

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
EFFECTIVE DATE:	03/04/2004

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
The Hamlet Group, Inc.		03/04/2004	CORPORATION: CALIFORNIA

**RECEIVING PARTY DATA**

Name:	Andrew Tavakoli
Street Address:	9255 W. Sunset Blvd.
Internal Address:	Suite 620
City:	West Hollywood
State/Country:	CALIFORNIA
Postal Code:	90069
Entity Type:	INDIVIDUAL: UNITED STATES

**PROPERTY NUMBERS Total: 10**

Property Type	Number	Word Mark
Registration Number:	0951007	HAMBURGER HAMLET
Registration Number:	0951013	HAMLET
Registration Number:	1810945	LITTLE CHOP
Registration Number:	1524937	PORTNER'S
Registration Number:	1810988	THE SUNFLOWER
Registration Number:	1810944	ZUCCHINI ZIRCLES
Registration Number:	1016474	THE HOTS BURGER
Serial Number:	76528311	CAESAR BURGER
Serial Number:	76528312	NACHO BURGER
Registration Number:	1812329	HAMLET'S PREMIUM ALE

**CORRESPONDENCE DATA**

OP \$265.00 0951007

Fax Number: (949)863-0151  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
Phone: 949-567-3507  
Email: rulem@pepperlaw.com  
Correspondent Name: Michael A. Rule  
Address Line 1: 5 Park Plaza  
Address Line 2: Suite 1700  
Address Line 4: Irvine, CALIFORNIA 92614-8503

ATTORNEY DOCKET NUMBER:	131949-0003
NAME OF SUBMITTER:	Michael A. Rule
Signature:	/Michael A. Rule/
Date:	05/29/2007

**Total Attachments: 25**

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## BILL OF SALE AND TRADEMARK ASSIGNMENT

WHEREAS, The Hamlet Group, Inc., a California corporation, HH of Maryland, Inc., a Maryland corporation, and HHK of Virginia, Inc., a Virginia corporation (the "Assignors"), have adopted and used certain trademarks, trade names, logos, and service marks (the "Marks"), and are the owners of certain other intellectual property defined below;

WHEREAS, on October 21, 2003, the Assignors filed a voluntary petition (the "Bankruptcy Case") for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on February 18, 2004, the Assignors and A. "Andrew" Tavakoli, an individual (the "Assignee"), entered into a certain Asset Purchase Agreement (the "Agreement") whereby the Assignee agreed to purchase and acquire from the Assignors the Purchased Assets and to assume the Assumed Liabilities (the "Asset Purchase"), as the same are used to operate the Restaurants (as such term is defined in the Agreement) at the locations specified in Schedule 1.1(a) of the Agreement (the "THG Business") as a going concern;

WHEREAS, the execution of this Bill of Sale and Trademark Assignment by the Assignors is also a condition precedent under the Agreement to the Asset Purchase;

WHEREAS, by Order dated March 4, 2004 (the "Order"), a copy of which is attached hereto as Exhibit A, the Bankruptcy Court authorized, among other things, the sale and assignment of the Marks and other Intellectual Property to the Assignee;

WHEREAS, the Assignors has agreed to execute this Bill of Sale and Trademark Assignment pursuant to the terms of the Order and the Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged:

The Assignors hereby assign, sell and transfer unto the Assignee, free and clear of all liens and other encumbrances pursuant to the Order, all right, title and interest on the Closing Date in and to the following intellectual property: licenses, patents, copyrights, designs and drawings, technical manuals, patterns, processes, formulae, know-how, trade secrets, trademarks, service marks and trade names, domain names, copyrights, intellectual property, shop rights, technology, inventions and discoveries, computer software (whether in source code or object code form), and other similar rights, including without limitation all confidential information, intellectual and similar intangible property rights, whether or not patentable (or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage), and any and all applications for, and extensions, divisions, continuations, continuations-in-part, and reissuances of, any of the foregoing, all as used in connection with the THG Business (collectively, the "Intellectual Property") and all rights to sue for past, present and future infringement or other violations of the Intellectual Property, and all goodwill associated with any of the foregoing; without limiting the generality or effect of the foregoing (including the goodwill of the THG Business symbolized by the Marks), the Intellectual Property

includes the rights in the names "Hamburger Hamlet" and "Porter's" and all trademark and service mark rights relating to such names, if any, along with the rights (common law or otherwise), registrations and logos and goodwill relating thereto, if any, and to the design element and any variations or combinations thereof and the goodwill relating thereto.


The Assignors hereby appoint each officer or other authorized representative of the Assignee as the Assignors' true and lawful attorney-in-fact ("Attorney-in-Fact"), with full power of substitution, for the Assignors and in its name, place and stead and on its behalf and for its use and benefit to execute and deliver all documents and instruments in such form and with such substance and to take all actions on behalf of the Assignors that such Attorney-in-Fact deems necessary, advisable or appropriate in order to transfer to and vest in the Assignee all of the foregoing rights in the Marks and other Intellectual Property and to otherwise effectuate the sale and assignment set forth herein, including without limitation any filings with the U.S. Patent and Trademark Office and any foreign patent and trademark offices, or their equivalent, that may be necessary to reflect the Assignee's title to the Marks. Without limiting the foregoing, the Assignee may file this Bill of Sale and Trademark Assignment in the U.S. Patent and Trademark Office and any foreign patent and trademark offices, or their equivalent, without any notice to the Assignors.

[Signatures on next page.]

IN WITNESS WHEREOF, the Assignors, by its duly authorized officer, and the Assignee, by its duly authorized officer, have executed this assignment as of March 11, 2004.

**ASSIGNORS**

THE HAMLET GROUP, INC.,  
a California corporation

By:   
Anthony G. Baril

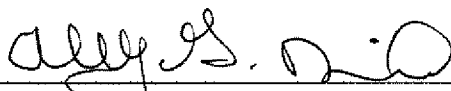
Title: President and Treasurer

HH OF MARYLAND, INC.,  
a Maryland corporation

By:   
Anthony G. Baril

Title: President and Treasurer

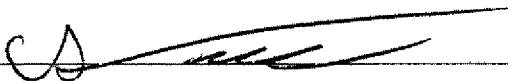
HHK OF VIRGINIA, INC.,  
a Virginia corporation

By:   
Anthony G. Baril

Title: President and Treasurer

**ASSIGNEE**

A. "ANDREW" TAVAKOLI



**EXHIBIT A**  
**to**  
**Bill of Sale and Trademark Assignment**

Order of the Bankruptcy Court – See attached

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange } ss.

On March 11, 2004, before me,

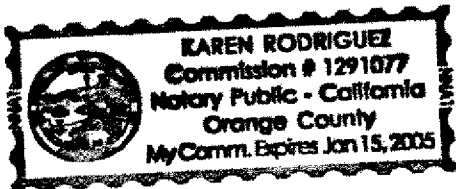
Karen Rodriguez, Notary Public  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Anthony G. Basil  
Name(s) of Signer(s)

- personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Karen Rodriguez  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Bill of Sale and Trademark Assignment

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
CHI-CHI'S, INC., et al.,<sup>1</sup> ) Case No. 03-13063 (CGC)  
) (Jointly Administered)  
Debtors. )  
Re: 459

**ORDER AUTHORIZING: (I) SALE OF CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES OTHER THAN PERMITTED LIENS, (II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) ASSUMPTION OF CERTAIN LIABILITIES**

Upon the motion dated January 30, 2004 (the "Sale Motion")<sup>2</sup> of The Hamlet Group, Inc. ("THG"), H.H. of Maryland, Inc., and H.H.K. of Virginia, Inc., three of the debtors and debtors-in-possession in these jointly-administered cases (collectively, the "Debtors"), for, inter alia, entry of an order (this "Sale Order") under sections 105(a), 363, and 365 of title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing (i) the Debtors' sale (the "Sale") of substantially all of their assets (the "Purchased Assets") pursuant to and as described in the asset purchase agreement dated January 29, 2004

<sup>1</sup> The debtors consist of the following entities: Chi-Chi's, Inc., CCMR of Catonsville, Inc., CCMR of Cumberland, Inc., CCMR of Frederick, Inc., CCMR of Greenbelt, Inc., CCMR of Harford County, Inc., CCMR of Maryland, Inc., CCMR of Ritchie Highway, Inc., CCMR of Timonium, Inc., Chi-Chi's of West Virginia, Inc., CMM Dissolution, Inc., Koo Koo Roo, Inc., Maintenance Support Group, Inc., Koo Koo Roo Licensing Systems, Inc. (collectively, the "Related Debtors"), The Hamlet Group, Inc., H.H. of Maryland, Inc., and H.H.K. of Virginia, Inc.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Agreement, as the case may be; as to any conflicts with respect to such terms, the meanings contained in the Agreement shall control over those in the Motion.



(the "Agreement"),<sup>3</sup> between the Debtors and A. "Andrew" Tavakoli, an individual (or one or more corporations designated by A. Tavakoli pursuant to section 11.1 of the Agreement)<sup>4</sup> (collectively, the "Purchaser"<sup>5</sup>), (ii) the Debtors' assumption and assignment to Purchaser of certain executory contracts and unexpired leases (the "Assumed Contracts"), pursuant to and as described in the Agreement, and (iii) the assumption by Purchaser of certain liabilities of the Debtors (the "Assumed Liabilities"), pursuant to and as described in the Agreement; and the Court having entered an order on January 16, 2004 (the "Sale Procedures Order") approving (i) the Sale Procedures, (ii) the form and manner of notice of the Sale and the Sale Hearing (as hereinafter defined), (iii) the form and manner of notice of the assumption and assignment of Assumed Contracts and (iv) the Breakup Fee; and a hearing on the Sale Motion having been held on February 17, 2004 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Court having reviewed and considered (i) the Sale Motion, (ii) the objections thereto, (iii) the arguments of counsel made, and the evidence offered at the Sale Hearing; and it appearing that the relief requested is in the best interests of the Debtors, their estates and creditors, and other parties-in-interest; and upon the record of the Sale Hearing; and after due deliberation thereon; and good cause appearing therefor,

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<sup>3</sup> A copy of the Agreement is annexed hereto as Exhibit A.

<sup>4</sup> The following corporations have been designated by A. Tavakoli: Hamlet Group Inc., and its wholly-owned subsidiaries, Hamlet East, Inc., Hamlet West, Inc., Hamlet of Beverly Hills Inc., Hamlet of Valencia Inc., Hamlet of Palm Springs Inc., and Hamlet Properties Inc.

<sup>5</sup> "Purchasers" shall also include the designee of the Designee Leases.

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>6</sup>

A. The Court's exercise of jurisdiction over the Sale Motion and the transactions contemplated by the Agreement is proper pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of this case and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.

C. As evidenced by the affidavits of service and publication filed with the Court, and based on the representations of counsel at the Hearing, (i) proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, the Sale, and the assumption and assignment of the Assumed Contracts has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014 and in compliance with the Sale Procedures Order, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Sale Motion, the Sale Hearing, the Sale, or the assumption and assignment of the Assumed Contracts is or shall be required.

D. As demonstrated by (i) the evidence offered at the Sale Hearing and (ii) the representations of counsel made at the Sale Hearing, the Debtors have marketed the Purchased Assets and their business operations (the "Subject Business") and conducted the sale

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<sup>6</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.

process in compliance with the Sale Procedures Order, and the Auction was duly noticed in a fair and good faith manner.

E. The Debtors (i) have full corporate power and authority to execute the 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 corporate action of the Debtors, (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement, (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation by the Debtors of the transactions contemplated thereby, and (iv) no consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate such transactions.

F. Approval of the Agreement and consummation of the Sale at this time are in the best interests of the Debtors, their creditors, their estates, and other parties-in-interest.

G. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale of the Purchased Assets pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, absent the Sale, the value of the Purchased Assets and Subject Business may be harmed.

H. The Debtors hold good and marketable title to the Purchased Assets.

I. Each of the Assumed Contracts is in full force and effect.

J. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested parties, including:  
(i) all entities known to have expressed an interest in a transaction with respect to the Purchased

Assets during the past twelve (12) months; (ii) all entities known to have asserted any liens, claims, encumbrances or interests in or upon the Purchased Assets; (iii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Sale Motion; (iv) all non-Debtor parties to the Assumed Contracts; (v) the U.S. Trustee; (vi) the Committee; (vii) the Internal Revenue Service; and (viii) all parties that have requested notice pursuant to Bankruptcy Rule 2002(m).

K. Based on evidence presented at the Sale Hearing, the Debtors and Purchaser have established that the Agreement was negotiated, proposed and entered into without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor Purchaser have engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code.

L. Purchaser 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.

M. After the Closing of the Sale, the Debtors shall have sufficient assets for the purpose of reorganizing their affairs or other disposition in these bankruptcy cases.

N. The consideration provided by Purchaser for the Purchased Assets pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors 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.

O. The transfer of the Purchased Assets to Purchaser will be a legal, valid, and effective transfer of the Purchased Assets, and will vest Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all liens, claims, encumbrances and interests (other than Permitted Liens (as defined in the Agreement)), including but not limited to (A) those 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 Purchaser's interest in the Purchased Assets, or any similar rights, (B) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Subject Business prior to Closing, and (C)(i) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership and (ii) all debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or any of the Debtors' predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interest and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including but not limited to claims otherwise arising under doctrines of successor liability to the extent permitted by law (collectively, "Interests").

P. Purchaser would not have entered into the 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 Purchaser and the assignment of the Assumed Contracts and Assumed Liabilities to Purchaser was not free and clear of all Interests or any kind or nature whatsoever, or if Purchaser would, or in the future could, be liable for any of the Interests, including, without limitation, the Excluded Liabilities.

Q. The Debtors may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever (other than Permitted Liens (as defined in the Agreement)) 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 Assumed Contracts who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant section 363(f)(2) of the Bankruptcy Code. Those (i) holders of Interests and (ii) non-Debtor parties to Assumed 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 claim an Interest.

R. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to Purchaser in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Contracts is in the best interests of the Debtors, their estates, and their creditors. The Assumed Contracts being assigned to, and the liabilities being assumed by, Purchaser are an integral part of the Subject Business being purchased by the Purchaser and, accordingly, such assumption and assignment of Assumed Contracts and liabilities is reasonable, enhances the value of the Debtors' estates, and does not constitute unfair discrimination.

S. The Debtors have cured, or have provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default or other monies otherwise owing, arising or accruing prior to the date hereof under any of the Assumed Contracts, with the meaning of section 365(b)(1)(B) of the Bankruptcy Code, in the amounts set forth on Exhibit B hereto (collectively, the "Cure Costs"), and the Purchaser has provided adequate assurance of future performance of and under the Assumed Contracts, within the meaning of sections 365(b)(1)(C), 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code. To the extent that any party has filed a timely objection to the "Cure Schedule" attached to that certain Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases dated February 2, 2004, and such objection(s) has not been resolved as of the date of this Order then the Debtors shall hold in escrow the full amount of the cure claims asserted by such party, which cure amount shall include attorneys' fees to the extent allowable, until such cure dispute is resolved by agreement of the parties or by the Court, at which time the Debtors shall pay the cure amount as ultimately agreed to or determined by the Court. If the Debtors do not resolve such objection(s) within 90-days of the Closing, the Debtors shall schedule a hearing on such objection(s) at the earliest convenience of the Court.

T. Approval of the Agreement and assumption and assignment of the Assumed 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 other parties-in-interest.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND

DECREED:

General Provisions

1. The Sale Motion is granted, as further described herein.
2. 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.

Approval of the Agreement

3. The Agreement, and all of the terms and conditions thereof, are approved.
4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to perform their obligations under and comply with the terms of the Agreement, and consummate the Sale, pursuant to and in accordance with the terms and conditions of the Agreement.
5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to Purchaser or reducing to possession, the Purchased Assets and the Assumed Contracts, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement.
6. This Sale Order and the Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtors, all non-Debtor parties to the Assumed



Contracts, all successors and assigns of Purchaser, the Debtors and their affiliates, subsidiaries and parent corporations, and any subsequent trustee 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 confirmed chapter 11 plan or in the order confirming any such chapter 11 plan shall conflict with the provisions of the Agreement or this Sale Order.

7. The 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 such modification is not material.

#### Transfer of Assets

8. Except as expressly permitted or otherwise specifically provided for in the Agreement or this Sale Order, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to Purchaser, and upon consummation of the Agreement 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.

9. Except as expressly permitted or otherwise specifically provided by the 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 Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Subject Business prior to Closing, or the transfer of the Purchased Assets to Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting any claim or Interest against Purchaser, its successors or assigns, its property, or the Purchased Assets.

10. The transfer of the Purchased Assets to Purchaser pursuant to the Agreement constitutes a legal, valid, and effective transfer of the Purchased Assets, and shall vest 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.

11. 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 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 (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets and (b) Purchaser 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 Purchased Assets of any kind or nature whatsoever.

Assumption and Assignment to Purchaser of Assumed Contracts

12. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon Closing of the Sale, the Debtors' assumption and assignment to the Purchaser, and Purchaser's assumption on the terms set forth in the Agreement, of the Assumed Contracts is hereby approved, and the requirements of sections 365(b)(1), 365(b)(3) and 365(f) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

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

14. With respect to the Assumed Contracts: (a) the Assumed Contracts shall be transferred and assigned to, and following 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 Assumed 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; (b) each Assumed Contract is an executory contract of the Debtors under section 365 of the Bankruptcy Code; (c) the Debtors may assume each Assumed Contract in accordance with section 365 of the Bankruptcy Code; (d) the Debtors may assign each Assumed Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition

renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (c) all other requirements and conditions under section 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Purchaser of each Assumed Contract have been satisfied; (f) 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 the Debtors in each Assumed Contract; (g) any provision of any Assumed Contract that purports to limit, prohibit or restrict the exercise by the Debtors or by the Purchaser of any option contained in any Assumed Contract, based on any defaults that occurred prior to the date of closing, are invalid, of no force or effect and shall not be the basis for any claim or contention that any option in any Assumed Contract cannot be exercised; and (h) any provision of any Assumed Contract purporting to change any provision of any Assumed Contract based upon the assignment of the Assumed Contract, including, without limitation, any provision relating to the amount of rent, is hereby deemed to be null, void and unenforceable against the Purchaser.

15. All Cure Costs shall be paid by the Debtors to the non-Debtor parties to the Assumed Contracts on or before the Closing Date of the Sale, and Purchaser shall have no liability or obligation arising or accruing under any Assumed Contract prior to the date of Closing, except as otherwise expressly provided in the Agreement.

16. Each non-Debtor party to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from asserting against Purchaser, or the Purchaser's property, any default existing as of Closing of the Sale, and Purchaser shall have no liability for

any amounts due or payable under any of the Assumed Contracts, including, without limitation, the Leases, which arose, accrued or are attributable to the periods prior to the Closing Date, whether or not due or payable after the Closing Date. Such amounts shall be borne as a Cure Cost by the Debtor

17. Except as provided in the Agreement or this Sale Order, after 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 Purchaser for the Purchased Assets is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code.

19. Upon Closing, the Debtors' creditors 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 (a) shall be effective as a determination that, as of Closing, all Interests of any kind or nature whatsoever existing as to the Debtors or the Purchased Assets prior to Closing have been unconditionally released, discharged and terminated (other than surviving obligations under the terms of the Agreement), 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 Purchased Assets.

21. Except as otherwise expressly provided in the 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; and 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 the Debtors are parties and relating to the Subject Business (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 hereby 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 under the WARN Act by virtue of its purchase of the Purchased Assets.

22. Any amounts that become payable by the Debtors to Purchaser pursuant to the Agreement (and related agreements executed in connection therewith) (a) shall constitute administrative expenses of Debtors' estates under sections 503(b) and 507(a)(1) of the Bankruptcy Code and (b) shall be paid by the Debtors in the time and manner provided for in the Agreement (and such related agreements) without further order of the Court.

23. 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 Agreement.

24. All entities who are presently, or as of Closing may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession to Purchaser at Closing.

25. Except for the Assumed Liabilities or as expressly and specifically provided for in the Agreement, Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Agreement, Purchaser shall not be liable for any claims against the Debtors or their predecessors or affiliates, and Purchaser shall have no successor or vicarious liabilities of any kind or character including but not limited to any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity, whether known or unknown as of Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of,

in connection with, or relating to the operation of the Subject Businesses prior to Closing. Neither the purchase of the Purchased Assets by Purchaser nor the subsequent operation by Purchaser of any business previously operated by the Debtors shall cause Purchaser to be deemed successor in any respect to the Debtors' business within the meaning of any revenue, pension, ERISA, COBRA, environmental or labor law, rule or regulation or under any products liability law.

26. Under no circumstances shall Purchaser be deemed a successor of or to the Debtors with respect to 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 trustees 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 hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against 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 Closing, no holder of an Interest in the Debtors or the



Purchased Assets shall interfere with 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 this case.

27. The Court shall retain jurisdiction to enforce and implement the terms and provisions of the 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 (a) compel delivery of the Purchased Assets to Purchaser, (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 Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Sale Order, and (e) protect Purchaser against (i) any of the Excluded Liabilities or (ii) any Interests in the Debtors or the Purchased Assets, of any kind or nature whatsoever, attaching to the proceeds of the Sale.

28. The transactions contemplated by the Agreement are undertaken by 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 to Purchaser (including the assumption and assignment of any of the Assumed Contracts) once the Sale has been consummated, unless such authorization is duly stayed pending such appeal. 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.

29. The terms and provisions of the 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, Purchaser, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all non-Debtor parties to the Assumed Contracts, persons asserting an Interest in the Purchased Assets to be sold to Purchaser pursuant to the 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.

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

31. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in writing, 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. As adequate protection for the Debtors for the application of the proceeds of the Sale, to the extent that any of the Debtors transfer property (including cash) following the Petition Date (the "Adequately Protected Debtor") to or for the benefit of or on account of claims against any other Related Debtor (the "Beneficiary Debtor"), with an aggregate fair value in excess of the aggregate fair value of property (including cash) or benefit received by the Adequately Protected Debtor from the Beneficiary Debtor following the Petition Date, then (i) the Adequately Protected Debtor shall have (i) an allowed claim against the Beneficiary Debtor equal to the amount by which the fair value of property (including cash) or benefit transferred (net of any reasonable expenses for overhead or other services reasonably allocated

or reasonably charges to the Adequately Protected Debtor), or repayment of such Beneficiary Debtors' Obligation under the DIP Loan Agreement<sup>7</sup> exceeds the aggregate fair value of property (including cash), benefit so received or repayment of such adequately protected Debtors' Obligations<sup>8</sup> under the DIP Loan Agreement, under Sections 364(c)(1) and 507(b) of the Bankruptcy Code, having priority over any and all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code other than the claims of the DIP Lender,<sup>9</sup> Senior Claims,<sup>10</sup> and the Carve-Out Expenses<sup>11</sup> up to the Carve-Out Amount<sup>12</sup> (defined collectively as the "Junior Reimbursement Claims"); (ii) a joint and several right of contribution against each Related Debtor in an amount equal to the applicable Junior Reimbursement Claim to the extent that such claim is not paid in full.

33. As provided by Bankruptcy Rules 6004(g) and 6006(d), this Sale Order shall not be stayed for 10 days after entry and shall be effective immediately upon entry.

Dated: Wilmington, Delaware  
March 4, 2004

  
UNITED STATES BANKRUPTCY JUDGE

<sup>7</sup> As defined in the Final Order Granting Debtors' Motion Under 11 U.S.C. §§105, 361, 362, 363 and 364 for Approval of: (a) Interim Priming Dip Facility; (b) Final Priming DIP Credit Facility, through Entry of Interim and Final Order and Approval of a Stipulation; (1) Authorizing the Debtors to Obtain Secured Postpetition Financing, (2) Granting Liens and Super-Priority Claims, and (3) Granting Adequate Protection; and (C) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001 (Docket No. 316) (the "Final DIP Order").

<sup>8</sup> As defined in the Final DIP Order.

<sup>9</sup> As defined in the Final DIP Order.

<sup>10</sup> As defined in the Final DIP Order.

<sup>11</sup> As defined in the Final DIP Order.

<sup>12</sup> As defined in the Final DIP Order.