

Hearing Date: **June 19, 2008 at 10:00 a.m.**
Objection Deadline: **June 17, 2008 at 4:00 p.m.**

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

In re

Quebecor World (USA) Inc., et al.,

Debtors.

Chapter 11

Case No. 08-10152 (JMP)
Jointly Administered

Honorable James M. Peck

MOTION OF THE DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a), 362, 363 AND 365 AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004, 6006 AND 9019 TO (I) ASSUME, AS AMENDED, (A) AN UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN NASHVILLE, TENNESSEE AND (B) AN UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN TAUNTON, MASSACHUSETTS, (II) AMEND (A) UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN NASHVILLE, TENNESSEE AND (B) UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN TAUNTON, MASSACHUSETTS AND (III) ENTER INTO A STIPULATION OF SETTLEMENT REGARDING LANDLORD'S MOTIONS WITH RESPECT TO UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN NASHVILLE, TENNESSEE AND TAUNTON, MASSACHUSETTS

The above-captioned debtors and debtors in possession (collectively, the "Debtors") move this Court (the "Motion") for the entry of an order substantially in the form of Exhibit A hereto, authorizing the Debtors to (i) assume, as amended, (a) an unexpired lease of non-residential real property located in Nashville, Tennessee and (b) an unexpired lease of non-

residential real property located in Taunton, Massachusetts, (ii) amend (A) an unexpired lease of non-residential real property located in Nashville, Tennessee and (b) an unexpired lease of non-residential real property located in Taunton, Massachusetts and (iii) enter into a Stipulation of Settlement regarding landlords' motions previously filed with this Court with respect to unexpired leases of non-residential real property located in Nashville, Tennessee and Taunton, Massachusetts. In support of this Motion, the Debtors rely on the Declaration of Jeremy Roberts submitted herewith. In further support of the Motion, the Debtors state as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 362, 363 and 365 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background

4. On January 21, 2008 (the "Petition Date"), the 53 Debtors filed their voluntary petitions for relief (the "Chapter 11 Cases") under chapter 11 of title 11 of the Bankruptcy Code.

5. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in these cases.

6. On January 31, 2008, an Official Committee of Unsecured Creditors was appointed.

7. On January 20, 2008, the Debtors' corporate parent, Quebecor World Inc. ("QWI"), together with each of the Debtors, commenced a proceeding before the Superior Court, Commercial Division, for the Judicial District of Montreal (the "Canadian Court") for a plan of compromise or arrangement (the "Canadian Proceeding") under the Canadian Companies' Creditors Arrangement Act ("CCAA").¹ Each of the Debtors was joined in the Canadian Proceeding in order that each Debtor may obtain the protection of a stay under the CCAA as well as under the Bankruptcy Code.

The Debtors' Business

8. The Debtors collectively operate the second largest commercial printing business in the United States, maintaining approximately 78 facilities in 29 states. QWI is a Canadian corporation and the corporate parent of the Debtors, having been incorporated on February 23, 1989 pursuant to the Canada Business Corporations Act to combine the assets constituting what was then the printing division of Quebecor Inc. (QWI, together with the Debtors and all of QWI's debtor and non-debtor subsidiaries and affiliates are referred to herein as "QW World").

9. QW World's key customers include the largest publishers, retailers and catalogers in the geographic areas in which QW World operates. In the magazine group, QW World prints magazines for publishers, including, for example, 15 magazine titles for Time, Inc.,² Cosmopolitan for Hearst Corp., *Elle* for Hachette-Filippachi Magazines US, *ESPN the Magazine* for Walt Disney Corp., *Forbes* for Forbes Inc. and *In Touch Weekly* for Bauer Publishing USA, while QW World's retail insert group includes customers such as CVS, Sears, JC Penney, Kohl's, and Walgreens. QW World's operations also encompass (a) catalogs for customers such

¹ The Canadian Court appointed Ernst & Young, Inc. to serve as Monitor for the Canadian Proceeding, and UBS Investment Bank is serving as QWI's financial advisor.

² These include *Time*, *Fortune*, *Money*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *Southern Living*, *Cooking Light* and *Coastal Living*.

as Williams-Sonoma, Oriental Trading Company, Victoria's Secret, IKEA, Cabelas and Bass Pro, (b) books for McGraw-Hill, Scholastic, Simon & Schuster, Thomas Nelson, Time-Warner and Pearson Education, (c) directories for Yellow Book USA, RH Donnelly, Windstream and Frontier in the United States, the Yellow Pages Group in Canada, as well as Telemex and Telefonica in Latin America and (d) direct mail services.

Unexpired Leases of Non-Residential Real Property in Nashville, Tennessee and Taunton, Massachusetts

10. The unexpired leases of non-residential real property that are the subject of this Motion are (i) a Lease between KDN Investments, LLC ("KDN"), as landlord, and Mid-South Press Corporation³ ("QW Mid-South"), as tenant, dated as of July 11, 2001, a copy of which is attached hereto as Exhibit B (the "Nashville Lease") covering the real and personal property located at 2947 Brick Church Pike, Nashville (Davidson County), Tennessee (the "Nashville Property") and (ii) a Lease between Melvin D. Small and Sarah Small, Trustees of Eagle Drive Trust ("Trustees," together with KDN, the "Landlords"), as landlord, and Retail Printing Corporation⁴ ("QW RPC," together with QW Mid-South, the "Debtor Tenants"), as tenant, dated as of July 11, 2001, a copy of which is attached hereto as Exhibit C (the "Taunton Lease," together with the Nashville Lease, the "Leases") covering the real and personal property located at 50 John Hancock Road, Taunton (Bristol County), Massachusetts (the "Taunton Property," together with the Nashville Property, the "Leased Premises").

11. The Nashville Property consists of an office and manufacturing facility of approximately 106,900 square feet. The Taunton Property consists of an industrial building of approximately 149,329 square feet. The initial terms of both of the Leases expire on July 10, 2008, with renewal options for two consecutive five-year terms upon twelve months' notice of

³ Mid-South Press Corporation is now known as Quebecor World Mid-South Press Corporation.

⁴ Retail Printing Corporation is now known as Quebecor World Retail Printing Corporation.

intent to renew by the applicable Debtor Tenant. In addition, Section 14.2 of each of the Leases contains a Tenant's Purchase Option (the "Purchase Options") pursuant to which the Debtor Tenants, under their respective Leases, may, upon notice to the applicable Landlord, elect to purchase the respective Landlord's right, title and interest in and to the applicable Leased Premises.

12. Prior to the Petition Date, pursuant to letters dated August 20, 2007, the Debtor Tenants notified the respective Landlords of their election to exercise their respective Purchase Options, with the closing of such Purchase Options to take place on or about July 11, 2008 pursuant to the terms of the Leases.

13. Both of the Leased Premises serve as the locations of major printing operations of the Debtors. The Debtors have a substantial amount of equipment, materials and inventory stored and in use at the Leased Premises.

Procedural Background

14. On April 1, 2008, the Landlords filed in this Court the Landlords' Motion to Compel Debtors to Assume or Reject Purchase Agreements Relating to Real Estate in Nashville, Tennessee and Taunton, Massachusetts (Docket No. 475) (the "Purchase Agreement Motion"), seeking to establish a deadline for each of the Debtor Tenants to assume or reject the purchase agreement that arose in connection with each Debtor Tenant's prepetition exercise of their respective Purchase Options, the closing of which would occur on July 11, 2008, the day after the expiration of the underlying Leases in accordance with their terms.

15. The Landlords argued in the Purchase Agreement Motion that, because the Debtor Tenants exercised the Purchase Options prepetition, as of the Petition Date the Debtor Tenants and the Landlords were parties to executory purchase agreements with a pending closing date of

July 11, 2008. Accordingly, the Landlords sought to compel the Debtors to assume or reject the Leases and, if assumed, to proceed with closing under the Purchase Options.

16. The Debtor Tenants and the Landlords are currently involved in the process established by the Purchase Options for appointment of appraisers to fix the purchase price for the Debtor Tenants to purchase each of the Nashville Property and the Taunton Property to the extent the parties are unable to agree on the purchase price for either or both properties (the “Purchase Price Process”). The Purchase Price Process was suspended and the hearing on the Purchase Agreement Motion, originally scheduled for April 17, 2008, was continued to the omnibus hearing of May 22, 2008, in each case pursuant to the Stipulation on Pending Motions Involving Nashville, Tennessee and Taunton, Massachusetts Leases dated April 17, 2008 (the “Interim Stipulation”), which was filed with and approved by this Court at the omnibus hearing of April 17, 2008 (Docket No. 574). On the record at the May 22, 2008 hearing, the hearing on the Purchase Agreement Motion was continued to the omnibus hearing of June 19, 2008 by agreement of the parties.

17. In addition to the Purchase Agreement Motion, on April 1, 2008, KDN filed a Landlord’s Motion to Compel Debtor to Perform Postpetition Obligations Arising Under Nashville, Tennessee Lease (Docket No. 473) (the “Lease Performance Motion,” together with the Purchase Agreement Motion, the “Landlord Motions”) seeking to require QW Mid-South to cure alleged postpetition defaults including (1) failure to make a payment of real estate taxes in the amount of \$66,536.11 that came due during the postpetition period (the “Tax Payment”), and (2) construction of an unauthorized addition (the “Addition”) and failure to operate in accordance with applicable law by reason of not having obtained a certificate of occupancy therefor (the “Certificate of Occupancy”). In addition, each of the Landlords has given notice to the respective Debtor Tenants to supply evidence of insurance complying with the requirements

of its lease (the “Insurance Requirement”). The Certificate of Occupancy has since been obtained and, in accordance with the Interim Stipulation, the Tax Payment has been made. However, the Landlords assert that construction of the Addition without authorization by KDN remains as an uncured default under the Nashville Lease (the “Unauthorized Construction Default”), and the Debtor Tenants are working to provide evidence satisfactory to the Landlords of their compliance with the Insurance Requirement. Pursuant to the Interim Stipulation, a hearing on the Lease Performance Motion as it relates to the Unauthorized Construction Default and the Insurance Requirement was scheduled to take place at the May 22, 2008 hearing. On the record at the May 22, 2008 hearing, such hearing was continued to the omnibus hearing of June 19, 2008 by agreement of the parties.

18. On April 7, 2008, the Debtors filed the Debtors’ Motion for Entry of an Order Pursuant to §365(d)(4) of the Bankruptcy Code Extending Time for the Debtors to Assume or Reject Unexpired Leases of Nonresidential Real Property (Docket No. 577) (the “Deadline Extension Motion”) seeking, as to all of their leases of nonresidential real property, including the Nashville Lease and the Taunton Lease, a 90-day extension of the time within which such leases will be deemed rejected if not assumed (the “Assumption Deadline”). Pursuant to the Interim Stipulation, although the Deadline Extension Motion was granted in full as to all other leases, the Assumption Deadline as it relates to the Nashville Lease and the Taunton Lease was extended to and including May 31, 2008. On the record at the May 22, 2008 hearing, the hearing on the Deadline Extension Motion as it relates to the Nashville Lease and the Taunton Lease was continued to the omnibus hearing of June 19, 2008 by agreement of the parties. Although not expressly addressed at the May 22, 2008 hearing, the Debtor Tenants and the Landlords consider the Assumption Deadline as it relates to the Nashville Lease and the Taunton Lease to have been correspondingly extended.

The Stipulation of Settlement and Lease Amendments

19. Because the Debtors conduct substantial operations at the Leased Premises and would not be in a position to quickly relocate their operations upon rejection of the Leases, the Debtors do not believe that it would be in their best interests to reject the Leases in the immediate future, with resulting disruptions to their ongoing operations at both the Nashville Property and the Taunton Property. Moreover, at the present time the Debtors do not believe that rejection of the Leases would be in the best interests of their creditors and bankruptcy estates. However, in light of their ongoing review of operations in connection with these Chapter 11 Cases, the Debtors also believe that it would be premature to assume the Leases in their present form, consummate the Purchase Options and close on a purchase of the Leased Premises at this stage of these Chapter 11 Cases. Accordingly, the Debtors and the Landlords have reached an agreement pursuant to which the Debtors and the Landlords will assume the Leases, as amended as described herein and set forth in the Stipulation of Settlement and the term sheets attached hereto as Exhibit D.

20. The terms upon which the Debtors and the Landlords have agreed to amend the Leases and resolve the remaining disputes with respect to the Landlord Motions and the Deadline Extension Motion are set forth in the Stipulation of Settlement and are summarized below:⁵

(a) Nashville Lease Extension/Purchase Option. At the Closing, (as defined below) KDN and QW Mid-South shall execute a First Amendment to Lease, whereby the term of the Nashville Lease will be extended for two years, and the Nashville Lease will be amended to provide a fixed-price option at which QW Mid-South may elect to purchase the Nashville Property (the “Nashville Purchase Option”), and otherwise reflecting the principal terms set forth in the term sheet annexed to the Stipulation of Settlement as Exhibit A, in form and substance satisfactory to the KDN and QW Mid-South (the “Nashville Amendment”). The Nashville Lease, as amended by the Nashville Amendment (the “Amended Nashville Lease”), shall, without the need for any order of this Court other than

⁵ The following is intended as a summary only, and is subject in all respects to the terms and conditions of the Stipulation of Settlement and the final documentation constituting the amendments to the Leases.

the Approval Order (as defined below), be deemed assumed by QW Mid-South pursuant to Section 365 of the Bankruptcy Code effective as of the Closing.

(b) Taunton Extension/Purchase Option. At the Closing, the Trustees and QW Retail shall execute a First Amendment to Lease, whereby the Taunton Lease will be extended for two years and will be amended to provide a fixed-price option at which QW Retail may elect to purchase the Taunton Property (the “Taunton Purchase Option”), and otherwise reflecting the principal terms set forth in the term sheet annexed to the Stipulation of Settlement as Exhibit B, in form and substance satisfactory to the Trustees and QW Retail (the “Taunton Amendment”). The Taunton Lease, as amended by the Taunton Amendment (the “Amended Taunton Lease”), shall, without the need for any order of this Court other than the Approval Order, be deemed assumed by QW Retail pursuant to Section 365 of the Bankruptcy Code effective as of the Closing.

(c) Restructuring Fees. At the Closing, (a) QW Mid-South shall, as a one-time restructuring fee and not as a credit toward any obligation under the Nashville Lease, pay \$50,000 in immediately available funds to KDN, and (b) QW Retail shall, as a one-time restructuring fee and not as a credit toward any obligation under the Taunton Lease, pay \$50,000 in immediately available funds to KDN (collectively, the “Restructuring Fees”).

(d) Insurance Requirement. On or before June 18, 2008, the Debtor Tenants shall supply written evidence to the Landlords of compliance with the Insurance Requirement. The Landlords shall promptly supply written notice to the Debtor Tenants either (a) accepting such evidence as satisfactory (such notice not to be unreasonably withheld), or (b) specifying the respects in which such evidence is unsatisfactory, in which event the Debtor Tenants shall have ten (10) business days within which to comply with the Insurance Requirement, and if they fail to do so, the Landlords may (in addition to their other remedies, including continued prosecution of the Lease Performance Motion as it relates to the Insurance Requirement) terminate the Stipulation of Settlement by written notice to the Debtor Tenants, who shall promptly remit the Restructuring Fees to the Landlords as liquidated damages for the Debtor Tenants’ breach of the Stipulation of Settlement; *provided, however*, that if the Debtor Tenants believe that the Landlords have acted unreasonably or in bad faith in determining that the Debtor Tenants have failed to comply with the Insurance Requirement, the Debtor Tenants shall be entitled to seek a determination from the Bankruptcy Court regarding compliance with the applicable Insurance Requirement; *and provided further* that the Debtor Tenants’ election to seek such determination from the Bankruptcy Court shall not toll or otherwise extend the Closing Condition Deadline (as defined below).

(e) Closing. The Closing shall occur at a time and place or pursuant to an escrow arrangement agreed upon between the Debtor Tenants’ and the Landlords’ counsel, but not later than five (5) business days after each of the following conditions has been satisfied: (a) an order of this Court granting this Motion and approving the Stipulation of Settlement and authorizing the Debtor Tenants’ to

assume the Leases, as amended, and otherwise perform under the Stipulation of Settlement, in form and substance satisfactory to the Debtor Tenants and the Landlords (the "Approval Order"), shall have been entered; (b) the Approval Order shall have become final, with no motion for reconsideration having been filed nor any appeal taken, *provided, however*, that at any time when the Approval Order remains in full force and effect, not having been stayed, the Landlords may waive this condition to the Closing, which shall thereupon be deemed satisfied as of the date of such waiver, and *further provided* that the Landlords shall waive this condition to the Closing if (i) no objection to the motion seeking the Approval Order is filed, and (ii) the Approval Order specifies that there shall be no ten-day stay of thereof pursuant to Fed. R. Bankr. P. 6004(g); (c) the Debtor Tenants shall be in compliance with the Insurance Requirement and shall have received the Landlords' acceptance of their evidence thereof pursuant to paragraph 4 of the Stipulation of Settlement (or the Bankruptcy Court shall have determined that the Debtor Tenants are in compliance with the Insurance Requirement); and (d) except for the Unauthorized Construction Default under the Nashville Lease, there shall be no Tenant Default, nor any event or condition that with the passage of time and/or the giving of notice would become a Tenant Default, under (and as defined in) the Nashville Lease or the Taunton Lease. At the Closing, the Debtor Tenants and the Landlords shall exchange estoppel certificates which shall disclose, to the extent of their respective knowledge of same, the existence of any default (other than the Unauthorized Construction Default), or any event or condition that with the passage of time and/or the giving of notice would become a default, under the Nashville Lease and the Taunton Lease. If the foregoing conditions to the Closing have not been satisfied by July 3, 2008 (the "Closing Condition Deadline"), then either the Tenant Debtors or the Landlords may terminate this Stipulation by written notice to the other party's counsel. Any notice served pursuant to the foregoing provision shall also be delivered to (i) counsel for the Official Committee of Unsecured Creditors of Quebecor World (USA), Inc., et al. (Ira Dizengoff and David H. Botter, Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022, (ii) counsel for the Prepetition Agent (Richard A. Levy and Peter P. Knight, Latham & Watkins, LLP, Sears Tower, Suite 5800, 233 South Wacker Drive, Chicago, Illinois 60606), and (iii) counsel for Ad Hoc Group of Quebecor Noteholders (Andrew N. Rosenberg and Elizabeth R. McColm, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019).

(f) Termination Fee. If the Nashville Purchase Option is exercised and the Taunton Purchase Option is not exercised or, if exercised, is not consummated in accordance with the terms of the Amended Taunton Lease (other than solely by reason of default by the Trustees), then upon termination of the Amended Taunton Lease (whether at the end of its stated term or earlier) there shall be paid to KDN, as the joint and several obligation of the Debtor Tenants, and in addition to any other amounts due under the Amended Taunton Lease, a termination fee equal to the amount of Fixed Rent under the Amended Taunton Lease for the Lease Year commencing July 11, 2009. If the Taunton Purchase Option is exercised and the Nashville Purchase Option is not exercised or, if exercised, is not consummated in accordance with the terms of the Amended Nashville Lease

(other than solely by reason of default by KDN), then upon termination of the Amended Nashville Lease (whether at the end of its stated term or earlier) there shall be paid to KDN, as the joint and several obligation of the Debtor Tenants, and in addition to any other amounts due under the Amended Nashville Lease, a termination fee equal to the amount of Fixed Rent under the Amended Nashville Lease for the Lease Year commencing July 11, 2009. For avoidance of doubt, no termination fee is payable if (a) both the Nashville Purchase Option and the Taunton Purchase Option are exercised and consummated in accordance with their terms (the Tenant Debtors may, in their sole and absolute discretion, determine to exercise of the Nashville Purchase Option and the Taunton Purchase Option at different times during the term of the respective Leases), or (b) neither the Nashville Purchase Option or the Taunton Purchase Option is exercised. Any termination fee that is payable pursuant to the Stipulation of Settlement shall not be a credit toward any obligation under or damages for breach of the Amended Nashville Lease or the Amended Taunton Lease, and shall be over and above such amounts as may be due under section 503(b)(7) of the Bankruptcy Code.

(g) Administrative Expense Priority. All obligations of a Debtor Tenant under the Stipulation of Settlement, the Amended Nashville Lease and/or the Amended Taunton Lease (including obligations that arise by exercise of the Nashville Purchase Option and/or the Taunton Purchase Option) that come due on or before the effective date of a Chapter 11 plan for such Debtor Tenant shall (without limiting any other remedies of the Landlords) constitute administrative expenses allowed under Section 503(b)(1)(A) of the Bankruptcy Code in respect of such Debtor Tenant.

(h) Superseded Matters. Subject to occurrence of the Closing, (a) the Stipulation of Settlement, together with the Amended Nashville Lease and the Amended Taunton Lease, shall constitute the full remaining relief to which (i) the Landlords are entitled under the Landlord Motions (including for any allegedly uncured defaults under the Nashville Lease or the Taunton Lease), and (ii) the Debtor Tenants are entitled under the Deadline Extension Motion as it relates to the Nashville Lease and the Taunton Lease, (b) the Debtor Tenants' exercise of the Purchase Options shall be of no further force and effect, and, accordingly, the Debtor Tenants' purported exercise of the Existing Renewal Options shall be of no further force or effect, and (c) the Purchase Price Process shall be terminated. Each party shall be responsible for compensating the appraiser designated by such party in connection with the Purchase Price Process.

(i) Pending Motions. Subject to the preceding paragraph (h), the Purchase Agreement Motion, the Lease Performance Motion and (solely as it relates to the Nashville Lease and the Taunton Lease) the Deadline Extension Motion shall remain pending through July 10, 2008, but shall be continued generally, subject to a request by either the Debtor Tenants or the Landlords for a hearing on all three motions to be scheduled on an emergency basis if the Stipulation of Settlement is terminated pursuant to paragraph (e) above or it otherwise appears that the Closing will not occur. In the event that either the Debtor Tenants or the Landlords request that a hearing on one or all of the Purchase Agreement Motion,

the Lease Performance Motion or the Deadline Extension Motion be scheduled, the deadline for any party to file an objection or response to any of said motions shall not be less than five (5) business days after notice of the proposed hearing is served.

Relief Requested and Basis Therefor

21. The Debtors request authorization to (i) assume the Leases, as amended, pursuant to section 365 of the Bankruptcy Code, (ii) execute the lease amendments pursuant to section 363 of the Bankruptcy Code and (iii) enter into the Stipulation of Settlement with the Landlords pursuant to section 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 9019.

Assumption of the Leases as Amended

22. Section 365 of the Bankruptcy Code authorizes a debtor to assume, assume and assign or reject its executory contracts and unexpired leases subject to the approval of the Court.

The relevant provisions of section 365 provide as follows:

Except as provided in . . . subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(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: cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

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 provides adequate assurance of future performance under such contract or lease

See 11 U.S.C. §§ 365(a) and (b)(1). Accordingly, section 365 of the Bankruptcy Code authorizes assumption of the Leases provided that defaults are cured and the debtor provides adequate assurance of future performance.

23. Courts approve motions to assume, assume and assign or reject executory contracts or unexpired leases where the debtor shows that its decision to take such action will

benefit the debtor's estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993) (section 365 of the Bankruptcy Code "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject"); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts under section 365 is that of "business judgment"); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) ("A bankruptcy court reviewing a trustee's decision to assume or reject an executory contract should apply its 'business judgment' to determine if it would be beneficial or burdensome to the estate to assume it.").

24. Courts generally will defer to a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See In re Dana Corp., 358 B.R. 567, 581 n.20 (Bankr. S.D.N.Y. 2007) ("A court may approve motions to assume, assume and assign or reject executory contracts upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment."); In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) ("The decision to assume or reject an executory contract is within the sound business judgment of the debtor-in-possession . . . and in reviewing such a decision the bankruptcy court merely 'reviews the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.'") (citing In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993)); In re Footstar, Inc., 323 B.R. 566, 568 (Bankr. S.D.N.Y. 2005) ("The standard to be applied by a court in determining whether an executory contract or unexpired lease should be assumed is the 'business judgment' test, which is premised upon the debtor's business judgment that assumption

would be beneficial to the estate.”); In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”).

25. The “business judgment” test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) (“In reviewing a debtor’s decision to assume or reject an executory contract, the court must examine the contract and circumstances and apply its best ‘business judgment’ to determine if the assumption or rejection would be beneficial or burdensome to the estate.”).

26. Whether a debtor has provided a counterparty with “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. In re Bygraph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective assignee of a lease from a debtor has financial resources to perform and has expressed a willingness to devote sufficient funding to its business to do so; chief determinant of adequate assurance under a lease is whether it appears that the rent will be paid).

27. Assumption of the Leases, as amended by the respective Lease Amendments, represents a sound exercise of the Debtors’ business judgment. The Leased Premises together comprise in excess of 256,000 square feet dedicated to the Debtors’ printing operations. As

noted above, relocating the operations currently based at the Leased Premises would require substantial lead-time to locate an appropriate alternative site, and would result in significant costs to the Debtors, both in terms of lost volume related to down-time and expenses associated with moving the equipment and inventory housed at the Leased Premises. Moreover, the Debtors operational needs are currently being met by the Leased Premises and the Debtors do not believe that there is any immediate benefit to rejecting the Leases and relocating to other premises.

28. Moreover, the Debtors and the Landlords have negotiated the terms of the Stipulation of Settlement and are in agreement on most of the material terms of the Nashville Amendment and the Taunton Amendment, such that assumption of the Leases, as amended by the respective Lease Amendments, will be with the consent of the Landlords. Accordingly, the requirements that the Debtors cure defaults and provide adequate assurance of future performance are satisfied pursuant to the parties agreement in the Stipulation of Settlement.

Approval of the Lease Amendments

29. The Debtors also request authorization pursuant to section 363 of the Bankruptcy Code to use property of their bankruptcy estates in connection with the payment of the Restructuring Fees and otherwise with respect to their entry into the Stipulation of Settlement, the Nashville Amendment and the Taunton Amendment.

30. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession to “use, sell, or lease, other than in the ordinary course of business, property of the estate” with court approval. 11 U.S.C. § 363(b)(1). A debtor in possession’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon its sound business judgment. See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that court considering a section 363(b) application must find a good business reason to grant such application); see also

Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (same); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (same); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is “good business reason”).

31. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Indeed, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently and appropriately have been reluctant to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld such decisions as long as they are attributable to any “rational business purpose.” In re Integrated Res., 147 B.R. at 656.

32. The Debtors have determined that entry into the Stipulation of Settlement, the Nashville Amendment and the Taunton Amendment is in their best interests and is essential to their business operations. Currently, the Debtors are in the position of either assuming the Leases and complying with their prepetition exercise of the Purchase Options thereunder, or rejecting the Leases, which would cause disruption to their business, force the Debtors to locate in excess of 256,000 square feet on short notice and give rise to potential rejection damages claims by the Landlords.

33. In contrast, the terms set forth in the Stipulation of Settlement will permit the Debtors to remain in the Leased Premises for an additional two years, with fixed-price purchase options that the Debtors may elect to exercise or decline in accordance with the terms set forth in the Stipulation of Settlement, which will be embodied in the Nashville Amendment and the Taunton Amendment. Accordingly, the Debtors request authorization to enter into and perform all of their obligations under the Stipulation of Settlement, the Nashville Amendment and the Taunton Amendment.

Abrogation of Stay Pursuant to Rule 6004(h)

34. With respect to approval of the Stipulation of Settlement, the Debtors request relief from the ten day stay imposed on orders approving the sale, use or lease of property under section 363 pursuant to Rule 6004(h). As noted above, under the Stipulation of Settlement the Landlords have agreed that they shall waive finality of the Approval Order as a condition to Closing if (i) no objection to the Motion seeking the Approval Order is filed, and (ii) the Approval Order specifies that there shall be no ten-day stay of thereof pursuant to Fed. R. Bankr. P. 6004(g). In addition, time is of the essence because if the conditions to the Closing have not been satisfied by July 3, 2008, then the Landlords may terminate the Stipulation of Settlement by written notice to the Debtor Tenants' counsel. Accordingly, the Debtors request a waiver of the stay approving entry into the Stipulation of Settlement, Nashville Amendment and Taunton Amendment pursuant to Rule 6004(h).

Approval of Stipulation of Settlement Pursuant to Bankruptcy Rule 9019

35. Approval of the Stipulation of Settlement is appropriate under the applicable standards governing approval of settlements under Bankruptcy Rule 9019. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement.” Fed. R. Bankr. P. 9019(a). Settlements and

compromises are “a normal part of the process of reorganization.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 428 (1968) (citing Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)).

36. To approve a compromise and settlement under Bankruptcy Rule 9019(a), a court should find that the compromise and settlement is fair and equitable, reasonable, and in the best interests of the debtor’s estate. See, e.g., In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id.* at 122. The court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Id.*; In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the bankruptcy court may exercise its discretion “in light of the general public policy favoring settlements.” In re Hibbard Brown & Co., Inc., 217 B.R. 41 (Bankr. S.D.N.Y. 1998); see also Shugrue, 165 B.R. at 123 (“the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above”).

37. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” In re WT. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983); see also Purofied Down Prods., 150 B.R. at 522 (“the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation”).

38. In deciding whether a particular settlement falls within the “range of reasonableness,” courts have considered the following factors: (i) the probability of success in the

litigation; (ii) the difficulties associated with collection; (iii) the complexity of the litigation, and the attendant expense, inconvenience and delay; and (iv) the paramount interests of creditors.

See, e.g., In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992).

39. “The ‘reasonableness’ of a settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not of fraud or collusions [sic].” Ionosphere Clubs, 156 B.R. at 428.

40. As is evident from the Landlord Motions and the Stipulation of Settlement, in the event that the Debtors and the Landlords are not able to reach a consensual resolution of the many issues related to and arising out of the Leases it is highly likely that the Debtors and the Landlords will be required to litigate a number of complex issues, including, among other things, the Landlords’ assertion that the Debtors are obligated to consummate the Purchase Options by July 10, 2008 and related request that the Court order the Debtors to assume or reject the Leases prior to such time. Such litigation, with its attendant costs and risks, is not in the best interests of the Debtors’ estates. Rather, it is in the best interests of the Debtors’ estates to resolve the Landlord Motions and the parties’ various claims and obligations under the Leases in the manner set forth in the Stipulation of Settlement.

41. The Stipulation of Settlement provides the Landlords with immediate relief with respect to those issues that are of pressing importance to them, including the outstanding Purchase Options, the Insurance Requirement and the Unauthorized Construction Default (as defined in the Stipulation), while at the same time, the Stipulation of Settlement avoids the need for the Debtors to decide whether or not to consummate the Purchase Options in the immediate future and provides the Debtors with the flexibility of a two year extension of the terms of the Leases and the

ability to exercise a purchase option under either, both, or neither of the Leases upon 60 days' notice.

42. Accordingly, the Debtors believe that the Stipulation of Settlement is fair and equitable resolution of the parties' disputes, well within the range of reasonableness, and in the best interests of the Debtors' estates.

Memorandum Of Law

43. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

44. Notice of this Motion has been provided to counsel to the Landlords and all parties on the Notice List as set forth in the Case Management Order. A copy of the Motion is also freely available on the website of the Debtors' proposed claim and noticing agent, Donlin, Recano & Company, Inc. at www.donlinrecano.com.

No Prior Request

45. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request an entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to (i) assume, as amended, the Nashville Lease and the Taunton Lease, (ii) amend the Nashville Lease and the Taunton Lease and (iii) enter into the Stipulation of Settlement.

Dated: June 9, 2008
New York, New York

Respectfully submitted,

/s/ Michael J. Canning
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*Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

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

In re

Quebecor World (USA) Inc., et al.,

Debtors.

Chapter 11

Case No. 08-10152 (JMP)
Jointly Administered

Honorable James M. Peck

ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 362, 363 AND 365 AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004, 6006 AND 9019 TO (I) ASSUME, AS AMENDED, (A) AN UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN NASHVILLE, TENNESSEE AND (B) AN UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN TAUNTON, MASSACHUSETTS, (II) AMEND (A) UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN NASHVILLE, TENNESSEE AND (B) UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN TAUNTON, MASSACHUSETTS AND (III) ENTER INTO A STIPULATION OF SETTLEMENT REGARDING LANDLORD'S MOTIONS WITH RESPECT TO UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY LOCATED IN NASHVILLE, TENNESSEE AND TAUNTON, MASSACHUSETTS

Upon the motion (the "Motion")* of the above-captioned debtors (collectively, the "Debtors") for the entry of an order substantially in the form of Exhibit A hereto, authorizing the Debtors to (i) assume, as amended, (a) an unexpired lease of non-residential real property located in Nashville, Tennessee (as defined in the Motion, the "Nashville Lease") and (b) an unexpired lease of non-residential real property located in Taunton, Massachusetts (as defined in the Motion, the "Taunton Lease," and together with the Nashville Lease, the "Leases"), (ii) amend (A) the Nashville Lease and (b) the Taunton Lease and (iii) enter into a Stipulation of Settlement regarding landlords' motions previously filed with this Court with respect to the Leases; the Court having reviewed the Motion and the Declaration of Jeremy Roberts in support of the

Motion; and having considered the statements of counsel at a hearing before the Court (the “Hearing”); and the Court having found that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion was appropriate under the circumstances, (e) the conditions for assumption of the Leases, as amended, under section 365 of the Bankruptcy Code, including the cure of any existing defaults thereunder to the extent required by the Landlords, have been or will promptly be satisfied by the Debtors, (f) the Debtors have provided the Landlords with adequate assurance of future performance under the Leases, (g) entry into the Lease Amendments and the Stipulation of Settlement and performance of the Debtors’ obligations thereunder are in the best interests of the Debtors and their bankruptcy estates and represent a sound exercise of the Debtors’ business judgment, (h) the terms of the Stipulation of Settlement are fair and reasonable under the circumstances, and (i) approval of the Settlement Agreement is in the best interests of the Debtors, their estate and creditors; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish grounds for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors, including QW Mid-South and QW RPC are authorized, pursuant to section 363 of the Bankruptcy Code, to take all steps necessary to execute and deliver the Nashville Amendment and the Taunton Amendment, and to perform all of the agreements, covenants and obligations of set forth in the Nashville Amendment and the Taunton Amendment,

* Capitalized terms not defined in this Order shall have the meaning ascribed to them in the Motion.

and take such additional actions as may be necessary in connection with entry into the Nashville Amendment and the Taunton Amendment.

3. The Debtors are authorized pursuant to 11 U.S.C. § 365 to assume the Leases, as amended, pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006. The Leases shall be deemed assumed and effective as of the date of the entry of this Order.

4. The Debtors, including QW Mid-South and QW RPC are authorized, pursuant to section 363 of the Bankruptcy Code, to take all steps necessary to execute and deliver the Stipulation of Settlement, and to perform all of the agreements, covenants and obligations set forth in the Stipulation of Settlement, and take such additional actions as may be necessary in connection with entry into the Stipulation of Settlement.

5. The ten day stay set forth in Bankruptcy Rule 6004(h) is hereby abrogated and this order shall be immediately effective and enforceable upon entry.

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

7. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June _____, 2008

United States Bankruptcy Judge