

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Clark Material Handling Company		01/31/2003	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Dabo Acquisition, Inc.		
<b>Street Address:</b>	1209 Orange Street		
<b>Internal Address:</b>	The Corporation Trust Center		
<b>City:</b>	Wilmington		
<b>State/Country:</b>	DELAWARE		
<b>Postal Code:</b>	19801		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	814501	CLARK	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(502)540-2268		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	502/587-3707		
<b>Email:</b>	abb@gdm.com		
<b>Correspondent Name:</b>	Amy B. Berge		
<b>Address Line 1:</b>	101 South Fifth Street		
<b>Address Line 2:</b>	3500 National City Tower		
<b>Address Line 4:</b>	Louisville, KENTUCKY 40202		
<b>ATTORNEY DOCKET NUMBER:</b>	106265000009		
<b>NAME OF SUBMITTER:</b>	Amy B. Berge		
<b>Signature:</b>	/Amy B. Berge/		

CH \$40.00 814501

Date:

10/24/2005

**Total Attachments: 24**

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## ASSIGNMENT OF INTELLECTUAL PROPERTY

THIS ASSIGNMENT OF INTELLECTUAL PROPERTY (this "**Assignment**") is made as of January 31, 2003, to be effective as of January 31, 2003 (the "**Effective Date**"), between and among CMH Holdings, Inc., a Delaware corporation, ("**ParentCo**"); CLARK Material Handling Company, a Delaware corporation (the "**Company**"); CLARK Alabama, Inc. (f/k/a Giant Corporation), a Delaware corporation; ("**Clark Alabama**"); and Hydroelectric Lift Trucks, Inc., an Ohio corporation, ("**Hydroelectric Lift Trucks**" and together with the Company and CLARK Alabama, the "**Debtor Entities**" and the Debtor Entities together with ParentCo, the "**Sellers**"), in favor of Dabo Acquisition, Inc., a Delaware corporation (the "**Transferee**").

### RECITALS

WHEREAS, the Debtor Entities have sought relief under Chapter 11 of Title 11 of the United States Code (the "**Code**") by commencing a voluntary case under Chapter 11 Case No. 00-1730-SLR (the "**Bankruptcy Case**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") and the Debtor Entities are debtors in possession under the Bankruptcy Case; and

WHEREAS, pursuant to that certain Purchase Agreement dated as of January 27, 2003, by and among the Sellers and the Purchaser, (the "**Purchase Agreement**"), and the documents and agreements delivered pursuant thereto, the Sellers and the Transferee have agreed that the Transferee shall purchase each Seller's respective right, title and interest in and to the Intellectual Property (as defined in the Purchase Agreement) in the manner and subject to the terms and conditions set forth in the Purchase Agreement and the applicable provisions of the Code, and pursuant and subject to the "*Order And Findings Of Fact And Conclusions Of Law Authorizing And Approving Motion Of Clark Material Handling Company, Et Al. For An Order Authorizing The Sale Of Assets To Dabo Acquisition, Inc. Free And Clear Of Liens, Claims, Encumbrances And Interests*" entered by the Bankruptcy Court on January 29, 2003 (a copy of which is attached hereto at Exhibit A) (the "**Sale Order**"); and

WHEREAS, in furtherance and confirmation of the provisions of the Purchase Agreement and the Sale Order, each of the Sellers have agreed to sell, convey, assign and transfer to the Transferee all of their respective rights, title and interests to said Acquired Assets, all in the manner and subject to the terms and conditions as set forth in the Sale Order and as set forth more specifically in this Assignment; and

WHEREAS, the parties hereto wish to confirm by this Assignment their intention that each Debtor Entity's respective right, title and interest in and to the Acquired Assets are hereby or will be transferred to the Transferee in accordance with the Sale Order; and

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Purchase Agreement.

NOW, THEREFORE, the parties hereto, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

1. **ASSIGNMENT OF PARENTCO.** ParentCo hereby unconditionally transfers, assigns, sets-over, conveys, grants, bargains, sells and delivers to Transferee all of ParentCo's respective right, title and interest in and to such Intellectual Property throughout the world, including without limitation, all of ParentCo's rights in, to or under, and rights to enforce, any contract or agreement (of any kind or nature included in the Acquired Assets) or any other legal rights (at law or in equity) with respect to any trade secrets, proprietary

property, confidentiality obligations or rights, or similar interests in the Intellectual Property (including all causes of action inuring to the benefit of the ParentCo with respect thereto).

2. **ASSIGNMENT OF DEBTOR ENTITIES.** Except as otherwise provided hereunder, and as provided in and subject to the Sale Order, each Debtor Entity hereby unconditionally transfers, assigns, sets-over, conveys, grants, bargains, sells and delivers to Transferee all of the respective Debtor Entity's right, title and interest in and to such Intellectual Property throughout the world, including without limitation, all of the respective Debtor Entity's rights in, to or under, and rights to enforce, any contract or agreement (of any kind or nature included in the Acquired Assets) or any other legal rights (at law or in equity) with respect to any trade secrets, proprietary property, confidentiality obligations or rights, or similar interests in the Intellectual Property (including all causes of action inuring to the benefit of the respective Debtor Entity with respect thereto).

3. **WAIVER.** Each Seller hereby waives any and all rights and privileges to contest the validity of the Intellectual Property.

4. **FURTHER ASSURANCES.** Each of the Sellers hereby covenants with Transferee, and its successors and assigns, that the Sellers each will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, bills of sale, transfers, assignments and conveyances, and powers of attorney, conveying and confirming unto Transferee, and its successors and assigns, the Acquired Assets hereby granted, assigned, transferred, conveyed and delivered as the Transferee, and its successors and assigns, shall reasonably require; provided, however, that Transferee, and its successors and assigns, shall prepare all necessary documentation, and that the Sellers shall not be obligated to incur or be liable for any expense, cost or obligation in connection therewith and provided further that this provision shall be binding on the respective Sellers only with respect to the portion of the Acquired Assets they themselves are transferring hereby.

5. **ENTIRE AGREEMENT.** This Assignment together with the Purchase Agreement, the Bill of Sale and Assignment and Assumption Agreement, dated as of the date of this Assignment, by and among the Sellers and Transferee, and the other documents delivered pursuant thereto constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes any prior writing, agreement or understanding among the parties, or between any Seller and any other party, with respect to the subject matter hereof.

6. **AMENDMENT; WAIVER.** Except as provided otherwise herein, this Instrument may not be amended, nor may any rights hereunder be waived, except by an instrument in writing signed by the Sellers and the Transferee.

7. **COUNTERPARTS.** This Assignment may be executed in any number of counterparts of the signature pages, each of which shall be considered an original, but all of which together shall constitute one and the same Assignment.

8. **HEADINGS.** The section and other headings contained in this Assignment are for reference purposes only and shall not affect the meaning or interpretation of this Assignment.

9. **RECITALS.** The recitals set forth at the beginning of this Assignment are fully incorporated into the body of this Assignment.

10. **SEVERABILITY.** If any provision of that Assignment is declared void by any court or regulatory agency of competent jurisdiction, the validity of any other provision of this Assignment shall not be affected and shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Assignment so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the agreements contemplated hereby are fulfilled to the extent possible after such a determination.

11. **BINDING EFFECT.** This Assignment shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

12. **GOVERNING LAW.** This Assignment shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of laws principles; provided, however, that with respect to any property included in the Acquired Assets which have sites in a particular jurisdiction and where, by operation of law, the law of such jurisdiction shall govern the assignment of such assets, then the law of said jurisdiction shall apply only as to matters directly related to effecting the transfer of such asset.

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*Signatures appear on next page*

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed and delivered, intending to be legally bound hereby.

**PARENT CO:**

CMH HOLDINGS CORPORATION

ATTEST:

By: *Michael J. Crossman*  
Name: MICHAEL J. CROSSMAN  
Title: VP

By: *Douglas Bennett*  
Name: Douglas Bennett  
Title: PRESIDENT

**THE DEBTOR ENTITIES:**

CLARK MATERIAL HANDLING COMPANY  
HYDROELECTRIC LIFT TRUCKS, INC  
CLARK ALABAMA, INC.

ATTEST:

By: *Brian C. Burton*  
Name: Brian C. Burton  
Title: President / COO

By: *Michael J. Crossman*  
Name: MICHAEL J. CROSSMAN  
Title: VP

**EXHIBIT A**

**TO**

**ASSIGNMENT OF INTELLECTUAL PROPERTY**

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**SALE ORDER**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
CLARK MATERIAL HANDLING ) Case No. 00-1730-JWV  
COMPANY, et al., )  
) Joint Administration  
)  
Debtors. )

**ORDER AND FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AUTHORIZING AND APPROVING MOTION  
OF CLARK MATERIAL HANDLING COMPANY ET AL. FOR AN ORDER  
AUTHORIZING THE SALE OF ASSETS TO DABO ACQUISITION, INC.  
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS<sup>1</sup>**

This matter came on to be heard by this Court on (a) the Motion of the Debtors for an Order Authorizing (A) Sale of Assets Free and Clear of all Liens, Claims, Rights, Interests and Encumbrances; (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; (C) Exempting the Sale from Stamp or Similar Tax; and (D) Other Related Relief (the "Sale Motion") seeking, inter alia, an order authorizing the sale ("Sale") of substantially all the assets of Clark Material Handling Company ("Clark"), Clark Alabama, Inc. f/k/a Blue Giant Corporation and Hydroelectric Lift Trucks, Inc. (collectively, the "Debtors") free and clear of Liens<sup>2</sup>, pursuant to 11 U.S.C. §§ 105, 363 and 365 and Rules 2002(a)(2), 6004(a), (b), (c) and (e), 6006(a), and 9014 of the Federal Rules of Bankruptcy Procedure, (b) the Court's Order dated January 6, 2003 (the "Procedures Order"), authorizing the Debtors to conduct an auction (the "Auction") and to seek confirmation of the results of the Auction, and approving the form of

<sup>1</sup> The Findings of Fact and Conclusions of Law contained herein constitute the findings of fact and conclusions of law required to be entered by this Court with respect to the Motion pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> As used herein, "Liens" shall have the meaning set forth in Paragraph F of the decretal portion of this Order.



notice of the hearing on the Sale Motion; (c) the January 24, 2003 Auction, at which Dabo Acquisition, Inc. (the "Purchaser") was selected as the "Successful Bidder" (as defined in the Procedures Order); and (d) the January 27, 2003 hearing (the "Sale Hearing") on the Sale Motion;

All parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale Motion, and the Court having heard the testimony of Douglas Bennett, an officer of CMHC Holdings Inc. and a representative of the Debtors, and the testimony of Chairman Baik, the chairman of the Purchaser, in support of approval of the Sale Motion, and due deliberation being had, and based upon the testimony and evidence presented to it, this Court hereby makes the following Findings of Fact and Conclusions of Law.

#### **I. FINDINGS OF FACT<sup>3</sup>:**

##### **A. Notice of Sale of The Acquired Assets**

1. Written notice ("Notice") of the Sale Hearing, pursuant to the Certificate of Service of Notice of the Hearing and Sale filed by the Debtors on December 18, 2002 with this Court, was transmitted to: (i) the Office of the United States Trustee; (ii) all dealers of the Debtors; (iii) all entities known to the Debtors to possess and/or exercise any control over any of the Acquired Assets; (iv) all entities known to the Debtors to assert any rights in any of the Acquired Assets; (v) all parties in interest and other entities and persons so entitled which are known to the Debtors; (vi) all parties to Assumed Executory Contracts; (vii) all applicable federal, state and local tax authorities with jurisdiction over the Debtors and/or the Acquired Assets; (viii) all federal, state and local environmental authorities in jurisdictions in which the

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<sup>3</sup> The Court's statements from the bench setting forth additional Findings of Fact and Conclusions of Law in open Court at the Hearing on the Motion are expressly incorporated by reference into this Order and made a part hereof.

Debtors operate and/or in which the Acquired Assets are located; and (ix) all entities which have requested notice in the Debtors' Chapter 11 cases.

2. [Intentionally omitted]

3. The Notice was adequate and sufficient under the circumstances of this Chapter 11 case and this proceeding and complied with the Procedures Order, the various applicable requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the procedural due process requirements of the United States Constitution.

**B. Competing Offers**

4. The Procedures Order established the parameters for bidding to purchase the Debtors' assets. All interested parties were notified of the Procedures Order and two (2) parties submitted "Qualified Bids" (as defined in the Procedures Order) for the Debtors' assets. Purchaser's offer was a Qualifying Bid under the Procedures Order.

5. The Procedures Order also provided that in the event more than one Qualifying Bid was received, an auction (the "Auction") would be held to determine the highest and best offer. The Auction was held on January 24, 2003. At the Auction, Purchaser's offer as amended and revised at the Auction was determined to be the highest and best offer and was selected as the "Successful Bid" (as defined in the Procedures Order). Purchaser's Successful Bid, as reflected in the Purchase Agreement among Purchaser, CMH Holdings Corporation, Clark and other Parties named therein, a substantially final draft of which is attached hereto (the "Purchase Agreement"),<sup>4</sup> is fair and reasonable, and constitutes reasonably equivalent and fair market value under the Bankruptcy Code and applicable nonbankruptcy law.

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<sup>4</sup> Capitalized undefined terms herein shall have the same meaning as defined in the Purchase Agreement.

6. The Debtors and the Purchaser fully and properly complied with the terms of the Procedures Order in providing notice of the bidding deadline, establishing Qualifying Bids, conducting the Auction and determining Purchaser's offer to be the Successful Bid.

**C. Basis For Section 363 Sale**

7. Time is of the essence in consummating the Sale. Accordingly, to maximize the value of the Acquired Assets, it is essential that the sale of the Acquired Assets occur within the time constraints set forth in the Purchase Agreement, including without limitation the requirement that Closing shall occur on or before January 31, 2003, unless otherwise agreed to by the parties.

8. Congress Financial Corporation ("Congress"), as agent for the Debtors' post-petition senior secured lenders (the "Lenders") who have a lien and a super-priority claim on the Acquired Assets, have thoroughly reviewed the Debtors' alternatives and have consented to the Transactions pursuant to 11 U.S.C. § 363(f).

9. The Acquired Assets are property of the Debtors' estates and title thereto is vested in such estates.

10. The Debtors have full corporate power and authority to execute the Purchase Agreement and any related agreements, documents or instruments, and to consummate the transactions contemplated by the Purchase Agreement (the "Transactions"). No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtors to consummate the Transactions.

**D. Good Faith Of Purchaser**

11. Purchaser is purchasing the Acquired Assets in good faith and is a good faith purchaser within the meaning of 11 U.S.C. § 363(m), and is therefore entitled to the

protections of that provision. Purchaser has proceeded in good faith in all respects in connection with this proceeding in that: (a) Purchaser in no way induced or caused the Chapter 11 filing of the Debtors; (b) Purchaser participated in the Auction; (c) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Transactions have been disclosed, including, without limitation, payment of the Cash Portion and assumption of the Assumed Obligations; (d) Purchaser has not violated 11 U.S.C. § 363(n) by any action or inaction; (e) Purchaser is not related to the Debtors; and (f) the negotiation and execution of the Purchase Agreement and any other agreements or instruments related thereto were done at arm's length and in good faith.

**E. Approval Of Motion**

12. The testimony of the Debtors and the Purchaser supporting each of the findings of fact contained in this document has been entered into evidence and accepted by this Court.

13. Purchaser is a third-party purchaser unrelated to the Debtors.

14. The purchase terms, as set forth in the Purchase Agreement, are fair and reasonable under the circumstances of this Chapter 11 case and this proceeding.

15. The Motion should be approved as it is in the best interests of creditors. Congress and the Lenders, who have liens and a super-priority administrative claim on all the Acquire Assets, have consented to the Transactions.

16. The Purchase Agreement represents a fair and reasonable offer under the circumstances of this Chapter 11 case and this proceeding.

17. The Transactions are not being entered into in order to escape liability for the debts of the Debtors' estates. The estates are unable to satisfy the Debtors' debts.

18. The Purchaser has provided adequate assurance of Purchaser's future performance under the Assumed Executory Contracts within the meaning of Sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

**F. Purchaser is Not a Mere Continuation of any of the Debtors**

19. The following findings of fact relate to the conclusions of law set forth in paragraph 14 of Section II(D) below:

a. Those of the Debtors' employees who are to be retained by Purchaser are being hired under new employment contracts or other arrangements to be entered into or to become effective at or after the time of the Closing.

b. No common identity of incorporators, directors or stockholders exists between Purchaser and the Debtors.

c. Purchaser is not purchasing all of the Debtors' assets. Purchaser is not purchasing any equity securities in the subsidiaries of the Debtors who are not debtors in these bankruptcy cases, certain contracts of the Seller, or any avoidance claims or causes of action, or the proceeds thereof, or any other Excluded Assets.

d. The Transactions are not being entered into fraudulently. The Sale has been properly noticed.

**G. Miscellaneous**

20. To the extent any Findings of Facts set forth in Section I, Paragraphs 1 - 19 and all sub-parts thereto, herein constitute Conclusions of Law, the Court so concludes.

**II. CONCLUSIONS OF LAW**

The Court hereby enters the following Conclusions of Law:

**A. Jurisdiction, Final Order And Statutory Predicates: Notice**

1. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested in the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).
2. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Rule 7054 of the Federal Rules of Bankruptcy Procedure, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.
3. This proceeding is a “core proceeding” within the meaning of 28 U.S.C. § 157(b)(2)(a), (n) and (o).
4. Venue of these cases in this district is proper pursuant to 28 U.S.C. § 1409(a).
5. The statutory predicates for the Sale Motion are Sections 363(b) and 365(a) of the Bankruptcy Code and Rules 2002(a)(2), 6004(a), (b), (c) and (e), 6006(a) and (c), 9014 and 9019(a) of the Federal Rules of Bankruptcy Procedure.
6. Proper, timely, adequate and sufficient notice of the Motion and the Hearing has been provided in accordance with Section 102(1) of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 6006 and the Procedures Order, and no other or further notice of the Motion, the Hearing or of the entry of this Order is required.
7. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons and entities, including (i) the Office of the United States Trustee; (ii) all dealers of the Debtors; (iii) all entities known to the Debtors to possess and/or exercise any control over any of the Acquired Assets; (iv) all entities known to the Debtors to assert any rights in any of the Acquired Assets; (v) all parties in interest

and other entities and persons so entitled which are known to the Debtors; (vi) all parties to Assumed Executory Contracts; (vii) all applicable federal, state and local tax authorities with jurisdiction over the Debtors and/or the Acquired Assets; (viii) all federal, state and local environmental authorities in jurisdictions in which the Debtors operate and/or in which the Acquired Assets are located; and (ix) all entities which have requested notice in the Debtors' Chapter 11 cases.

**B. Section 363 Sale**

8. The Acquired Assets are property of the Debtors' estates and title thereto is vested in such estates.

9. The proposed Sale constitutes a sale of property of the Debtors' estates outside the ordinary course of business within the meaning of Section 363(b) of the Bankruptcy Code.

10. The Debtors are authorized to sell property of their estates outside of the ordinary course of business, pursuant to 11 U.S.C. § 363(b), free and clear of the Liens if the applicable provisions of 11 U.S.C. § 363(f) have been satisfied.

11. The provisions of Section 363(f) of the Bankruptcy Code have been satisfied in that Congress and the Lenders have consented to the Sale of the Acquired Assets on which they have liens. Either no secured creditor has objected to the Sale Motion or all such objections have been resolved, except that Congress has expressly reserved all of its rights and protections under the Final Financing Order (as hereafter defined), the DIP Financing Agreements (as defined in the Final Financing Order), the Bankruptcy Code and all other applicable laws.

12. Given all of the circumstances of this Chapter 11 case and the adequacy and fair value of the purchase price under the Purchase Agreement, the proposed Sale of the Acquired Assets to Purchaser is in the best interests of the Debtors, their creditors and their estates, and constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

**C. Retention Of Jurisdiction**

13. It is necessary and appropriate for the Court to retain jurisdiction, inter alia, to interpret and enforce the terms and provisions of this Order and the Purchase Agreement, and to adjudicate, if necessary, any and all disputes concerning the assumption and assignment of the Assumed Executory Contracts, any right, title, (alleged) property interest, including ownership claims, relating to the Acquired Assets and the proceeds thereof, as well as the extent, validity and priority of all Liens relating to the Acquired Assets.

**D. No Successor Liability**

14. Purchaser does not constitute a successor to the Debtors or their estates.

a. The Transactions do not amount to a consolidation, merger or de facto merger of Purchaser and the Debtors or their estates.

b. Purchaser is not merely a continuation of the Debtors or the estates, there is not substantial continuity between Purchaser and the Debtors, and there is no continuity of enterprise between the Debtors and Purchaser.

**E. Miscellaneous**

15. To the extent any Conclusion of Law set forth in Section II, Paragraphs 1-14 herein constitutes a Finding of Fact, this Court so finds.



**Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:**

A. The relief requested in the Sale Motion is granted and approved in all respects. All objections to the Sale Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, are overruled on the merits. The Purchase Agreement, the Transactions and the Sale are hereby approved in all respects.

B. The Debtors are authorized and directed to take any and all actions necessary or appropriate to (i) consummate the Sale of the Acquired Assets to Purchaser (including, without limitation, to convey to Purchaser any and all of the Acquired Assets intended to be conveyed) and the Closing of the Transactions in accordance with the Sale Motion, the Purchase Agreement and this Order; and (ii) perform, consummate, implement and close fully the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement. The officers and directors of the Debtors are duly authorized to execute and deliver any and all agreements and instruments in connection with the Transactions.

C. The Purchaser is a purchaser in good faith of the Acquired Assets and is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

D. In the absence of a stay pending appeal, if the Purchaser elects to close under the Purchase Agreement at any time after entry of this Order, then, with respect to the Purchase Agreement, the Purchaser shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal.

E. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not materially adverse to the interests of the Debtors, their creditors or their estates.

F. Upon the Closing and subject to the payment by the Purchaser of all cure costs under Section 365 of the Bankruptcy Code for Assumed Executory Contracts, the Acquired Assets transferred, sold and delivered to Purchaser shall be free and clear of all encumbrances, obligations, liabilities, contractual commitments or claims, including, without limitation, any theory of successor liability, de facto merger, or substantial continuity, whether based in law or equity, employee benefit obligations (including, without limitation, under the Employee Retirement Income Security Act, the Comprehensive Omnibus Budget Reconciliation Act, CERCLA and all other Environmental Laws), any security interest, mortgage, lien, charge against or interest in property, adverse claim, claim of possession, right of way, license, easement or restriction of any kind, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership or any option to purchase, option, charge, retention agreement which is intended as security or other matters (hereinafter collectively referred to as "Liens," such term to be deemed to exclude any and all Permitted Liens) of any person or entity that encumber or relate to or purport to encumber or relate to the Acquired Assets.

G. Purchaser is not a successor to the Debtors or their estates by reason of any theory of law or equity and Purchaser shall not assume or in any way be responsible for any liability or obligation of the Debtors or their estates, except as otherwise expressly provided in the Purchase

Agreement; provided, that nothing in this Order or the Purchase Agreement releases an entity that is an owner or operator of property from any liability, if any, to a governmental entity under police and regulatory statutes or regulations that such entity would be subject to as the owner or operator of property after the Closing under the Purchase Agreement; and provided, further, that nothing in this Order shall constitute a determination that the Purchase ~~is~~<sup>is not</sup> an owner or operator of property.

H. Effective on the date of entry of this Order, except as otherwise expressly provided in the Purchase Agreement, all entities, including, but not limited to, the Debtors, creditors, employees, former employees and shareholders, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, maintaining any authority relating to Environmental Laws, and their respective successors or assigns, shall be permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind against Purchaser as alleged successor or otherwise with respect to any Liens arising out of or related to the Transactions.

I. Each and every term and provision of the Purchase Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates, their creditors and the Debtors' shareholders, all entities and third parties, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, maintaining any authority relating to Environmental Laws, and their respective successors or assigns, including, but not limited to, all non-Debtor parties to the Assumed Executory Contracts assigned to Purchaser under the Purchase Agreement and persons asserting any Lien against or interest in the Debtors' estates or any of the Acquired Assets to be sold and assigned to

Purchaser, irrespective of any action commenced which contests the Debtors' authority to sell and assign the Acquired Assets or which seeks to enjoin such Sale and/or assignment.

J. All entities holding Liens of any kind and nature be and hereby are barred from asserting such Liens against Purchaser and/or the Acquired Assets and, effective upon the transfer of the Acquired Assets to Purchaser at the Closing, the Liens shall attach to the proceeds of the Sale with the same force, validity, priority and effect, if any, as the Liens formerly and against the Acquired Assets. The Debtors shall (a) utilize a portion of the proceeds derived from the Sale of the Acquired Assets to indefeasibly pay and satisfy all outstanding Obligations (as such term is defined in the Final Order (1) Authorizing Debtors and Debtors-in-Possession to Obtain Financing, Grant Security Interests, Accord Priority Status Pursuant to Section 364(c) of the Bankruptcy Code, and Affording Priority Status Pursuant to Section 364(c) of the Bankruptcy Code, and Affording Adequate Protection in Respect Thereof, and (2) Modifying the Automatic Stay, dated June 27, 2000, and as further amended and modified (the "Final Financing Order")) due and owing to Congress immediately following the Closing in accordance with the DIP Financing Agreements (as defined in the Final Financing Order); and (b) place \$1.5 million of the proceeds into an interest bearing escrow account to fund the Carve Out (as defined in the Final Financing Order) which shall not be distributed except upon further order of the Court.

K. This Order: (a) is and shall be effective as a determination that, upon Closing, all Liens existing as to the Acquired Assets conveyed to Purchaser have been and hereby are adjudged and declared to be unconditionally released, discharged and terminated, and (b) shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal,

state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets conveyed to Purchaser. All Liens of record as of the date of this Order shall be forthwith removed and stricken as against the Acquired Assets. All such Entities described above in this Paragraph K are authorized and specifically directed to strike all such recorded Liens against the Acquired Assets from their records, official and otherwise.

L. If any person or entity which has filed statements or other documents or agreements evidencing Liens on, or interests in, the Acquired Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Liens which the person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Purchaser are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets.

M. Any and all Acquired Assets in the possession or control of any person or entity, including, without limitation, any former vendor, supplier or employee of the Debtors (a) shall be transferred to Purchaser free and clear of the Liens and (b) shall be delivered at the Closing to Purchaser unless, pursuant to the Purchase Agreement, such person, entity, vendor, supplier or employee may retain temporary possession or control of any of such Acquired Assets, in which

case the possession of such item shall be delivered to Purchaser at such time as is designated by Purchaser.

N. The Debtors are hereby authorized, in accordance with §365(b)(1) and (f)(2) of the Bankruptcy Code, to: (A) assume the Assumed Executory Contracts; (B) sell, assign and transfer to Purchaser, each of the Assumed Executory Contracts in each case free and clear of all Liens; and (C) execute and deliver to Purchaser, such assignment documents as may be necessary to sell, assign and transfer the Assumed Executory Contracts. Pursuant to Section 365(f) of the Bankruptcy Code, the Purchaser will cure all monetary defaults under any Assumed Executory Contract. As set forth in Paragraph 18 of Section I.E. above, Purchaser has provided adequate assurance of future performance within the meaning of Section 365(b)(1)(C) of the Bankruptcy Code, and no further adequate assurance, other than the Purchaser's promise to perform under the Assumed Executory Contracts, shall be necessary.

O. The Assumed Executory Contracts shall be transferred and assigned to, and following the closing of the sale shall remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Executory 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 and, pursuant to Section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Executory Contracts after such assignment to and assumption by the Purchaser.

P. 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 Assumed Executory Contracts. The validity of the assumption, assignment and sale to Purchaser shall not

be affected by any dispute between any Debtor or their affiliates and another party to an Assumed Executory Contract regarding the payment of any amount, including any cure amount under the Bankruptcy Code. The Assumed Executory Contracts, upon assignment to Purchaser, shall be deemed valid and binding, and in full force and effect in accordance with their respective terms.

Q. Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, all parties to the Assumed Executory 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 Assumed Executory Contracts existing as of the Closing or arising by reason of the Closing. Any party that may have had the right to consent to the assignment of its Assumed Executory 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 it failed to object to the assumption and assignment.

R. Nothing contained in any order of any type or kind entered in these Chapter 11 cases or any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order, including, without limitation, any plan of reorganization (whether a liquidating plan or otherwise) of the Debtors.

S. Subsequent to the Closing and in accordance with the terms of the Purchase Agreement, the Debtors are authorized and directed to change the Debtors' name as of the Closing to a name not resembling "Clark". Upon such name change, the Secretary of State of Delaware is authorized and directed to forthwith accept such name change and record such change on its official records, and upon written request by the Debtors, the Clerk of the

Bankruptcy Court is authorized and directed to modify the style of this Chapter 11 case consistent with such name change.

- T. This Court retains jurisdiction, even after the closing of the Chapter 11 cases, to:
- (1) Interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith;
  - (2) Protect the Purchaser, or any of the Acquired Assets, from and against any of the Liens;
  - (3) Compel delivery of all Acquired Assets to Purchaser;
  - (4) Resolve any disputes arising under or related to the Purchase Agreement, the Sale or the Transactions, and the Purchaser's peaceful use and enjoyment of the Acquired Assets;
  - (5) Adjudicate all issues concerning (alleged) pre-Closing Liens and any other (alleged) interest(s) in and to the Acquired Assets, including the extent, validity, enforceability, priority and nature of all such (alleged) Liens and any other (alleged) interest(s);
  - (6) Adjudicate any and all issues and/or disputes relating to the Debtors' right, title or interest in the Acquired Assets and the proceeds thereof, the Sale Motion and/or the Purchase Agreement; and
  - (7) Adjudicate any and all remaining issues concerning the Debtors' right and authority to assume and assign the Assumed Executory Contracts and the



Purchaser's rights and obligations with respect to such assignment and the existence of any default under any Assumed Executory Contract.

U. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Transactions.

V. Pursuant to Section 1146(c) of the Bankruptcy Code, no transfer, sales or similar tax shall apply to the Transactions, \* *you*

W. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the efficacy of such provision, it being the intent of the Court that the Purchase Agreement and each and every provision, term, and condition thereof be, and therefore is, authorized and approved in its entirety.

X. All of the provisions of this Order are non-severable and mutually dependent.

Y. This Order shall be effective immediately upon entry and Federal Rules of Bankruptcy Procedure 6004(g) and 6006(d) are waived, and no automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure, applies with respect to this Order.

Z. To the extent of any conflict between the terms and provisions of this Order and the Purchase Agreement, the terms and provisions of this Order shall control.

AA. The Purchaser shall cooperate with the Debtors and any representatives of these estates to (i) maintain the safe-keeping and preservation of the Debtors' books and records for a period of two years and (ii) allow the Debtors and such representatives reasonable access to the books and records.

BB. Notwithstanding anything to the contrary in the Purchase Agreement, the Purchaser is not purchasing and the Debtors are not selling or otherwise transferring the equity

\* provided that a Chapter 11 Plan is confirmed in this estate. Pending confirmation of a Plan, the Debtors shall place in escrow the estimated amount of any transfer, sales, or similar taxes that may apply to the sale. Such taxes shall have no higher administrative priority than any other administrative 18 expense. *you*

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securities of the Debtors' non-debtor subsidiaries or these estates' avoidance claims and other causes of action and the proceeds thereof.

*All filed objections ARE resolved AS stated on the Record OR ARE overruled.*

SO ORDERED this \_\_ day of January 2003

*James W. Ventur*  
UNITED STATES BANKRUPTCY JUDGE