

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
PROXIM CORPORATION, et al.,¹) Case No. 05-11639 (PJW)
) (Jointly Administered)
Debtors.)

MOTION OF THE DEBTORS FOR AN ORDER: (I) APPROVING SALE BY DEBTORS OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE BANKRUPTCY CODE, (II) ASSUMING AND ASSIGNING CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

Proxim Corporation (“Proxim”), Proxim Wireless Networks, Inc., and Proxim International Holdings Inc. (collectively, the Debtors)² hereby move this Court (the “Sale Motion”) for entry of an Order (I) Approving Sale by Debtors of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests Pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code, (II) Assuming and Assigning Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief. The proposed sale is to Moseley Associates, Inc. (“Moseley”) pursuant to the terms of that certain *Asset Purchase Agreement* dated June 10, 2005 (the “Asset Purchase Agreement”) attached hereto as **Exhibit A**, or other successful bidder or bidders, if any (collectively, the “Successful Bidder”). In support of the Sale Motion, the Debtors respectfully state as follows:

¹ The Debtors are the following entities: Proxim Corporation, a Delaware corporation, Proxim Wireless Networks, Inc., a Delaware corporation, Proxim International Holdings, Inc., a Delaware corporation, and WirelessHome Corporation, a Delaware corporation.

² WirelessHome Corporation is not a party to the proposed sale.

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 363, and 365 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006, and 9014.

Background

3. On June 11, 2005 (the "Petition Date"), the Debtors (including WirelessHome Corporation) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee, examiner or committee has been appointed in any of the Debtors' chapter 11 cases.

A. Description Of The Debtors

5. Proxim is a provider of wireless networking equipment for wireless fidelity ("Wi-Fi") or wireless local area networks ("WLAN"), and broadband wireless networks or wireless wide area network ("WWAN") markets. Proxim is publicly traded on the Nasdaq stock exchange.

6. Proxim is the result of a merger that occurred in March 2002 between Western Multiplex Corporation and Proxim, Inc. Proxim is the Debtors' sole operating entity in the United States. Each of the other Debtors in these cases (including WirelessHome

Corporation) is a wholly owned subsidiary of Proxim and does not have any ongoing operations.

Prior to March 2002, Proxim operated as Western Multiplex Corporation, a designer and manufacturer of broadband wireless systems.

7. Proxim's business is currently focused on providing wireless solutions for the mobile enterprise, security and surveillance, last mile access, voice and data backhaul and municipal networks. Proxim serves these sectors of the wireless market by selling its systems to service providers, businesses and other enterprises, primarily indirectly through distributors, value-added resellers, products integrators and original equipment manufacturers, and to a lesser extent, directly to end customers.

8. Proxim's WLAN product portfolio is positioned to compete primarily in the following three Wi-Fi markets: (i) enterprise mobility, (ii) last-mile access, and (iii) municipal wireless networking.

9. Proxim's WLAN products in the enterprise mobility market provide wireless networks inside corporate campuses, production facilities, medical centers, universities and civic centers. Proxim's WLAN products in the last-mile access market connect end-users with a service provider's network enabling home subscribers to operate their desktops, laptops or handheld devices wirelessly within a residential home, multi-residential dwellings, business parks, school districts and rural communities. And lastly, Proxim's WLAN products in the municipal wireless networking market enable internet access in high-traffic public facilities or public hot spots such as airport terminals, hotels, convention centers, and cafes and further enable internet access to rural communities and urban networks such as providing wireless networks to governmental agencies across a city or county. These networks consist of access

points or bridges that serve as the link between the wire-line network and wireless users, and network interface cards for access devices.

10. Both the enterprise and municipal wireless network markets are experiencing significant growth and intensifying competition as mobile professionals increasingly require wireless access to corporate information. Enterprise customers for Proxim's Wi-Fi products span the education, retail, finance, health care, manufacturing, transportation industries as well as government.

11. The WWAN or broadband wireless market is split into two segments: license-exempt and licensed. Proxim primarily offers license-exempt broadband wireless products including both point-to-point and point-to-multipoint radios. Products in the WWAN market consist of broadband radio frequency equipment that delivers high speed voice and data communications over a wireless medium, and include point-to-point radios for voice and data backhaul or to connect two buildings, and point-to-multipoint radios that are used to connect multiple buildings in an enterprise campus or community as well as for public safety and last mile access applications. These products are positioned to compete in the enterprise mobility, last-mile access, municipal wireless networks, voice and data backhaul, and security and surveillance markets. Broadband wireless has quickly established itself in these markets as a strong network access alternative and as a complement to leased lines, cable and DSL for the delivery of data, voice, video and multimedia applications to both business and residential customers.

12. Proxim's operations resulted in total consolidated revenues for all business segments of approximately \$113.7 million for fiscal year 2004 and \$148.4 million for fiscal year

2003. Net losses for these years totaled approximately \$48.7 million in 2004 and \$127.4 million in 2003.

B. The Debtors' Principal Indebtedness

13. The Debtors have three tranches of principal indebtedness consisting of (1) first priority secured obligations to Silicon Valley Bank ("SVB"); (2) second priority secured obligations to Warburg Pincus Private Equity VIII, L.P. (individually and in its capacity as Collateral Agent under the Warburg Group Debt Documents, "Warburg"), BCP Capital, L.P., BCP Capital QPF, L.P. and BCP Capital Affiliates Fund LLC (collectively and individually, together with Warburg, the "Warburg Group"); and (3) unsecured obligations to trade vendors, lessors, and others.

14. The Debtors' outstanding obligations to SVB arise out of an accounts receivable financing agreement. As of the Petition Date, the Debtors do not have any outstanding obligations to SVB on account of advances under a line of credit, but are responsible for approximately \$1,575,000 in reimbursement obligations to SVB in connection with certain issued letters of credit. This indebtedness is secured by a first priority lien on substantially all of the Debtors' assets, including certain restricted cash.

15. The Warburg Group provided bridge financing to the Debtors in July 2004 in the form of convertible secured promissory notes (the "Bridge Notes"). The Debtors owe \$10.0 million in principal obligations under the Bridge Notes, which have a maturity date of June 30, 2005, and bear interest at the rate of 15% per annum. Under circumstances such as a material asset sale, the Bridge Notes will become due and payable upon demand by the holders for an amount equal to one hundred fifty percent (150%) of all unpaid principal and accrued

interest. The Debtors' obligations under the Bridge Notes are secured by a second priority lien (subordinate to SVB) on substantially all of the Debtors' assets.³

16. Proxim's remaining indebtedness consists of unsecured debt totaling approximately \$42.0 million, of which approximately \$17.8 million is on account of a settlement agreement with Symbol Technologies, Inc. ("Symbol") in connection with a patent infringement judgment against Proxim.

C. Need For Bankruptcy Relief /Prepetition Marketing Efforts

17. Proxim has incurred substantial losses and negative cash flows from its inception. As a result of operational and market forces, Proxim has suffered significant declines in revenues beginning in 2003. Proxim has also faced difficult and expensive patent infringement litigation with Symbol.

18. In light of Proxim's sustained operating losses and changes in the availability of funding from private and public capital markets, Proxim began to restructure its business operations in 2004 to reduce expenditures and conserve cash. Proxim has reduced the number of its employees from approximately 425 in January 2003 to its current level of approximately 254.

19. As its access to cash diminished, Proxim also began to consider various strategic options. In May 2004, Proxim retained Bear, Stearns & Co. Inc. ("Bear Stearns") as investment bankers in an effort to raise capital for the company. This effort was unsuccessful

³ The Bridge Notes were issued as part of an exchange transaction pursuant to which the Warburg Group agreed to exchange outstanding secured promissory notes. The pre-existing notes had an aggregate outstanding principal balance of \$40 million and accrued interest totaling \$9 million.

and, by late 2004, Proxim and Bear Stearns focused their efforts on actively marketing the Debtors' business for a possible sale or restructuring transaction.

20. Bear Stearns is a widely-recognized global investment banking, securities trading and brokerage firm that has been in business since 1923. Bear Stearns has extensive experience assisting companies such as Proxim in marketing their assets and maximizing value through strategic transactions.

21. Bear Stearns began its marketing efforts for the Debtors by participating in a series of meetings with the Debtors' management team to outline a marketing strategy. The critical tasks at the initial stage of the marketing effort included the preparation of management presentations, creating protocols for the sale process, outlining a timetable of critical events and deadlines, identifying potential buyers, coordinating the creation of an electronic due diligence room, conducting management interviews and on-site visits, and determining the specific assets available for sale. During this time frame, Bear Stearns obtained extensive data from the Debtors, including but not limited to:

- Historical and projected balance sheets, profit and loss statements, cash flow statements, and various other accounting records;
- Historical sales data by business segment, including gross margins, market share, and comparables;
- Asset data, including intellectual property and fixed assets, licenses, inventories, lease agreements, and capital improvements; and
- Details regarding the Debtors' liabilities, such as loan agreements and accounts payable schedules.

22. Bear Stearns worked with Proxim to prepare a management presentation that would be presented to potential buyers at in-person meetings or electronically for conference calls. Proxim and Bear Stearns completed two initial versions of the management presentation, one which contained all publicly available information and one which would be subject to signed confidentiality agreements. Bear Stearns later prepared a management presentation that targeted particular segments of Proxim's business.

23. The management presentation included a narrative of the Debtors' history and current status; details on Proxim's products, technology, customers and business strategy; and summary profit and loss statements, balance sheets, cash flow statements, sales data, and in some cases, expense schedules, property schedules, asset rankings and estimated valuations. In certain instances, the management presentation included detailed profit and loss projections based on various scenarios contemplating a combination of alternate operational structures or a debt restructuring. The management presentation was revised on an ongoing basis during the marketing process to keep the data as current as possible and also to customize the document for each potential buyer and its specific needs.

24. Over the course of its engagement, Bear Stearns compiled a list of 42 strategic and financial buyers and equity firms (including Moseley) that may have an interest in consummating a transaction with the Debtors. Bear Stearns initially contacted these parties by electronic mail and telephone. In general terms, each party initially approached by Bear Stearns was given the opportunity to purchase all of the Debtors' wireless networking business. Each potential buyer expressing interest in the Debtors' assets was sent a confidentiality agreement for signature. Upon execution, each party was provided with the management presentation that

included details about the Debtors and their operating performance. Delivery of the management presentation was followed immediately with an in-person meeting or conference call with all senior members of Proxim's management team to review the management presentation. On many occasions, the initial meeting was followed by a series of conference calls to allow Proxim's management to provide each potential buyer with specific information requested about the company's business or finances. While the various parties contemplated their involvement in the sale process, numerous follow-up conference calls took place between Bear Stearns and each of the parties to address their review of the Debtors' information and to answer additional questions or to respond to comments or concerns.

25. Initially, none of the potential buyers contacted by Bear Stearns expressed interest in acquiring the entirety of Proxim's business, but a number of potential buyers indicated an interest in acquiring specific assets of the company. In late February 2005, the Debtors and Bear Stearns modified their marketing strategy to include selling the business in segments, which resulted in a few additional potential buyers.

26. Of the 42 potential buyers ultimately contacted by Bear Stearns, 27 expressed no interest in pursuing a transaction. The remaining 15 potential buyers (which included Moseley) executed confidentiality agreements (or already had confidentiality agreements in place) and were sent additional information about the Debtors. Subsequent to reviewing this information, 10 potential buyers withdrew from the process.

27. Two potential buyers expressed formal interest in acquiring particular assets of the company. The proposals were presented to Proxim's board of directors, but rejected on the basis that the proposals did not provide sufficient value.

28. Two additional buyers (one of which was Moseley) made proposals through non-binding letters of intent to acquire substantially all of the assets of the company, either by way of a bankruptcy sale or an acquisition of stock outside of bankruptcy. Each of these bids was carefully scrutinized by the Debtors, and included specific focus on a number of factors including: (i) the cash versus debt component of the purchase price, (ii) the buyer's ability to fund the business; (iii) the buyer's ability to close the sale promptly in light of the Debtors' deteriorating financial condition; (iv) the buyer's experience in the Debtors' line of business and with the purchase of assets in distressed or bankruptcy situations; and (v) the likelihood that the buyer would actually close the transaction. At the same time, both of the potential buyers were given significant access to the Debtors to conduct further due diligence.

29. Proxim initially pursued negotiations with both parties on dual tracks in order to maximize the value of a transaction and ensure that a deal would be reached. Proxim subsequently entered into an exclusivity arrangement with Moseley and attempted to reach a definitive agreement for an out-of-court transaction. Ultimately, it became clear that no transaction could be accomplished outside of bankruptcy and that the highest and best value for the Debtors' assets could be realized from a bankruptcy sale to Moseley. The Debtors accepted Moseley's bid for the following reasons, among others:

- Provides for an all-cash purchase price;
- No financing contingencies;
- Possesses the best understanding of the Debtors' business;
- Holds significant prior purchase experience via the bankruptcy process;
- Brings the best capitalized sponsor to the transaction;

- Results in the most value to creditors; and
- Most likely to close the transaction.

30. Upon selecting Moseley as a “stalking horse” bidder in a contemplated bankruptcy case, the parties began negotiations on the terms of a definitive agreement for the sale.

31. On June 10, 2005, the Debtors and Moseley entered into the Asset Purchase Agreement, which contemplates the sale of the Debtors’ business as a going concern for a purchase price of \$21 million, subject to adjustments depending upon, among other things, the Debtors’ accounts receivable and inventory at closing. In order to provide Proxim with needed access to cash to fund its operations through a contemplated closing of the sale, Moseley has also agreed to provide debtor in possession financing to the Debtors in an amount of up to \$6 million, which would be taken as a credit against the purchase price.

32. The Debtors believe that the proposed going concern sale to Moseley is preferable to a liquidation. The sale will preserve over two hundred jobs worldwide and much of the Debtors’ going concern value. In addition, because the sale is expressly subject to overbids and an auction process, the Debtors believe that the sale will ensure that the maximum possible value is generated for the Debtors’ assets.

33. Given these obvious benefits to the estates, the Debtors determined, in the exercise of their business judgment, to file these chapter 11 cases in order to consummate the proposed sale.

Bidding Procedures

34. On June 16, 2005, the Debtors filed a *Motion For an Order*:

(A) Approving Sale Procedures and Overbid Protections in Connection with Proposed Sale of Substantially All Assets Owned by the Debtors; (B) Scheduling an Auction and Approving Notice of Respective Dates, Times and Places for Auction and For Hearing on Approval of (i) Sale and (ii) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Form of Notice and (D) Granting Related Relief (the "Sale Procedures Motion").

The Sale Procedures Motion seeks entry of a proposed order (the "Sale Procedures Order") that, *inter alia*, approves bidding procedures and buyer protections for the proposed sale and schedules the date, time and place for an auction on the Debtors' assets in the event that qualified competing bids are received.

The Asset Purchase Agreement

35. The principal terms of the proposed Asset Purchase Agreement with Moseley are summarized below:⁴

a. **Purchased Assets.** Substantially all of the Debtors' business assets, as set forth with more particularity in section 1.1 of the Asset Purchase Agreement, including all equipment, inventory, accounts receivable, intellectual property, interests in certain subsidiaries, customer and supplier lists, rights under Assumed Contracts, books and records,

⁴ The Asset Purchase Agreement is incorporated herein by reference. The description of the Asset Purchase Agreement set forth in this Sale Motion is a summary description only. To the extent the terms of this Sale Motion conflict with the terms of the Asset Purchase Agreement, the Asset Purchase Agreement will control. Capitalized terms used herein that are not otherwise defined herein shall have the same meaning as set forth in the Asset Purchase Agreement.

pre-paid deposits, certain rights of action, licenses or permits, cash in deposit accounts, and all other assets that are not Excluded Assets.

b. **Excluded Assets.** Excluded Assets, as set forth with more particularity in section 1.2 of the Asset Purchase Agreement, include certain avoidance actions, insurance policies, and professional retainers.

c. **Assumed Liabilities.** The only Assumed Liabilities, as set forth in section 1.3 of the Asset Purchase Agreement, are certain cure obligations under Assumed Contracts (as set forth in section 2.2(c) of the Asset Purchase Agreement) and any future liabilities arising under such contracts after the Closing Date. Except for the foregoing, Moseley will not assume any liabilities of the Debtors.

d. **Purchase Price.** \$21 million, less the following: (1) certain cure obligations expected to total approximately \$7 million (as set forth in section 2.2(c) of the Asset Purchase Agreement); (2) outstanding amounts owed to Moseley under a postpetition financing arrangement, and (3) certain adjustments depending on the Debtors' accounts receivable and inventory as of the Closing Date.

e. **Assignment of Contracts and Leases.** At Closing and pursuant to section 365 of the Bankruptcy Code, the Debtors shall assume and assign the Assumed Contracts to Moseley. The Assumed Contracts will include, *inter alia*, the Debtors' customer contracts, vendor agreements, and certain real property leases, as identified in Schedule 1.1(d) appended to the Asset Purchase Agreement. In accordance with the terms of the Asset Purchase Agreement and applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, the

Debtors and Moseley retain the rights to modify Schedule 1.1(d) to add or delete executory contracts or unexpired leases at any time through the Closing.

f. **Taxes.** The Debtors and Moseley shall each pay one-half of any and all transfer taxes or government charges in connection with the sale.

g. **Closing.** The Closing must occur by July 29, 2005, unless extended by mutual written agreement of the parties.

h. **Representations, Warranties and Covenants.** The Asset Purchase Agreement contains representations, warranties, covenants and other provisions that are generally similar to those contained in comparable asset sale transactions in bankruptcy.

i. **Conditions Precedent.** Moseley's obligation to close the sale is conditioned on, among other things: the accuracy of the Debtors' representations and warranties set forth in the Asset Purchase Agreement, the Debtors' compliance with their obligations under the Asset Purchase Agreement, entry of orders (in form and substance reasonably acceptable to Moseley) approving the Sale Procedures Motion and the Asset Purchase Agreement, Moseley reaching agreement with Symbol regarding assumption and assignment of its agreements with the Debtors and the cure amount payable in connection therewith, the Debtors reaching agreement with the Warburg Group regarding the allowed amount of its claim and payment of such claim out of the purchase price, each of the Debtors' key employees accepting employment with Moseley effective on the closing of the sale, and the absence of a Material Adverse Effect.

j. **Other Material Provisions.** The Asset Purchase Agreement requires the Debtors to seek approval of certain bidding procedures and buyer protections, including a Topping Fee in favor Moseley in the amount of \$630,000, which the Debtors have

done by virtue of the Sale Procedures Motion. The Asset Purchase Agreement also contains a limited no solicitation provision that prohibits the Debtors from soliciting or negotiating any alternative offer to purchase the Debtors' assets until entry of the Sale Procedures Order.

Relief Requested

36. By this Sale Motion, the Debtors request that this Court, *inter alia*, (a) authorize the sale of substantially all of the Debtors' assets to Moseley under the terms of the Asset Purchase Agreement or to the Successful Bidder of the Purchased Assets free and clear of all liens, claims, encumbrances or other interests pursuant to sections 363(b), (f) and (m) and 365 of the Bankruptcy Code, with such liens, claims, encumbrances and other interests to attach to the sale proceeds of the Purchased Assets with the same validity, priority and perfection as existed immediately prior to such sale and subject to any claims and defenses that the Debtors may possess, and (b) approve the assumption and assignment of the Assumed Contracts.

37. The Debtors also request that the order approving this Sale Motion shall, among other things:

a. approve and authorize the transactions contemplated in the Asset Purchase Agreement with Moseley or an alternative asset purchase agreement with the Successful Bidder;

b. include specific findings of fact and conclusions of law which, among other things, shall determine that: (i) the Purchased Assets to be acquired by Moseley under the Asset Purchase Agreement or the Successful Bidder will be purchased in good faith within the meaning of section 363(m) of the Bankruptcy Code and that such purchaser is entitled to the protections of such section; (ii) the Asset Purchase Agreement was negotiated in good

faith and from arms-length bargaining positions; (iii) none of the Debtors or Moseley has engaged in conduct that would permit the Asset Purchase Agreement or the transactions contemplated thereby to be voided under section 363(n) of the Bankruptcy Code; (iv) Moseley is not a successor to the Debtors or any other person except for the Assumed Liabilities; (v) that the Debtors timely and properly complied with all notice obligations set forth in the Sale Procedures Order and the Asset Purchase Agreement; (vi) the cure obligations under the Assumed Contracts are amounts agreed by Moseley and the counterparties to the Assumed Contracts, or as otherwise ordered by the Court; (vii) the sale of the Purchased Assets was conducted pursuant to a fair process and adequate notice of the opportunity to bid was provided by the Debtors; and (viii) the price to be paid for the Purchased Assets represents the highest or otherwise best offer therefor and constitutes reasonably equivalent value;

c. provide that the sale of the Purchased Assets pursuant to sections 363(b) and (f) of the Bankruptcy Code including, without limitation, the assignment pursuant to section 365 of the Bankruptcy Code of the Debtors' right, title and interest in the Assumed Contracts, shall be free and clear of all claims, liabilities, liens, encumbrances and other interests pursuant to sections 363(b) and (f) of the Bankruptcy Code, other than the Assumed Liabilities, with such liens, claims, encumbrances and other interests to attach to the sale proceeds of the Purchased Assets with the same validity, priority and perfection as existed immediately prior to such sale;

d. approve and direct (i) the assumption of the Assumed Contracts by the Debtors; (ii) the assignment of all such Assumed Contracts to Moseley or the Successful Bidder; and (iii) the cure of any defaults under all Assumed Contracts and the Cure Amounts

therefor and authorize and require payment by Moseley or the Successful Bidder of certain Cure Amounts (as set forth in section 2.2(c) of the Asset Purchase Agreement) on the Closing Date pursuant to sections 365(a), (b), (c), (f) and (k) of the Bankruptcy Code;

e. provide that (i) all counterparties to the Assumed Contracts shall have no recourse against Moseley or the Successful Bidder to satisfy any default by the Debtors (other than the Cure Amounts which Moseley is required to pay pursuant to section 2.2(c) of the Asset Purchase Agreement and any other Assumed Liabilities); (ii) the Debtors are a party to each of the Assumed Contracts (including by reason of a prior acquisition of the original party to such Assumed Contracts) and have the legal authority to convey all of the Debtors' rights in such Assumed Contracts to Moseley or the Successful Bidder; and (iii) all Assumed Contracts shall remain in full force and effect for the benefit of Moseley or the Successful Bidder notwithstanding any provision in such Assumed Contracts or applicable law that prohibits, restricts or conditions such assignment and transfer or terminates or modifies or permits a party other than the Sellers to terminate or modify such Assumed Contracts on account of such assignment and transfer;

f. provide that, except to the extent provided in the Asset Purchase Agreement, Moseley or the Successful Bidder shall have no liability or responsibility for any claim against or liabilities of the Debtors, other than the Assumed Liabilities;

g. provide that the Asset Purchase Agreement and the transactions and instruments contemplated thereby shall specifically be performable and enforceable against and binding upon and shall not be subject to rejection or avoidance by, the Debtors or any successor thereto; and

h. provide that Moseley or the Successful Bidder and the Debtors are authorized to close the sale immediately upon entry of an order approving this Sale Motion and there shall be no stay of such order pursuant to Rules 6004(g) or 6006(d).

Basis for Relief

38. Section 363(b) of the Bankruptcy Code provides that a debtor in possession, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” Under prevailing caselaw, a sale under section 363(b) requires that the Court “expressly find from the evidence presented . . . a good business reason” to approve the sale. Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); accord Stephens Industries, Inc. v. McClung, 789 F.2d 386, 389-90 (6th Cir. 1986); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

39. The Debtors believe that the present circumstances warrant approval of the proposed sale of the Purchased Assets to Moseley or the Successful Bidder. Simply stated, the Debtors are running out of money and must restructure their affairs to maximize value for creditors. The Debtors have determined that they can maintain their going concern value and realize the maximum possible return for their assets by selling their assets to Moseley or a higher bidder. The Debtors have engaged in a comprehensive effort to market their assets on a prepetition basis. The proposed sale will be further tested by the bidding procedures that the Debtors have requested this Court to approve. Based on these circumstances, the Debtors believe that the sale of the Purchased Assets to Moseley on the terms of the Asset Purchase

Agreement or to the Successful Bidder on higher or better terms is appropriate and represents the exercise of sound business judgment on the part of the Debtors.

40. The proposed sale also satisfies the requisites of section 363(f) of the Bankruptcy Code for a sale free and clear of all liens, claims, encumbrances and interests.

41. Section 363(f) of the Bankruptcy Code 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 nonbankruptcy 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 a 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).

42. Section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests.” The term “any interest,” as used in section 363(f), is not defined anywhere in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor, JV, 209 F.3d 252, 259 (3d Cir. 2000). In Folger Adam, the Third Circuit specifically addressed the scope of the term “any interest.” 209 F.3d at 258. The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only in rem interests in property,” the trend in modern cases is towards “a broader interpretation which includes other obligations that may flow from ownership of the property.” Id. at 258 (citing 3 COLLIER ON BANKRUPTCY 363.06[1]). As

determined by the Fourth Circuit in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in Folger Adam, the scope of 11 U.S.C. § 363(f) is not limited to in rem interests. Thus, the Third Circuit in Folger Adam stated that Leckie held that the debtors “could sell their assets under §363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” Folger Adam, 209 F.3d at 258.

43. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Debtors’ sale of the Purchased Assets free and clear of all security interests, liens, pledges, charges, options, rights of first refusal, claims, rights of offset, any other monetary encumbrances or other restrictions on the use or exercise of any attribute of ownership or other interests (collectively, the “Interests”). See Citicorp Homeowners Services, Inc. v. Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988).

44. The Debtors submit that each “Interest” can be satisfied in the instant cases by at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such Interest will be adequately protected by either being paid in full at the time of Closing, or by having such Interest attach to the net proceeds of the sale, subject to any claims and defenses that the Debtors may possess with respect thereto. The principal parties asserting Interests against the Purchased Assets are SVB, the Warburg Group, and Moseley. These parties are expected to consent to the proposed sale free and clear of their Interests. The Debtors accordingly request that the Purchased Assets be transferred to Moseley or the Successful Bidder

free and clear of all Interests, with such Interests to attach to the sale proceeds of the Purchased Assets with the same validity, priority and perfection as existed immediately prior to such sale.⁵

45. Courts have consistently held that a purchaser of a debtor's assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. See Ninth Avenue Remedial Group, 195 B.R. 7161, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); In re Johns-Manville Corp., 837 F.2d 89 (2d Cir.), cert denied, 488 U.S. 868 (1988) (channeling of claims to proceeds is consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); In re New England Fish Co., 19 B.R. 323 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale is also free and clear of Title VII employment discrimination and civil rights claims of debtors' employees); In re Hoffman, 53 B.R. 874 (Bankr. D.R.I. 1985), aff'd, 65 B.R. 985 (D.R.I. 1986) (transfer of liquor license free and clear of any interest is permissible even though the estate had unpaid taxes).

46. For obvious reasons, the very purpose of an order purporting to authorize the sale of the Purchased Assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from a debtor's pre-sale conduct. Under section 363(f) of the Bankruptcy Code, Moseley or the Successful Bidder is entitled to know that the Purchased Assets will not be subject to any latent claims that could be asserted after the proposed transaction is completed.

⁵ The Debtors' obligations to Moseley under a postpetition financing arrangement will be paid as a deduction to the purchase price.

47. Therefore, the Debtors request that this Court approve the sale of the Purchased Assets to Moseley or the Successful Bidder free and clear of all Interests or any successor liability relating thereto.

Good Faith Purchaser

48. The Debtors request that the Court designate Moseley or the Successful Bidder as a purchaser in “good faith” as such term is used in section 363(m) of the Bankruptcy Code. Such designation can be made by a bankruptcy court in the context of a sale of purchased assets of a debtor when it has been established that the proposed transaction is for fair value and is the result of arms’ length negotiation between the parties. See In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986).

49. The proposed sale of the Debtors’ assets is for fair value and is the result of arms’ length negotiations. The conditions to a good faith finding are therefore satisfied.

Authorization to Assume and Assign the Assumed Contracts

50. As required by the Asset Purchase Agreement, and in order to enhance the value to the Debtors’ estates (by curtailing potential administrative liability and rejection claims), the Debtors request approval, under section 365 of the Bankruptcy Code and as part of the sale of the Purchased Assets, to assume and assign the Assumed Contracts to Moseley or the Successful Bidder upon the closing of the sale. The Assumed Contracts are those that relate to the Purchased Assets and are identified as contracts or leases in Schedule 1.1(d) of the Asset Purchase Agreement (as such Schedule may be modified through the Closing) that need to be assumed by the Debtors and assigned to Moseley or to the Successful Bidder.

51. The Debtors further request that the Sale Order provide that the Assumed Contracts will be assigned to, and remain in full force and effect for the benefit of, Moseley or the Successful Bidder notwithstanding any provisions in the Assumed Contracts, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment. The cure amounts payable in connection with assumption and assignment of the Assumed Contracts will be identified in a schedule to the Asset Purchase Agreement that will be filed with the Court at least eighteen days prior to the hearing on this Sale Motion, but such list remains subject to amendment up until the Closing of the sale.

52. Section 365(f) of the Bankruptcy Code 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).

53. 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 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).

54. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession's decision to assume an executory contract, courts have consistently applied a "business judgment" test when reviewing such a decision. See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 318 U.S. 523, 550 (1953); Matter of Talco, Inc., 558 F.2d 1369, 1173 (10th Cir. 1977). A debtor satisfies the "business judgment" test when it determines, in good faith, that assumption of an executory contract will benefit the estate and unsecured creditors. In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D. N.Y. 1986). The assumption and assignment of the Assumed Contracts, or any of them, set forth in the Asset Purchase Agreement is a necessary part of the proposed sale of the Debtors' assets and, as stated above, will benefit these estates. Accordingly, the Debtors submit that assumption and assignment of the Assumed Contracts is in the best interests of the estates and constitutes a sound exercise of the Debtors' business judgment.

55. In accordance with section 365(b)(1) of the Bankruptcy Code, Moseley or the Successful Bidder shall be obligated to cure any defaults associated with the Assumed Contracts, subject to section 2.2(c) of the Asset Purchase Agreement.

56. At the hearing on this Sale Motion, the Debtors will establish that Moseley or the Successful Bidder can provide adequate assurance of future performance under the Assumed Contracts. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “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 Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). The Debtors will meet this standard by showing that Moseley or the Successful Bidder is adequately funded and has the financial wherewithal to fully perform its obligations under the Assumed Contracts.

57. Consequently, assumption and assignment of the Assumed Contracts as part of the sale of the Purchased Assets is appropriate under the circumstances and should be approved

Conclusion

58. The proposed sale of the Purchased Assets as described in this Sale Motion, including the transfer of the Assumed Contracts, is proper, necessary and serves the best interests of the Debtors, their creditors, and their estates. The relief requested in this Sale Motion will maximize recoveries and allow the Debtors to reorganize their affairs. Thus, the Debtors request that the Court approve the proposed sale as requested herein, including the assumption and assignment of the Assumed Contracts.

Notice

59. The Debtors will serve notice of this Sale Motion in accordance with the Sale Procedures Order and the Asset Purchase Agreement. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

60. No prior request for the relief sought in this Sale Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: June 27, 2005

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[Proposed] Counsel for Debtors and Debtors in
Possession

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

In re:

PROXIM CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 05-11639 (PJW)
(Jointly Administered)

ORDER: (I) APPROVING SALE BY DEBTORS OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE BANKRUPTCY CODE, (II) ASSUMING AND ASSIGNING CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 27, 2005, (the "Motion") of Proxim Corporation, Proxim Wireless Corporation and Proxim International Holdings, Inc., (collectively, the "Sellers," or the "Debtors"), as debtors and debtors in possession, for, among other things, entry of an order pursuant to 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 (the "Sale Order") (i) authorizing the Debtors' sale (the "Sale") of the Purchased Assets, pursuant to and as described in the Asset Purchase Agreement, dated as of June 10, 2005, and annexed hereto as **Exhibit A**,² including all Schedules and Exhibits (as they may be amended, in accordance with the terms thereof, the "Purchase Agreement"), among the Debtors, as Sellers and Moseley Associates, Inc. and its assignees and designees, as Purchaser (the "Purchaser"), free and clear of all liens, claims, encumbrances, and interests (as hereinafter defined collectively as "Interests"), with such Interests to transfer, affix, and attach to the proceeds of the Sale, all as

¹ The Debtors are the following entities: Proxim Corporation, a Delaware corporation, Proxim Wireless Networks, Inc., a Delaware corporation, Proxim International Holdings, Inc., a Delaware corporation, and WirelessHome Corporation, a Delaware corporation.

² Capitalized terms not defined herein shall have the meanings set forth in the Purchase Agreement.

more fully set forth herein; (ii) approving the Purchase Agreement; (iii) authorizing the assumption, assignment, and sale of certain executory contracts and unexpired leases (the "Purchased Contracts") pursuant to and as provided for in the Purchase Agreement and fixing or establishing the procedures to fix all amounts, if any, required to be paid or escrowed pending resolution of disputes concerning such amounts in connection with the assumption of the Purchased Contracts pursuant to 11 U.S.C. § 365(b)(1)(A) and (B) (the "Cure Amounts") and (iv) authorizing the exemption of the Sale from stamp and similar taxes; and the Court having entered an Order, dated June [], 2005 (the "Bidding Procedures Order"), authorizing the Debtors to conduct an auction and approving the terms and conditions thereof (the "Auction") to consider higher or otherwise better offers for the Purchased Assets and approving (a) the procedures for the submission of competing bids, (b) the form and manner of notice of the Auction, (c) the Motion, in part, and (d) the Topping Fee; and a hearing on the Motion having been held on July 20, 2005 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered (i) the Motion, (ii) the objections thereto, if any, (iii) the arguments of counsel made, and the evidence proffered or 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 parties in interest; and upon the record of the Sale Hearing and these cases; and after due deliberation thereon; and good cause appearing therefor, 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 Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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

C. The court has jurisdiction over this Motion and the transactions contemplated by the Purchase Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105, 363, and 365 of 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014.

E. As evidenced by the affidavits of service previously filed with the Court (i) proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Bidding Procedures Order, the Bidding Procedures, the Sale Hearing, the Sale and the assumption, assignment, and sale of the Purchased Contracts has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code, Fed. R. Bankr. P. 2002, 6004, and 9014, the Bidding Procedures Order and the Purchase Agreement, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Auction, the Bidding Procedures Order, the Bidding Procedures, the Sale Hearing, the Sale, or the assumption, assignment and sale of the Purchased Contracts is or shall be required.

F. Each Debtor (i) has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale of the Purchased 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 Purchase Agreement, and (iii) has taken all company action necessary to authorize and approve the Purchase Agreement and the consummation by such Debtors of the transactions contemplated thereby,

G. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtors to consummate such transactions.

H. Emergent circumstances and sound business reasons exist for the Debtors' Sale of the Purchased Assets pursuant to the Purchase Agreement. Entry into the Purchase Agreement and consummation of the transactions contemplated thereby 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 Purchased Assets pursuant to sections 105 and 363 of the Bankruptcy Code. Such business reasons include, but are not limited to, the following: (i) there is substantial risk of deterioration of the value of the Purchased Assets if the Sale is not consummated quickly; (ii) the Purchase Agreement constitutes the highest and best offer for the Purchased Assets; and (iii) the Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the Purchased Assets on a going-concern basis and avoid decline and devaluation of the Debtors' business.

I. The Purchase Agreement and the transactions contemplated by the Purchase Agreement were negotiated and have been and are undertaken by the Sellers and Purchaser at arm's length, without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. [No higher and better Qualified Bid other than the Bid by Moseley was made and, therefore, no auction was conducted. **[OR]** Because at least one Qualified Bid, other than the Bid by Moseley, has been received, an auction (the "Auction") was conducted in accordance with the Bidding Procedures Order on July 13, 2005, at which Purchaser was declared the highest and best bidder, was conducted in good faith within the meaning of section 363(m) of the Bankruptcy Code.] As a result of the foregoing, the Sellers and Purchaser are entitled to the protections of section 363(m) of the Bankruptcy Code.

J. 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 to be avoided under, section 363(n) of the Bankruptcy Code.

K. The consideration provided by the Purchaser for the Purchased Assets is the highest and otherwise best offer received by the Debtors and is fair and reasonable. A sale of the Purchased Assets other than one free and clear of Interests would impact materially and adversely on 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 Purchase Agreement is in the best interests of the Debtors, their estates, creditors, and all parties in interest.

L. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (ii) the Purchaser; (iii) the official committee of unsecured creditors appointed in these chapter 11 cases (the "Committee"); (iv) all entities that may have an interest in a transaction with respect to the Purchased Assets; (v) all entities known to have asserted any Interests in, upon or against the Purchased Assets or the Debtors; (vi) all Persons listed on Schedule [] to the Purchase Agreement; (vii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (viii) all parties to Purchased Contracts; (ix) the United States Attorney's office; (x) the Securities and Exchange Commission; (xi) the Internal Revenue Service; (xii) Federal Trade Commission; and (xiii) all entities on the Master Service List.

M. The Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

N. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all Interests, including but not limited to claims otherwise arising under doctrines of successor liability.

O. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors,

their estates, and their creditors, if the sale of the Purchased Assets to the Purchaser and the assignment of the Purchased Contracts to the Purchaser was not free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of such Interests, including, without limitation, the Excluded Liabilities.

P. The Debtors may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-debtor parties to Purchased Contracts which did not object, or which withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of Interests and (ii) non-debtor parties to Purchased Contracts who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they assert an Interest.

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

R. The Purchaser has (i) cured, or has provided adequate assurance of cure, of any default existing prior to the Closing under any of the Purchased Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from

a default prior to the date hereof under any of the Purchased Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The Purchaser has provided adequate assurance of its future performance of and under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

S. Approval of the Purchase Agreement and assumption, assignment, and sale of the Purchased Contracts and consummation of the Sale of the Purchased Assets at this time are in the best interests of the Debtors, their creditors, their estates, and all parties in interest.

For all of the foregoing and after due deliberation, the Court ORDERS, ADJUDGES, AND DECREES THAT:

General Provisions

1. The Motion is granted, as further described herein.
2. All objections and responses concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the 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.

Approval of the Purchase Agreement

3. The Purchase Agreement, and all of the terms and conditions thereof, is approved.
4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and comply with the terms of the Purchase Agreement, and consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.
5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions as may be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the

Purchaser or reducing to possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

6. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of any Debtor, all governmental entities (including the Federal Trade Commission), all non-debtor parties to the Purchased Contracts, all successors and assigns of the Purchaser, the Debtors and their affiliates and subsidiaries, the Purchased Assets, and any subsequent trustees appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Purchase Agreement or this Sale Order.

Transfer of Assets

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

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

9. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Interests in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior, to the Closing, in proper form for filing and executed by the appropriate parties, termination statements,

instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then the Purchaser is authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Purchased Assets of any kind or, nature whatsoever.

Assumption, Assignment, and Sale to Purchaser of Purchased Contracts

10. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtors' assumption, assignment and sale to the Purchaser, and the Purchaser's assumption on the terms set forth in the Purchase Agreement, of the Purchased Contracts identified on **Exhibit B** hereto is approved, and the requirements of section 365(b)(i) of the Bankruptcy Code with respect thereto are deemed satisfied. In accordance with the terms of the Asset Purchase Agreement and all other applicable provisions of the Bankruptcy Code, the Debtors and the Purchaser retain the right to modify **Exhibit B** to add or delete executory contracts or unexpired leases or otherwise amend such exhibit at any time through the Closing.

11. The Debtors are authorized and directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, conditioned and effective upon the Closing of the Sale, the Purchased Contracts free and clear of all Interests of any kind or nature whatsoever and (ii) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Purchased Contracts and Assumed Liabilities to the Purchaser.

12. With respect to the Purchased Contracts: (i) each Purchased Contract is an executory contract or unexpired lease of the Debtors under section 365 of the Bankruptcy Code; (ii) the Debtors may assume each Purchased Contract in accordance with section 365 of the Bankruptcy Code; (iii) the Debtors may assign each Purchased Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Purchased Contract that prohibit or condition the assignment of such Purchased Contract or allow the non-debtor party to

such Purchased Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Purchased Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (iv) the Purchased Contracts shall be transferred and assigned to, and following the Closing of the Sale remain in full force and effect for the benefit of, Purchaser in accordance with their respective terms, notwithstanding any provision in any such Purchased Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer; (v) the Debtors are a party to each of the Assumed Contracts (including by reason of a prior acquisition of the original party to such Assumed Contracts) and have the legal authority to convey all of the Debtors' rights in such Assumed Contracts to Purchaser or the Successful Bidder; (vi) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Purchaser of each Purchased Contract have been satisfied; and (vii) upon Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract.

13. Subject to the procedures set forth in paragraphs 14 and 15, the Cure Amounts set forth on Exhibit B are the true, correct, final, and fixed amounts, and are the only amounts that are required to be paid upon assumption of the Purchased Contracts pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code. The Purchaser is authorized and directed to pay such amounts under sections 105, 363(b), and 365 of the Bankruptcy Code and the terms of the Asset Purchaser Agreement (including without limit section 2.2(c)). Except for the procedures set forth in paragraphs 15 and 16, the Cure Amounts shall not be subject to further dispute or audit, including any based on performance prior to the time of assumption, assignment, and sale, irrespective of whether such Purchased Contract contains an audit clause.

14. Purchaser has demonstrated adequate assurance of future performance with respect to the Purchased Contracts and has satisfied the requirements of the Bankruptcy

Code, including, without limitation, sections 365(b)(1) and (3) and 365(f)(2)(B) to the extent applicable.

15. There shall be no rent accelerations, assignment fees, increases or any other fees charged to Purchaser as a result of the assumption, assignment and sale of the Purchased Contracts. The validity of the assumption, assignment and sale to Purchaser shall not be affected by any dispute between any of the Debtors or their affiliates and another party to an Purchased Contract regarding the payment of any amount, including any cure amount under the Bankruptcy Code. The Purchased Contracts, upon assignment to Purchaser, shall be deemed valid and binding, in full force and effect in accordance with its terms.

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

17. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all parties to the Purchased Contracts are forever barred and enjoined from raising or asserting against Purchaser any assignment fee, default, breach, claim, or pecuniary loss, or condition to assignment, arising under or related to the Purchased Contracts existing as of the Closing under the Purchase Agreement or arising by reason of the Closing under the Purchase Agreement. Except as provided in the Purchase Agreement or this Sale Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, their property or their assets or estates.

Additional Provisions

18. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law and may not be avoided under section 363(n) of the Bankruptcy Code.

19. On the Closing of the Sale, all parties are authorized and directed to execute such documents and take all other actions as may be necessary to release their Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

20. This Sale Order (i) shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing as to the Debtors or the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

21. Except as otherwise expressly provided in the Purchase Agreement, Purchaser shall have no obligation to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans) or any other payment to employees of the Debtors. Purchaser shall have no liability with respect to any collective bargaining agreement, employee pension plan, employee welfare or retention, benefit and/or incentive plan to which any Debtors are a party and relating to the Purchased Assets (including, without limitation, arising from or related to the rejection or other termination of any such agreement), and Purchaser shall in no way be deemed a party to or assignee of any such agreement, and no employee of Purchaser shall be deemed in any way covered by or, a party to any such agreement, and all parties to any such agreement are enjoined from asserting against Purchaser any and all claims arising from or relating to such agreement. Any and all notices, if any, required to be given to the Debtors' employees pursuant to the Workers Adjustment and Relocation Adjustment Act (the "WARN Act"), or any similar

federal or state law, shall be the sole responsibility and obligation of the Debtors and Purchaser shall have no responsibility or liability therefore.

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

23. All entities who are presently, or on the Closing may be, in possession of any or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing.

24. Except for the Assumed Liabilities or as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Sale Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets other than for the Assumed Liabilities. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Purchase Agreement, to the extent allowed by law, the Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character including, but not limited to, any such liability that may be imposed by statute (e.g., under so-called "bulk-sale" laws) or any theory of antitrust, environmental, products liability, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing.

25. Under no circumstances shall the Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Purchased Assets of any kind or nature whatsoever. The sale, transfer, assignment, and delivery of the Purchased Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and

continue to be obligations of, the Debtors. All Persons holding Interests against or in the Debtors or the Purchased Assets of any kind or nature whatsoever (including but not limited to, the Debtors and/or their respective successors, including any trustee's thereof, creditors, employees, unions, former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against the Purchaser, its property, its successors and assigns, or the Purchased Assets, as an alleged successor or otherwise, with respect to any Interest of any kind or nature whatsoever such Person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Purchased Assets. Following the Closing, no holder of an Interest in the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interest, or any actions that the Debtors may take in their chapter 11 cases.

26. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to the Purchaser, (ii) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (iii) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (iv) interpret, implement, and enforce the provisions of this Sale Order, (v) protect the Purchaser against (a) any of the Excluded Liabilities or (b) any Interests in the Debtors or the Purchased Assets, of any kind or nature whatsoever, attaching to the proceeds of the Sale, and (vi) resolve any disputes arising from the assumption, assignment, and sale of the Purchased Contracts to the Purchaser; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Purchase Agreement or this Sale Order, such abstention, refusal,

or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter; provided further however, that nothing in this Sale Order shall contravene any provisions in the Purchase Agreement concerning the processes for dispute resolution.

27. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale of the Purchased Assets to the Purchaser (including the assumption, assignment, and sale of any of the Purchased Contracts), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

28. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, and all parties in interest, the Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an Interest in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code or, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding.

29. The provisions of this Sale Order and the terms and conditions of the Purchase Agreement shall be binding upon, fully enforceable against and inure to the benefit of any trustee, responsible officer or other fiduciary appointed in any of the Debtors' chapter 11 cases under any section of the Bankruptcy Code or any applicable law. Such binding effect is an integral part of this Sale Order.

30. The failure specifically to include any particular provisions of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such

provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

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

32. The stay of orders authorizing the (i) use, sale, or lease of property as provided for in Fed. R. Bank. P. 6004(g) and (ii) assignment of an executory contract or unexpired lease as provided for in Fed. R. Bank. P. 6006(d) shall not apply to this Sale Order, and this Sale Order is immediately effective and enforceable.

Dated: June _____, 2005

UNITED STATES BANKRUPTCY JUDGE