

# TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	BANKRUPTCY COURT ORDER RELEASING ALL LIENS, INCLUDING SECURITY INTEREST RECORDED AT REEL/FRAME 3035/0609		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
CATTERTON PARTNERS V, L.P.		12/03/2008	LIMITED PARTNERSHIP: DELAWARE
<b>RECEIVING PARTY DATA</b>			
Name:	Archway Bakeries LLC		
Street Address:	14120 Ballantyne Corp. Place, Suite 350		
City:	Charlotte		
State/Country:	NORTH CAROLINA		
Postal Code:	28277		
Entity Type:	LIMITED LIABILITY COMPANY: NORTH CAROLINA		
<b>PROPERTY NUMBERS Total: 40</b>			
Property Type	Number	Word Mark	
Serial Number:	75247999		
Serial Number:	74137548	ARCHWAY	
Serial Number:	74139450	ARCHWAY	
Serial Number:	75759984	ARCHWAY HOME STYLE COOKIES	
Serial Number:	74426000	COOKIE LEGENDS	
Serial Number:	76589648	CRISPY CLASSICS	
Serial Number:	75223024	CRISPYSTIX	
Serial Number:	73755292	DELICIOUS	
Serial Number:	77005549	DELICIOUS	
Serial Number:	78622492	DOUBLE THICK	
Serial Number:	73661446	FAWN FOODS	
Serial Number:	74012955	FRACKERS	
Serial Number:	73774125	FROOKIE	

OP \$1015.00 75247999

900123967

**TRADEMARK**  
**REEL: 003913 FRAME: 0627**

Serial Number:	73657991	FROOKIES
Serial Number:	74166123	FROOKWICH
Serial Number:	73836615	FRUITINS
Serial Number:	72224646	FUDGE TOWN
Serial Number:	74079879	FUNKY MONKEYS
Serial Number:	78278098	GENERAL HENRY
Serial Number:	77495408	JUST LIKE HOMEMADE
Serial Number:	75846398	JUST LIKE HOMEMADE!
Serial Number:	72282031	LICKITY SPLITS
Serial Number:	71486795	MAMA'S
Serial Number:	75114118	MAMA'S
Serial Number:	74137671	MILK LUNCH
Serial Number:	71566113	MRS. ALISON'S
Serial Number:	74645756	MRS. ALISON'S
Serial Number:	74292620	MRS. ALISON'S COOKIES
Serial Number:	76477990	MRS. ALISON'S GREAT TASTE SINCE 1933
Serial Number:	72253336	ORANGE PUNCH
Serial Number:	74061733	REGENCY
Serial Number:	73779647	R.W. FROOKIE
Serial Number:	75111370	SALERNO
Serial Number:	75243716	SALERNO
Serial Number:	75499377	SANTA'S FAVORITES
Serial Number:	74297426	SCHOOLHOUSE COOKIES
Serial Number:	72203529	SCOOTER PIE
Serial Number:	72296238	SCOOTER-PUFFS
Serial Number:	71676840	SHUR-GOOD
Serial Number:	73762213	THE GOOD FOR YOU COOKIE

#### CORRESPONDENCE DATA

Fax Number: (704)557-8197

*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*

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Email: eschuth@lance.com

Correspondent Name: Edward H. Schuth

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Address Line 4: Charlotte, NORTH CAROLINA 28277

NAME OF SUBMITTER:	Edward H. Schuth
Signature:	/Edward H. Schuth/
Date:	01/06/2009
<p><b>Total Attachments: 20</b></p> <p>source=Archway - Sale Order#page1.tif</p> <p>source=Archway - Sale Order#page2.tif</p> <p>source=Archway - Sale Order#page3.tif</p> <p>source=Archway - Sale Order#page4.tif</p> <p>source=Archway - Sale Order#page5.tif</p> <p>source=Archway - Sale Order#page6.tif</p> <p>source=Archway - Sale Order#page7.tif</p> <p>source=Archway - Sale Order#page8.tif</p> <p>source=Archway - Sale Order#page9.tif</p> <p>source=Archway - Sale Order#page10.tif</p> <p>source=Archway - Sale Order#page11.tif</p> <p>source=Archway - Sale Order#page12.tif</p> <p>source=Archway - Sale Order#page13.tif</p> <p>source=Archway - Sale Order#page14.tif</p> <p>source=Archway - Sale Order#page15.tif</p> <p>source=Archway - Sale Order#page16.tif</p> <p>source=Archway - Sale Order#page17.tif</p> <p>source=Archway - Sale Order#page18.tif</p> <p>source=Archway - Sale Order#page19.tif</p> <p>source=Archer Acquisitions LLC Name Change#page1.tif</p>	

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

In re:	)	
	)	Chapter 11
	)	Case No. 08-12323 (CSS)
Archway Cookies LLC,	)	
a Delaware limited liability company, <i>et al.</i> <sup>1</sup> ,	)	Jointly Administered
	)	
Debtors.	)	
	)	

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**ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL ASSETS OF  
ARCHWAY COOKIES, LLC FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND OTHER INTERESTS; (II) AUTHORIZING AND  
APPROVING PURCHASE AGREEMENT THERETO; (III) APPROVING  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO;  
AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”),<sup>2</sup> of the debtors and debtors in possession in the above captioned cases (collectively, the “**Debtors**”), pursuant to Sections 105(a), 363 and 365 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order (i)(a) Approving Procedures in Connection with the Sale of the Debtors’ Assets; (b) Scheduling the Related Auction and Hearing to Consider Approval of Sale and Hearing to Consider Approval of Stalking Horse Protections; (c) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (d) Approving the Form and Manner of Notice Thereof; and (e) Granting Related Relief; and (ii)(a) Authorizing the Sale of Such Assets, Pursuant to the Modified Purchase Agreement (defined below), Free and

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Archway Cookies LLC, a Delaware limited liability company (4891), and Mother’s Cake & Cookie Co., a California corporation (8765).

<sup>2</sup> Capitalized terms used herein shall have the meaning ascribed to them in the Purchase Agreement (as defined below) and/or the Bidding Procedures Order, unless otherwise noted.

Clear of Liens, Claims, Encumbrances, and Other Interests; (b) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (c) Granting Related Relief, all as more fully described in the Motion; and a hearing on the Bidding Procedures Order having been held before this Court on November 13, 2008; and the Court having entered the Bidding Procedures Order on November 18, 2008; and the Court having conducted the Sale Approval Hearing to consider the approval of the sale of substantially all of the assets of Archway Cookies LLC (the "**Purchased Assets**") and related transactions pursuant to the terms of the Asset Purchase Agreement (the "**Purchase Agreement**"),<sup>3</sup> dated November 13, 2008, between Archway Cookies LLC and Archer Acquisitions, LLC ("**Purchaser**") as modified on the record of the Auction; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the Purchase Agreement and the transactions contemplated thereby; and the Court having reviewed and considered the Motion and any objections thereto, and the arguments of counsel made, and evidence adduced, related thereto; and upon the record of the hearing on the Bidding Procedures Order, the Sale Approval Hearing held before this Court on December 2, 2008, and the full record of these cases; and it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

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

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

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

D. Emergent circumstances and sound business reasons exist for the Debtors' sale of the Purchased Assets pursuant to the Purchase Agreement. Among other things, the Debtors' manufacturing and business operations were terminated prior to the Petition Date, and the value of the Purchased Assets, including, without limitation, the Debtors' trademarks and trade names, will become impaired if the Purchased Assets are not sold quickly. Entry into the Purchase Agreement and consummation of the transactions contemplated thereby (the "Transactions") constitute the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates and creditors.

E. Notice of the Sale Motion, the Auction, and the Sale Approval Hearing has been given in accordance with Bankruptcy Rules 2002, 4001, 6004 and 6006 and the Bidding Procedures Order. The foregoing notice was reasonably calculated to provide notice to all creditors of the Debtors, all other parties in interest, and all prospective bidders and in all respects constitutes proper and sufficient notice of the Sale Motion and the Sale Approval Hearing, and no other or further notice of the Sale Motion, the Sale Approval Hearing or the entry of this Order need be given.

F. A reasonable opportunity has been afforded to all prospective bidders and any interested party to conduct due diligence with respect to the Purchased Assets and make an offer for the Purchased Assets that is higher and better than the offer of the Purchaser.

G. The Debtors and their professionals have complied in all respects with the Bidding Procedures Order.

H. Initial Overbids in addition to the offer of the Stalking Horse Bidder were received before the Bid Deadline, and there were four Qualified Bidders at the Auction on December 2, 2008. Following competitive bidding, the Purchase Agreement represents the highest and best offer received by the Debtors for the Purchased Assets, and the Purchaser was determined by the Debtors to be the Prevailing Bidder. Brynwood Partners VI L.P. was determined to be the Back-up Bidder.

I. The Auction was fair in substance and procedure. The sale consideration to be realized by the Debtors pursuant to the Purchase Agreement ("**Total Consideration**") is fair and reasonable, and given the sufficient notice and opportunity given to all prospective bidders and any interested parties, and the competitive bidding resulting from that notice and the Auction, the Total Consideration represents the present realizable and market value of the Purchased Assets. Consummation of the Transactions contemplated by the Purchase Agreement will therefore provide the highest or otherwise best value for the Purchased Assets and is in the best interests of the Debtors and their estates.

J. The Transactions contemplated by the Purchase Agreement are undertaken by the Debtors and the Purchaser at arm's length, are not entered into fraudulently, are without collusion and are in good faith in all respects within the meaning of Sections 363(m) of the

Bankruptcy Code, and the Purchaser is entitled to the protections of Sections 363(m) of the Bankruptcy Code.

K. For the purposes of approving the Transactions described in the Purchase Agreement, this Court specifically finds that (i) the Purchaser is not a successor of the Debtors (as such term is commonly understood and defined by state and federal statutory and/or common law); (ii) the Transactions are not, and will not result in, a de facto merger or consolidation of the Debtors and the Purchaser; (iii) the Purchaser's business is not a mere continuation or substantial continuation of the Debtors' business; (iv) the Purchaser is entering into the sale in good faith and not for the purpose of avoiding the Debtors' liabilities; and (v) there are no common incorporators, officers, directors or material stockholders between the Debtor and the Purchaser.

L. A sale of the Purchased Assets other than one free and clear of Liens, Claims and interests (as such term is interpreted under Section 363(f) of the Bankruptcy Code) would adversely affect the Debtors' estates and would be of substantially less benefit to the Debtors' estates.

M. The Debtors and the Purchaser have not engaged in any conduct that would permit the Purchase Agreement or the Transactions to be avoided under Section 363(n) of the Bankruptcy Code, and Purchaser has not otherwise violated Section 363(n) by any action or inaction, and the Transactions do not violate the provisions of Section 363(n).

N. The Debtors (i) have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby (collectively, the "Sale Documents"), 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, (iii) have taken all corporate action



necessary to authorize and approve the Sale Documents and the consummation by the Debtors of the Transactions contemplated thereby, and (iv) no consents or approvals, other than as set forth in this Order or as expressly provided for in the Purchase Agreement, are required for the Debtors to consummate the Transactions.

O. 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 all creditors and non-debtor parties to the Executory Contracts.

P. 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 in and to the Purchased Assets free and clear of all Liens, Claims and interests (as such term is interpreted under Section 363(f) of the Bankruptcy Code) of any kind or nature whatsoever (but excluding Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement), including (but not limited to) (i) Liens and Claims 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, (ii) Liens and Claims relating to taxes arising under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing, (iii) 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, including, but not limited to, any restriction on the use, transfer, receipt of income or other exercise of any attributes of ownership and specifically including, without limitation, the mortgages, security interests and judgments listed on Exhibit B attached hereto, (iv) any interest arising under Sections 365(h) or 365(n) of the Bankruptcy Code, and (v) all debts arising in any

way in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors or affiliates, Claims, obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests, 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 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including (but not limited to) claims otherwise arising under doctrines of successor liability (all such Liens, Claims and interests (as such term is interpreted under Section 363(f) of the Bankruptcy Code) shall be referred to herein as the **"Interests"**).

Q. Purchaser would not have entered into the Purchase Agreement and would not consummate the Transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Purchased Assets to Purchaser were not free and clear of all Interests of any kind or nature whatsoever (other than any Permitted Lien or Assumed Liability as set forth in the Purchase Agreement), or if Purchaser would, or in the future could, be liable for any of the Interests.

R. The Debtors may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever (except for the Permitted Liens and Assumed Liabilities as set forth in the Purchase 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. Wachovia Capital Finance Corporation (New England) and Catterton Partners V, L.P. (collectively, the **"Pre-Petition Secured Lenders"**) consent to the Transactions contemplated by the Purchase Agreement and, therefore, the Purchased Assets may be sold free and clear of any Interest of the Pre-Petition Secured Lenders pursuant to Section 363(f)(2). Any entity with an Interest in the Purchased

Assets that is junior to the Interests of the Pre-Petition Secured Lenders (any such Interest, a **"Junior Interest"**) could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Interest through the application of applicable state law foreclosure remedies and/or the default remedies of Article 9 of the Uniform Commercial Code as enacted in the applicable jurisdiction, and therefore, the Purchased Assets may be sold free and clear of any Junior Interests under Sections 363(f)(1) and 363(f)(5) of the Bankruptcy Code. In addition, the Total Consideration represents the presently realizable market value of the Purchased Assets and, in accordance with Section 506(a) of the Bankruptcy Code, represents the aggregate value of all Liens against the Purchased Assets, thus satisfying the requirement of Section 363(f)(3) of the Bankruptcy Code. Any other person or entity with an Interest in any of the Purchased Assets has consented to their sale, is deemed to have consented to their sale, or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest, or the sale of the Purchased Assets otherwise satisfies the requirements of Section 363(f) of the Bankruptcy Code. Specifically, any person or entity with Interests in the Purchased Assets who did not object, or who withdrew their objections, to the Purchase Agreement or the Motion are deemed to have consented to the Transactions pursuant to Sections 363(f)(2). Those persons or entities with Interests in the Purchased Assets who did object fall within one or more of the other subsections of Sections 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Transactions ultimately attributable to the property against or in which they assert an Interest with the same validity, force, and effect which they now have, subject to any claims and defenses the Debtors and/or other parties in interest possess with respect thereto.

S. The procedures set forth herein for the assumption and assignment of unexpired leases and assumed contracts (the "**Executory Contracts**") are in the best interests of the Debtors, their estates, and their creditors and are an integral part of the Transactions, and Purchaser would not have entered into the Purchase Agreement and would not consummate the Transactions contemplated thereby without the approval of such procedures.

T. For purposes of Section 363(b)(1) of the Bankruptcy Code, the Debtors have not, in connection with offering a product or service, disclosed to one or more individuals a policy prohibiting the transfer of "personally identifiable information" (as defined in 11 U.S.C. § 101 (41A)) about individuals to persons that are not affiliated with the debtor.

U. Upon completion of the Transactions, the Debtors will have reasonable access to their books and records to allow them to administer their bankruptcy cases post-sale.

V. The legal and factual bases set forth in the Motion and at the Sale Approval Hearing establish just cause for the relief granted herein.

W. The relief requested in the Motion is an exercise of the Debtors' sound business judgment and is in the best interests of the Debtors and their estates and creditors.

X. The entry of this Order is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

Y. Time is of the essence in closing the Transactions, and the Debtors and the Purchaser intend to close the sale of the Purchased Assets and the other Transactions as soon as possible.

Z. To the extent that a finding of cause is necessary to grant the relief provided herein, such cause exists based on the findings of fact and conclusions of law contained herein.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion [D.I. 100] is granted.
2. Any and all objections and responses concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Approval Hearing. All objections and responses to the Motion that have not been withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby overruled and denied.
3. The Sale Documents, all of the terms and conditions thereof, the sale of the Purchased Assets, and all other Transactions are hereby approved in all respects.
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 Sale Documents, and to consummate the sale of the Purchased Assets and the other Transactions pursuant to, and in accordance with, the terms and conditions of the Sale Documents.
5. The Debtors, acting by and through their existing agents, representatives and officers, including, without limitation, Jeff Granger, their Chief Restructuring Officer, are authorized to execute, deliver, perform under, consummate, and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and are authorized to take any and all further actions (i) as may be reasonably requested by Purchaser pursuant to the Purchase Agreement for the purpose of assigning, transferring, granting, conveying, and conferring the Purchased Assets to Purchaser, or (ii) as may be necessary, desirable or appropriate in connection with the performance by the Debtors of their obligations under the Sale Documents, in each case without the necessity of any further Order of this Court.

6. This Order and the Sale Documents shall be binding in all respects upon all creditors (whether known or unknown) of the Debtors, any person or entity that holds or purports to hold an Interest in or against the Debtors or the Purchased Assets, all nondebtor parties to the Executory Contracts, any other party in interest within the meaning of Section 1109(b) of the Bankruptcy Code, all successors and assigns of Purchaser, the Debtors, and their affiliates and subsidiaries, and any subsequent trustee(s) appointed in any of the Debtors' Chapter 11 cases or upon a conversion thereof to Chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any Chapter 11 plan confirmed in these bankruptcy cases or in any Order of the Court confirming any such Chapter 11 plan shall conflict with or modify the rights of the Purchaser pursuant to the provisions of the Sale Documents or this Order.

7. The Sale Documents 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 does not have a materially adverse effect on the Debtors' estates.

8. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, at the Closing and upon consummation of the Transactions, Purchaser shall acquire good and marketable title in and to each of the Purchased Assets, free and clear of all Interests of any kind or nature whatsoever (except for the Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement), with all such Interests of any kind or nature whatsoever (except for the Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) 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 or any other party in interest may possess with respect thereto.

9. All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, employees, and other creditors, holding or purporting to hold Interests of any kind or nature whatsoever (except for the Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) against or in the Debtors or the Purchased Assets (regardless of whether any such Interest or purported Interest is legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) are forever barred, estopped, and permanently enjoined from asserting any claim or demand based upon, or in any way related to, such Interests against Purchaser, its successors or assigns, or the Purchased Assets.

10. The transfer of the Purchased Assets to Purchaser pursuant to the Sale Documents does not require any consents other than as specifically provided for in the Sale Documents and 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 (except for the Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) pursuant to Section 363(f) of the Bankruptcy Code.

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 Purchased Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Purchased Assets, then

(a) the Debtors are authorized 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 authorized to file, register, or otherwise record a certified copy of this 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 (except for the Permitted Liens and Assumed Liabilities).

12. Purchaser shall have a period of sixty (60) days following the Closing Date to designate those Executory Contracts that Purchaser desires to be assumed and assigned by Seller (collectively, the "Assumed Contracts"). Upon such designation, Purchaser shall provide notice to any non-debtor party to an Assumed Contract that the Assumed Contract has been designated for assumption and assignment to Purchaser. Such notice shall be provided using the form attached hereto as Exhibit C (such form being referred to as the "Assumption Notice"). The Assumption Notice shall be filed with the Bankruptcy Court and shall contain (i) the proposed Cure Amount to be paid in connection with the assumption and assignment of the designated Contract, (ii) notice that any objection to the proposed assumption and assignment shall be filed within fifteen (15) days after the filing of the Assumption Notice, (iii) notice that failure to object to the proposed assumption and assignment within the time required shall result in the waiver of any possible objection; and (iv) notice that any party to an Assumed Contract that fails to timely object shall be deemed to have consented to the proposed assumption and assignment. In the event an objection to the proposed assumption of an Assumed Contract is timely received, Purchaser shall have the option to remove the Executory Contract that is the subject of the objection from the list of Assumed Contracts or request that the Court set a hearing to resolve the objection, in which case Purchaser shall have standing to request that this Court



make all findings of fact and conclusions of law necessary for the entry of an Order binding upon the counterparty to such Executory Contract and declaring the Executory Contract to be assumed and assigned to Purchaser. In the absence of any objection to the proposed assumption of an Assumed Contract, Purchaser shall be allowed to submit the proposed order approving the assumption and assignment of the Assumed Contract under certification of counsel.

13. Pursuant to the procedures set forth herein, the Debtors are authorized, in accordance with Sections 105(a), 363, and 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser, the Executory Contracts free and clear of all Interests of any kind or nature whatsoever (other than the Permitted Liens and Assumed Liabilities); and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Executory Contracts to the Purchaser. During the period that the Purchaser is allowed to designate Executory Contracts for assumption and assignment, the Debtors shall not be permitted to file any motion to reject any Executory Contracts without first providing the Purchaser advance notice of at least five (5) business days.

14. Any provision in any of the Executory Contracts or any other agreement to which the Debtors are a party that purports to declare a breach or default as a result of a change in control of the Debtors' Business or requires the consent of a nondebtor party in connection with a change in control of the Debtors' Business is hereby deemed unenforceable under Section 365(f) of the Bankruptcy Code.

15. The Total Consideration 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.

16. The Total Consideration provided by Purchaser for the Purchased Assets under the Sale Documents is fair and reasonable, and the Transactions may not be avoided under Section 363(n) of the Bankruptcy Code.

17. Prior to the Closing of the sale of the Purchased Assets, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release effective as of the Closing its Interests (other than the Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

18. This Order (a) shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged, and terminated (other than the Permitted Liens and Assumed Liabilities set forth in the Purchase 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.

19. Each and every federal, state, and local governmental agency or department is <sup>authorized</sup> ~~directed~~ to accept any and all documents and instruments necessary and appropriate to consummate the Transactions contemplated by the Purchase Agreement.

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

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

22. Under no circumstances shall Purchaser be deemed a successor of or to the Debtors for any Interests against or in the Debtors or the Purchased Assets of any kind or nature whatsoever (other than Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement). The sale, transfer, assignment and delivery of the Purchased Assets shall not be subject to any Interests (except for Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) and all such Interests shall remain with, and continue to be obligations of,

the Debtors (subject to any and all rights and defenses of the Debtors with respect thereto, as debtor in possession under the Bankruptcy Code or otherwise). All persons holding Interests against the Debtors or in the Purchased Assets of any kind or nature whatsoever (except for Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) shall be, and are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against 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 the Debtors, their estates, officers, directors, shareholders, or the Purchased Assets. Following the Closing, no holder of an Interest in or against the Debtors or the Purchased Assets (with the exception of Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement) shall interfere with Purchaser's title to or use and enjoyment of the Purchased Assets.

23. This Court retains jurisdiction to enforce and implement the terms and provisions of the Sale Documents, 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) subject to the terms and conditions of the Sale Documents, compel delivery of the Purchased Assets to Purchaser or performance of other obligations of the Debtors under the Purchase Agreement, (b) subject to the terms and conditions of the Sale Documents, compel delivery of the purchase price by Purchaser or performance of other obligations of Purchaser contained in the Sale Documents, (c) resolve any disputes arising under or related to the Sale Documents, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order and the Purchase Agreement, including, without

limitation, the enforcement of Purchaser's exclusive right, title, and interest in and to the Purchased Assets, and (e) protect Purchaser against any claims or demands based upon (i) any of the Excluded Liabilities or (ii) any Interests in the Purchased Assets (other than the Permitted Liens and Assumed Liabilities set forth in the Purchase Agreement); provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Sale Documents or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

24. The Transactions contemplated by the Sale Documents are undertaken by Purchaser in good faith in all respects, as that term is used in Section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale of the Purchased Assets to Purchaser free and clear of all Interests or the validity of any other protection provided to Purchaser pursuant to this Order unless such authorization is duly stayed pending such appeal.

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

26. Time is of the essence in closing the Transactions. Accordingly, the stay of orders authorizing the (i) use, sale, or lease of property as provided for in Bankruptcy Rule 6004(g) and (ii) assignment of an executory contract or unexpired lease as provided for in Bankruptcy Rule 6006(d), shall not apply to this Order, and this Order is immediately effective and enforceable.

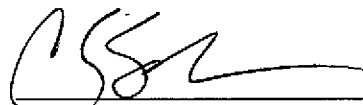
27. To the extent permitted by Section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Assets on account of the filing or pendency of these Chapter 11 cases.

28. This Order constitutes this Court's approval of the Transactions. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

29. The provisions of this Order are non-severable and mutually dependent.

30. Within two (2) business days of the entry of this Order, the Debtors shall serve a copy of this Order (in the Debtors' discretion, without attachments provided that they are furnished upon request by any recipient) on (i) counsel to the lenders providing secured post-petition financing in these bankruptcy cases; (ii) counsel for the Pre-Petition Lenders, (iii) counsel for the Official Committee of Unsecured Creditors; (iii) all entities having requested notices pursuant to Bankruptcy Rule 2002; (iv) all entities asserting a lien on the assets of the Debtors; (v) counsel for any person that filed an objection to the Motion, and (vi) the Office of United States Trustee.

Dated: December 3, 2008  
Wilmington, Delaware



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Christopher S. Sontchi  
United States Bankruptcy Judge

