debtor parties to the Assumed Executory Contracts and Assumed Leases are hereby forever bound by such Cure Amounts. Except for the Cure Amounts, there are no other defaults existing under the Assumed Executory Contracts or Assumed Leases.

15. Purchaser shall pay or otherwise satisfy the Cure Amounts no later than the Cure Costs Deadline established in Section [____] of the Agreement.

16. Except for the obligations of Purchaser to pay or otherwise satisfy the Cure Amounts, each non-Debtor party to an Assumed Executory Contract or Assumed Lease is hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser or the Business Units and/or Miscellaneous Assets any default, additional amounts or other Claims existing as

of the Closing Date, whether declared or undeclared or known or unknown; and such non-Debtor parties to the Assumed Executory Contracts and Assumed Leases are also forever barred, estopped, and permanently enjoined from asserting against Purchaser any counterclaim, defense or setoff, or any other Claim, Lien or Interest, asserted or assertable against the Debtors.

17. There shall be no rent accelerations, assignment fees, increases or any other fees charged or chargeable to Purchaser as a result of the assumption, assignment and sale of the Assumed Executory Contracts and the Assumed Leases. Any provisions in any Assumed Executory Contract or Assumed Lease that prohibit or condition the assignment of such Assumed Executory Contract or Assumed Lease or allow the party to such Assumed Executory Contract or Assumed Lease to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Executory Contract or Assumed Lease, constitute unenforceable anti-assignment provisions, and are void and of no force and effect. The validity of the assumption, assignment and

sale of the Assumed Executory Contracts and the Assumed Leases to Purchaser shall not be affected by any dispute between any of the Debtors and any non-Debtor party to such Assumed Executory Contract or Assumed Lease.

18. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Transactions. No brokers were involved in consummating the Sale or the Transactions, and no brokers' commissions are due to any person or entity in connection with the Sale or the Transactions.

19. Upon the Closing, (a) the Debtors are hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of the Business Units and/or Miscellaneous Assets to Purchaser free and clear of any and all Liens, Claims, Interests and Encumbrances, and (b) except as otherwise expressly provided in the Agreement, all such Liens, Claims, Interests and Encumbrances shall be and hereby are released, terminated and discharged as to the Purchaser and the Business Units and/or Miscellaneous Assets.

20. Upon the Closing, and except as otherwise expressly provided in the Purchase Agreement, Purchaser shall not be liable for any Claims against, and liabilities and obligations of, the Debtors or any of the Debtors' predecessors or affiliates.

21. Purchaser shall not be deemed a successor of or to the Debtors or the Debtors' estates with respect to any Liens, Claims, Interests and Encumbrances against the Debtors or the Business Units and/or Miscellaneous Assets, and Purchaser shall not be liable in any way for any such Liens, Claims, Interests and Encumbrances, including, without limitation, the Excluded Liabilities, Excluded Environmental Liabilities or Excluded Assets. Upon the Closing of the Sale, all creditors, employees and equityholders of the Debtors are permanently and forever barred, restrained and enjoined from (a) asserting any Claims or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind, against Purchaser or the one or more of the Business Units on account of any of the Liens, Claims, Interests and Encumbrances, Excluded Liabilities, Excluded

Environmental Liabilities or Excluded Assets, or (b) asserting any Claims or enforcing remedies under any theory of successor liability, *de facto* merger, or substantial continuity.

22. This Order (a) is and shall be effective as a determination that, upon Closing, all Liens, Interests and Encumbrances existing as to the Business Units and/or Miscellaneous Assets conveyed to Purchaser have been and hereby are adjudged and declared to be unconditionally released, discharged and terminated, and (b) is and shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Business

Units conveyed to Purchaser. All such entities described above in this Paragraph 23 are authorized and specifically directed to strike all recorded Liens, Interests and Encumbrances against the Business Units and/or Miscellaneous Assets from their records, official and otherwise and including without limitation those Liens, Interests and Encumbrances listed in the applicable schedules to the Agreement.

23. If any person or entity, which has filed statements or other documents or agreements evidencing Liens, Interests and Encumbrances on or in the Business Units and/or Miscellaneous Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens, Interests and Encumbrances, and any other documents necessary for the purpose of documenting the release of all Liens, Interests and Encumbrances which the person or entity has or may assert with respect to the Business Units and/or Miscellaneous Assets, the Debtors and Purchasers are hereby authorized and directed to execute and file such statements,

instruments, releases and other documents on behalf of such person or entity with respect to the Business Units and/or Miscellaneous Assets.

24. Any and all Business Units and/or Miscellaneous Assets in the possession or control of any person or entity, including, without limitation, any former vendor, supplier or employee of the Debtors shall be transferred to Purchaser free and clear of Liens, Claims, Interests and Encumbrances and shall be delivered at the time of Closing to Purchaser.

25. This Order and the Agreement shall be binding in all respects upon all creditors and equityholders of any of the Debtors, all non-debtor parties to the Assumed Executory Contracts and Assumed Leases, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtors' bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Agreement shall not be subject to rejection or avoidance under any circumstances.

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

27. Any amounts that become payable by the Debtors to Purchaser pursuant to the Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Agreement shall (a) constitute administrative expenses of the Debtors' estates and (b) be paid by the Debtors in the time and manner as provided in the Agreement without further order of this Court.

28. Nothing contained in any order entered in the Debtors' bankruptcy cases subsequent to entry of this Order, nor in any chapter 11 plan confirmed in these chapter 11 cases, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

29. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h), 6006(d) and any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted.

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

31. The failure specifically to include or make reference to any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement is authorized and approved in its entirety.

32. The Court retains jurisdiction, even after the closing of these chapter 11 cases, to:

(1) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Agreement, all amendments thereto and any waivers and consents thereunder; (2) protect Purchaser, or any of the Business Units and/or Miscellaneous Assets, from and against any of the Liens, Claims, Interests and

Encumbrances; (3) compel delivery of all Business Units and/or Miscellaneous Assets to Purchaser; and

(4) resolve any disputes arising under or related to the Agreement, the Sale or the Transactions, or Purchaser's peaceful use and enjoyment of the Business Units and/or Miscellaneous Assets.

EXHIBIT B

AVAILABLE AT
WWW.DONLINRECANO.COM OR BY
CONTACTING DEBTORS' COUNSEL

EXHIBIT C

AVAILABLE AT
WWW.DONLINRECANO.COM OR BY
CONTACTING DEBTORS' COUNSEL

EXHIBIT D

AVAILABLE AT
WWW.DONLINRECANO.COM OR BY
CONTACTING DEBTORS' COUNSEL

EXHIBIT E

AVAILABLE AT
WWW.DONLINRECANO.COM OR BY
CONTACTING DEBTORS' COUNSEL