

11-14-2003  
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To the Honorable Commissioner of Patents and Trademarks: *Please*

original documents or copy thereof.

1. Name of conveying party(ies):

**HARRIS TRUST AND SAVINGS BANK**

- Individual(s)                       Association
- General Partnership               Limited Partnership
- Corporation-State -- **Illinois**
- Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment                               Merger
- Security Agreement                   Change of Name
- Other **Release of Security Interest**

Execution Date: October 17, 2001

2. Name and address of receiving party(ies):

Name: **DRAKE ACQUISITION COMPANY**

Internal Address: \_\_\_\_\_

Street Address: 6523 North Galena Road

City: Peoria State: IL Zip: 61632

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State **a Colorado Corporation**
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

**895,688      909,593      1,376,289**

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Robert E. Burwell, Esq.

Internal Address: Latham & Watkins LLP

Street Address: 701 B. Street, Suite 2100

City: San Diego State: CA Zip: 92101

6. Total number of applications and registrations involved:.....

**3**

7. Total fee (37 CFR 3.41).....\$ 90.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number

500524 (For additional fees, if any)

(Attach duplicate copy of this page if paying by deposit account)

**DO NOT USE THIS SPACE**

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Patricia A. Conner  
Name of Person Signing

*Patricia A. Conner*  
Signature

November 10, 2003  
Date

Total number of pages including cover sheet, attachments, and document: **22**

11/13/2003 LUMELLER 00000209 895688

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

01 FC:8521                      40.00 OP  
02 FC:8522                      50.00 OP

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 )  
MBC GREENHOUSE CO., et al. )  
 )  
 )  
 )  
Debtors. )

Chapter 11  
Case No. 01-02178 (RRM)  
(Jointly Administered)

NOTIFIED:  
AS A TRUE COPY:  
ATTEST:

DAVID D. BIRD, CLERK  
U.S. BANKRUPTCY COURT  
BY: *Michelle Bankable*  
Deputy Clerk 10/18/01

**AMENDED ORDER PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) OF THE BANKRUPTCY CODE (I) AUTHORIZING THE SALE OF THE DEBTORS' GIFT GROUP ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSES AND UNEXPIRED LEASES IN CONNECTION WITH SUCH SALE [RE DOCKET NO. 320]**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors seeking, among other things, entry of an order pursuant to sections 105(a), 363, 365 and 1146(c) of title 11 of the United States Code (the "Bankruptcy Code") (i) authorizing the sale of certain assets of the Gift Group free and clear of liens, claims, encumbrances and interests and (ii) authorizing the assumption and assignment of certain executory contracts, licenses and unexpired leases in connection with the sale of certain of the Debtors' Gift Group assets; and the Court having entered an order on August 23, 2001, (the "Bidding Procedures Order") approving the Bidding Procedures, the Bid Protection, and the form of the Asset Purchase Agreement; and the Auction having been held on

<sup>1</sup> The following entities are Debtors: MBC Greenhouse Co., Drake Acquisition Company, Flower of the Month Company, Foster & Gallagher, Inc., Gurney Seed & Nursery Corp., Health Group, Inc., HearthSong, Inc., Henry Field Seed & Nursery Company, Home Marketplace, Inc., Learn & Play, Inc., Magic Cabin Dolls, Inc., Michigan Bulb Company, mySEASONS.com, Inc., mySEASONS Holdings, Inc., New Holland Bulb Co., NEWCO Holdings, Inc., Sand Lake Realty, Co., Spring Hill Nurseries Company, Stark Bro.'s Wholesale Co., Stark Brothers Nurseries and Orchards Company, Stark Nursery Co. (d/b/a Agri Sun), and Vermont Wildflower Farm, Inc.

<sup>2</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion and the Asset Purchase Agreement.

September 11, 2001; and Brecon Capital Company, LLC (together with any designee thereof, the "Successful Bidder") having been determined by the Debtors, after consultation with the Agent and the Committee, to have submitted the highest and best bid at the Auction for the assets; and the Sale Hearing having been held on September 19, 2001; and the Debtors having submitted into evidence the transcript of the Auction at the Sale Hearing; and all interested parties having been afforded 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, and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and it appearing that the relief requested in the Motion and approval of the sale of the assets identified in the Asset Purchase Agreement attached hereto as Exhibit X (the assets, "Gift Group Assets", the sale of the Gift Group Assets and all transactions related thereto are collectively the "Sale") and the assumption and assignment of some or all of the list of executory contracts, licenses and unexpired leases attached hereto as Exhibit Y (the "Agreements" and the Agreements that are assumed by the Debtors and assigned to the Successful Bidder by the Debtors, in consultation with the Successful Bidder are the "Assigned Agreements") and the assumption of the liability for the

payment of any cure amounts associated with the Assigned Agreements (the "Cure Amounts") listed in Exhibit Y, any other liabilities assumed by the Successful Bidder pursuant to the Assigned Agreements and any other liabilities assumed by the Successful Bidder pursuant to the terms of this Sale Order (the "Assumed Obligations") is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and upon the record of the Sale Hearing, the Auction and these cases and after due deliberation and sufficient cause appearing therefor, it is hereby:

**FOUND AND DETERMINED AS FOLLOWS:**<sup>3</sup>

1. The statutory predicates for the relief sought in the Motion are sections 363, 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014.
2. As evidenced by the affidavit of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the Sale, the assumption and assignment to the Successful Bidder of the Assigned Agreements through the Cure Notice and the identity of the Successful Bidder through the Successful Bid Notice has been provided in accordance with sections 102(l), 363, and 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014; (ii) such notice was reasonable, sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Auction, Sale Hearing, the

<sup>3</sup>Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.  
28605-001\DOCS\_DE:30673.2

assumption and assignment of the Assigned Agreements or the identity of the Successful Bidder is or shall be required. The Debtors did not select a Second Best Bidder or Second Best Bid.

3. A reasonable opportunity to object or be heard with respect to the Motion, the identity of the Successful Bidder, the assumption and assignment of the Assigned Agreements and the relief requested in the Motion has been afforded to all interested persons and entities.

4. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors have adequately marketed the Gift Group Assets and the Assigned Agreements and conducted the sale process in compliance with the Bidding Procedures Order.

5. Each Debtor (i) has full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby for the Sale, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement, (iii) expects to take all corporate action necessary to authorize and approve the Asset Purchase Agreement and the consummation by such Debtor of the transactions contemplated thereby.

6. The Debtors have demonstrated sound business justifications for the Sale pursuant to section 363(b) of the Bankruptcy Code prior to, and outside the context of, a plan of reorganization in that, among other things, their Gift Group Assets are deteriorating in value and the Debtors are unable to restructure or reorganize their operations.

7. The Debtors have acknowledged that the Lenders have a perfected security interest in substantially all of the Debtors' assets, including substantially all of the Gift Group Assets.

8. The Debtors and the Successful Bidder negotiated, proposed and entered into the Asset Purchase Agreement without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Successful Bidder have engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. The Successful Bidder is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

9. The consideration provided by the Successful Bidder for the Gift Group Assets pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Gift Group Assets, (iii) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practical available alternative and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including, but not limited to, statutes governing fraudulent conveyance and fraudulent transfer).

10. The transfer of the Gift Group Assets to the Successful Bidder will be a legal, valid, and effective transfer of the Gift Group Assets, and will vest the Successful Bidder with all rights, title and interest of the Debtors in the Gift Group Assets, free and clear of all liens, claims,

encumbrances, pledges, mortgages, security interests, charges, options, and other interests (collectively, the "Interests") other than the Assumed Obligations, including, but not limited to, those (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or the Successful Bidder's interest in the Gift Group Assets, or any similar rights, and (ii) relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the date (the "Closing Date") of the consummation of the Asset Purchase Agreement (the "Closing").

11. The Successful Bidder may not have entered into the Asset Purchase Agreement and may not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Gift Group Assets to such Successful Bidder is not free and clear of all Interests other than the Assumed Obligations, or if the Successful Bidder would, or in the future could, be liable for any of the Interests and if the assignment of the Assigned Agreements could not be made under section 365 of the Bankruptcy Code.

12. The Debtors may sell the Gift Group Assets free and clear of all Interests of any kind or nature whatsoever (other than the Assumed Obligations) because one or more of the standards set forth in section 363(f) of the Bankruptcy Code have been satisfied. Those (i) holders of Interests and (ii) non-debtor parties to Agreements who did not object or who 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 Agreements 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 proceeds of the Sale ultimately attributable to the property against or in which they claim or may claim an Interest.

13. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume Assigned Agreements and assign them to the Successful Bidder and the assumption and assignment of the Assigned Agreements is in the best interests of the Debtors, their estates, and their creditors. The Assigned Agreements being assigned to, and the liabilities being assumed by, the Successful Bidder are an integral part of the Gift Group Assets being purchased by the Successful Bidder. Accordingly, such assumptions and assignments of Assigned Agreements and the Assumed Obligations are reasonable, enhance the value of the Debtors' estates and do not constitute unfair discrimination.

14. The Debtors and the Successful Bidder (i) have provided adequate assurance of the Successful Bidder's future performance under the Assigned Agreements, within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code, (ii) will cure, or have provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assigned Agreements within the meaning of section 365(b)(1)(A) of the Bankruptcy Code and (iii) will provide 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 Assigned Agreements, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code.

15. Approval of the Asset Purchase Agreement and the assumption and assignment of the Assigned Agreements and the consummation of the Sale at this time is in the best interests of the Debtors, their creditors, their estates and other parties in interest.

16. The Cure Amounts are the true and correct amounts necessary to cure any existing defaults under the Assigned Agreements and the Successful Bidder shall be liable for payment of all such Cure Amounts (or for the payment of such lower amount as it may agree with any non-debtor party to any Assigned Agreement).

Now, therefore, based upon the foregoing findings of fact, it is hereby:

ORDERED that the Motion is granted as further described herein; and it is further

ORDERED that, except as provided in the subsequent ordered paragraph, all objections to the Motion or the relief requested therein, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits; and it is further

ORDERED that the objections of the parties to executory contracts, licenses and unexpired leases not listed as Agreements in Exhibit Y are preserved to the extent that the Successful Bidder seeks to acquire such executory contracts, licenses or unexpired leases; and it is further

ORDERED that, pursuant to section 363(b) of the Bankruptcy Code, the Debtors

are authorized and directed to consummate the Sale pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement; and it is further

ORDERED that the Debtors are authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement, and to take all further actions as may be requested by the Successful Bidder for the purpose of assembling, assigning, transferring, granting, conveying and conferring to the Successful Bidder or reducing to possession, the Gift Group Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement; and it is further

ORDERED that, except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, pursuant to sections 105(a), 363(b) and 363(f) of the Bankruptcy Code, the Gift Group Assets shall be transferred to the Successful Bidder as contemplated by the Asset Purchase Agreement and, as of the Closing Date, shall be free and clear of Interests of any kind or nature whatsoever (except for the Assumed Obligations), with all such Interests of any kind or nature whatsoever (except for the Assumed Obligations) 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 Gift Group Assets, subject to any claims and defenses the Debtors may possess with respect thereto; and it is further

ORDERED that, except as expressly permitted or otherwise specifically provided

for in the Asset Purchase Agreement or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests of any kind or nature whatsoever against or in the Debtors or the Gift Group Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated, known or unknown), arising under or out of, in connection with, or in any way relating to, the Debtors, the Gift Group Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Gift Group Assets to the Successful Bidder, hereby are forever barred, estopped, and permanently enjoined from asserting against the Successful Bidder, its successors or assigns, its property, or the Gift Group Assets, such persons' or entities' Interests other than the Assumed Obligations; and it is further

ORDERED that the transfer of the Gift Group Assets to the Successful Bidder pursuant to the Asset Purchase Agreement shall constitute a legal, valid and effective transfer of the Gift Group Assets, and shall vest the Successful Bidder with all right, title and interest of the Debtors in and to the Gift Group Assets, free and clear of all Interests of any kind or nature whatsoever, other than the Assumed Obligations; and it is further

ORDERED that, on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Gift Group Assets, if any, as such Interests may have been recorded or may otherwise exist; and it is further

ORDERED that, 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 Gift Group Assets shall not have delivered to the Debtors prior to the Closing Date, 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 Gift Group Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Gift Group Assets and (b) the Successful Bidder is hereby 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 Gift Group Assets of any kind or nature whatsoever other than the Assumed Obligations; and it is further

ORDERED that, pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing of the Sale, the Debtors' assumption of and assignment to the Successful Bidder, and the Successful Bidder's assumption on the terms set forth in the Asset Purchase Agreement, of the Assigned Agreements is hereby approved, and the requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code with respect thereto are hereby deemed satisfied; and it is further

ORDERED that the Debtors are hereby authorized, but not directed, in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (a) assume and assign to the

Successful Bidder, effective upon the Closing of the Sale, the Assigned Agreements free and clear of all Interests of any kind or nature whatsoever except for the Assumed Obligations (provided, however, that nothing herein shall defeat any right which a party to an Assigned Agreement may have under section 365 of the Bankruptcy Code provided, further, that this Sale Order shall constitute a full and final adjudication of any such party's rights under section 365 of the Bankruptcy Code) and (b) execute and deliver to the Successful Bidder such documents or other instruments as may be necessary to assign and transfer the Assigned Agreements to the Successful Bidder; and it is further

ORDERED that the Assigned Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder in accordance with their respective terms, notwithstanding any provision in any such Assigned Agreements (including those of the type described in sections 365(b)(2) and 365(f)(1) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved from any liability for any breach of any Assigned Agreements that occurs or arises after such assignment to and assumption by the Successful Bidder on the Closing Date; and it is further

ORDERED that the Cure Amounts are the only amounts necessary to cure any monetary default under the Assigned Agreements pursuant to section 365(b)(1) of the Bankruptcy Code pursuant to the assumption by the Debtors and assignment to the Successful Bidder of such Assigned Agreements and such Cure Amounts shall not be subject to further

dispute or audit based on performance prior to the time of assumption and assignment, irrespective of whether such assumed executory contract or unexpired lease contains an audit clause; and it is further

ORDERED that the Successful Bidder is assuming all liability for the payment of the Cure Amounts without prejudice to the right of the Successful Bidder to agree with any non-debtor party to the Assigned Agreements to pay a lesser amount in satisfaction of such Cure Amounts, provided that such agreement does not create or increase liability of the Debtors or their estates; and it is further

ORDERED that the Successful Bidder shall assume all obligations of the Debtors under any Assigned Agreement first arising from and after the Closing, and shall not assume or bear responsibility for any obligation under any Assigned Agreement accruing thereunder prior to the Closing other than the Cure Amounts or any Assumed Obligations; and it is further

ORDERED that the Successful Bidder is not liable for the payment of any cure amounts for any Agreements other than the Cure Amounts, which are solely related to the assumption and assignment of the Assigned Agreements; and it is further

ORDERED that, provided that this paragraph shall not operate to bar or enjoin the Debtors from raising or asserting against the Successful Bidder or its affiliates claims relating to the Successful Bidder's obligations under the terms of this Sale Order, the Asset Purchase Agreement and the Sale, all non-debtor parties to the Agreements are forever barred and enjoined from raising or asserting against the Successful Bidder or the Successful Bidder's

affiliates (as they exist immediately following Closing) any assignment fee, default or breach under, or any claim or pecuniary loss, or condition to assignment, arising under or related to the Agreements that exist as of the Closing or arising by reason of the Closing; and it is further

ORDERED that, except as provided to the contrary in this Sale Order, all rights and remedies of any non-debtor party or the Successful Bidder under any of the Assigned Agreements (the "Rights and Remedies") are fully preserved and shall be fully enforceable after the Closing against the Successful Bidder or the non-debtor party unless such Rights and Remedies are or were expressly waived in a separate agreement or on the record at the Auction or Sale Hearing; and it is further

ORDERED that any party that may have had the right to consent to the assumption and assignment of an Assigned Agreement to which it is a party is deemed to have consented to such assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code or otherwise if it failed to object to the assumption and assignment prior to the objection deadline provided by the Successful Bid Notice; and it is further

ORDERED that the consideration provided by the Successful Bidder for the Gift Group Assets under the Asset Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia; and it is further

ORDERED that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever (other than Assumed

Obligations) existing as to the Debtors or the Gift Group Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Gift Group Assets; and it is further

ORDERED that each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement; and it is further

ORDERED that all entities who are presently, or on the Closing Date may be, in possession of some or all of the Gift Group Assets are hereby directed to surrender possession of the Gift Group Assets to the Successful Bidder on the Closing Date; and it is further

ORDERED that, except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, the Successful Bidder shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or



related to the Gift Group Assets except for the Assumed Obligations; and it is further

ORDERED that, without limiting the generality of the foregoing, and except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, the Successful Bidder is not a successor in interest to and shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Successful Bidder shall have no successor, transferee or vicarious liabilities of any kind or character whether known or unknown and whether arising under federal or state law or otherwise as of the Closing Date, 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 Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing Date; and it is further

ORDERED that the Successful Bidder shall not be deemed a joint employer or co-employer with or successor employer to the Debtors and shall have no obligation to pay wages, severance pay, WARN Act claims, benefits or any other payment to employees of the Debtors, except that the Successful Bidder shall be liable for the payment of all accrued vacation pay to employees of the Gift Group as provided for in the Asset Purchase Agreement; and it is further

ORDERED that, by entering into the Asset Purchase Agreement, the Successful Bidder has not assumed or otherwise become obligated for any of the Debtors' liabilities other

than as expressly set forth in the Asset Purchase Agreement; and it is further

ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Gift Group Assets to the Successful Bidder, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein, (d) protect the Successful Bidder against any liability other than those expressly assumed by the Successful Bidder pursuant to the Asset Purchase Agreement, this Sale Order or the Sale and (e) interpret, implement, and enforce the provisions of the Asset Purchase Agreement and this Sale Order; and it is further

ORDERED that the transactions contemplated by the Asset Purchase Agreement are undertaken by the Successful Bidder 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 to the Successful Bidder, unless such authorization is duly stayed pending such appeal prior to the Closing. The Successful Bidder is a purchaser in good faith of the Gift Group Assets, and the Successful Bidder is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code; and it is further

ORDERED that, the terms and provisions of the Asset Purchase Agreement and

this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, the Successful Bidder, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting interests in the Gift Group Assets to be sold to the Successful Bidder pursuant to the Asset Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding; and it is further

ORDERED that the failure specifically to include any particular provisions of the Asset 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 Asset Purchase Agreement be authorized and approved in its entirety for the Sale; and it is further

ORDERED that the Asset 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; and it is further

ORDERED that, except as provided in the Asset Purchase Agreement, this Sale Order, or other order of this Court, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Obligations 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 the Gift Group Assets; and it is further

ORDERED that all net proceeds from the Sale shall be deposited in the Collateral Collection Account held by the Agent in accordance with the provisions of the Cash Management Order and the Interim Cash Collateral Order (and subject to the right of the Committee and other parties to challenge under paragraph 19 of the Interim Cash Collateral Order); and it is further


ORDERED that the transfer of the Gift Group Assets (including, without limitation, the Assigned Agreements, all real property, all personal property, all intellectual property and other forms of property comprising the Gift Group Assets) to the Successful Bidder does not and will not subject the Debtors or the Successful Bidder, its affiliates or its designees to any liability for a stamp tax or similar tax, including, without limitation, any transfer tax, or pursuant to any so called "bulk sale" law, to the fullest extent permitted by section 1146(c) of the Bankruptcy Code; and it is further

ORDERED that the 10-day stay periods under Fed. R. Bankr. P. 6004(g) and Fed. R. Bankr. P. 6006(d) (collectively, the "Stay Period") are hereby waived in connection with the Sale, provided, however, that, if an objection to the Sale is filed, the Stay Period shall be reduced to the minimum amount of time needed by the objecting party to file its appeal in order to permit the Sale to close as provided under the Asset Purchase Agreement; and it is further

ORDERED that the provisions of this Sale Order are nonseverable and mutually dependent; and it is further

ORDERED that nothing contained in any chapter 11 plan confirmed in these cases or the order confirming such plan or any other order of the Court shall, in any material way, conflict with or deviate from the terms, conditions and provisions of the Asset Purchase Agreement or any related agreements or the terms of this Sale Order.

Dated: 10/17, 2001

  
\_\_\_\_\_  
The Honorable Roderick R. McKelvie  
United States District Judge

Owned Intellectual Property - Schedule 4.8

1. Trademark Registrations

(a) **Walter Drake**

Registration Number: 909,593  
Registered: 03/09/71  
Renewal Date: 03/09/01  
Registered Owner: Drake Acquisition Company

(b) **Walter Drake**

Registration Number: 895,688  
Registered: 07/28/70  
Renewal Date: 07/28/00  
Registered Owner: Drake Acquisition Company

(c) **Walter Drake**

Registration Number: 1,376,289  
Registered: [Data to come]  
Renewal Date: [Data to come]  
Registered Owner: [Data to come]

(d) **Home Marketplace**

Registration Number: 2,126,732  
Registered: 01/06/98  
Registered Owner: Michigan Bulb Company

2. Pending Trademark Registrations

a) **Homewares By Walter Drake**

Serial Number: 75/849,932  
Notice of Allowance Date: 04/24/01  
Owner: Foster & Gallagher, Inc.