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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
CLAIM JUMPER RESTAURANTS, LLC) Case No. 10-12819 (KG)
et al.,)
) (Jointly Administered)
Debtors.¹)
) Docket Ref. Nos. 34, 161

ORDER UNDER 11 U.S.C. §§ 105(a), 363 AND 365 AND
FED. R. BANKR. P. 2002, 6004 AND 6006 AUTHORIZING AND APPROVING (A) THE
SALE OF ASSETS FREE AND CLEAR OF LIENS AND OTHER INTERESTS AND (B)
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES TO SUCCESSFUL BIDDER(S) AT AUCTION

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order authorizing and approving the proposed sale of substantially all of the Debtors' assets (the "Assets"), to GRP Acquisition Corp. (or an Affiliate of GRP Acquisition Corp. designated pursuant to Section 10.3 of the Agreement, together, "GRP"), pursuant to that certain Asset Purchase Agreement by and among the Debtors and GRP, dated September 10, 2010, subject to higher and better offers; and an auction for the Assets having been held on October 28, 2010 (the "Auction"); and Landry's Holdings, Inc. ("LHI"), Landry's Restaurants, Inc. ("LRI") and/or any entity formed by LHI or LRI to acquire the Assets (collectively, the "Buyer") having submitted the highest and best offer for the Assets at the Auction, as set forth in that certain Asset Purchase Agreement by and among the Debtors, LHI and LRI, attached hereto as Exhibit A (as may be amended in accordance with the DIP loan

¹ The Debtors in these cases along with the last four digits of each of the Debtors' federal tax identification numbers are: Claim Jumper Restaurants, LLC (1053); and Claim Jumper Management, LLC (6481). The Debtors' headquarters and mailing address is: 16721 Millikan Ave., Irvine, CA 92606.

agreement, the order approving the DIP loan agreement and the terms hereof, the "Agreement";² and the Court having considered the Motion and the Agreement, objections thereto, the statements of counsel and any testimony or offer of proof as to testimony on the record at the hearing on November 2, 2010 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their bankruptcy estates, their creditors and other parties-in-interest; and after due deliberation and good cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS.³

A. **Jurisdiction and Venue.** This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006.

C. **Notice.** As evidenced by the affidavits of service filed with this Court and based upon the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing and the transactions set forth in the Agreement and this Order (the "Transaction"), including the assumption and assignment of the Assigned Contracts and Cure Amounts with respect thereto, has been provided in accordance

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion or the Agreement, as the case may be.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

with Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006; (ii) it appearing that no other or further notice need be provided; (iii) such notice was and is good, sufficient and appropriate under the circumstances; and (iv) no other or further notice of the Motion, the Auction, the Sale Hearing or the Transaction (including the assumption and assignment of the Assigned Contracts), is or shall be required.

D. Opportunity to Object. A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been given, in light of the circumstances, to all interested persons and entities, including the following: (a) the U.S. Trustee; (b) counsel to the official committee of unsecured creditors (the "Committee"); (c) all parties known to be asserting a lien on any of the Debtors' Assets; (d) all known vendors, suppliers, customers, lenders, contract, license and lease counterparties; (e) all entities known to have expressed an interest in acquiring any of the Assets; (f) the United States Attorney's office; (g) all state attorney generals in states in which the Debtors conduct business; (h) various federal and state agencies and authorities asserting jurisdiction over the Assets, including the Internal Revenue Service and taxing agencies for each state in which the Debtors do business or are organized; (i) the Buyer and its counsel; (j) all other parties that have filed a notice of appearance and demand for service of papers in the Debtors' chapter 11 cases under Bankruptcy Rule 2002 as of the date of filing the Motion; and (k) all known creditors of the Debtors. A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been given.

E. Authority. The Debtors (i) have limited liability company power and authority to execute the Agreement and all other documents contemplated thereby and the Debtors' sale of the Assets or transfer of the Assets and sale of the NewCo Stock (as defined

below)⁴ has been duly and validly authorized by all necessary limited liability company action, (ii) have all of the limited liability company power and authority necessary to consummate the transactions contemplated by the Agreement and this Order, (iii) have taken all limited liability company action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated by the Agreement and this Order, 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. **Transaction in Best Interests.** Good and sufficient reasons for approval of the Agreement and the Transaction have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

G. **Business Justification.** The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications, and (ii) compelling circumstances for approval of the Transaction other than in the ordinary course of business under Bankruptcy Code section 363(b) prior to, and outside of, a plan of reorganization in that, among other things, the immediate consummation of the Transaction with the Buyer is necessary and appropriate to maximize the value of the Debtor's estates. Entry of an order approving the Agreement and all the provisions thereof is a necessary condition precedent to the Buyer consummating the transactions set forth in the Agreement. Such business purposes and justifications include, but are not limited to, the facts that: (i) there is substantial risk of deterioration of the value of the Assets if the Transaction is not consummated promptly; (ii) the Agreement and the Closing (as defined in the Agreement) will present the best opportunity to realize the value of the Debtors on

⁴ Any reference to the transfer of the NewCo Stock in this Order shall be applicable only to the extent that Buyer elects to have the Debtors transfer some or all of the Assets to NewCo pursuant to section 4.16 of the Agreement.

a going concern basis and avoid decline and devaluation of the Debtors' business; and (iii) unless the Transaction is concluded expeditiously as provided in the Motion and pursuant to the Agreement and this Order, creditors' recoveries may be diminished.

H. **Arm's-Length Transaction.** The Agreement was negotiated, proposed and entered into by the Debtors and the Buyer without collusion, in good faith and from arm's-length bargaining positions. The Buyer is not an "insider" of the Debtors, as that term is defined in Bankruptcy Code section 101(31). Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). Specifically, the Buyer has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders.

I. **Good Faith Buyer.** The Buyer is a good faith purchaser of the Assets and/or the NewCo Stock within the meaning of Bankruptcy Code section 363(m) and is therefore entitled to all of the protections afforded thereby. The Buyer has proceeded in good faith in all respects in connection with this proceeding, as reflected by the facts, inter alia, that: (a) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Assets; (b) the Buyer complied with the provisions in this Court's order approving bid procedures (the "Bid Procedures") for the auction and sale of the Assets dated October 1, 2010 [Docket No. 161] (the "Bid Procedures Order"); (c) the Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Bid Procedures Order; and (d) all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer and the Debtors in connection with the Transaction have been disclosed.

J. **Highest and Best Offer.** The Debtors conducted the Auction in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order.

The Auction conducted pursuant to the Bid Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity was given to any interested party to make a higher and better offer for the Assets. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

K. Consideration. The consideration provided by the Buyer under the Agreement and this Order constitutes reasonably equivalent value or fair consideration, as the case may be (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. The Agreement and this Order represents a fair and reasonable offer to purchase the Assets and/or NewCo Stock under the circumstances of this chapter 11 case. No other person or entity or group of entities, other than the Buyer, has offered to purchase the Assets for an amount that would give greater economic value to the Debtors' estates. Approval of the Motion and the Agreement and the consummation of the transactions contemplated thereby are in the best interests of the Debtors, their creditors, their estates and all other parties in interest.

L. Free and Clear. The Debtors are the sole and lawful owners of the Assets, or have a valid, enforceable property interest in such assets. The transfer of the Assets to

the Buyer and/or NewCo, as applicable, and the transfer of the NewCo Stock to Buyer under the Agreement and this Order will be a legal, valid, and effective transfer of the Assets and/or the NewCo Stock, and vests or will vest Buyer or NewCo, as applicable, with all right, title, and interest of the Debtors to the Assets (and vests or will vest the Buyer with all right, title, and interest of the Debtors to the NewCo Stock, if applicable) free and clear of all liens (including, without limitation, mechanics', materialmens' and other consensual and non-consensual liens and statutory liens), claims (as defined in Section 101(5) of the Bankruptcy Code), encumbrances (including, without limitation, all Encumbrances as defined in the Agreement), obligations, liabilities (including, without limitation, all Liabilities as defined in the Agreement), contractual commitments, interests (as the term is defined in the Agreement) of any kind or nature whatsoever, including, without limitation, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, judgments, demands, rights of first refusal, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental liability, employment-related liability, pension liability, or tax, decrees of any court or foreign or domestic governmental entity, interests, 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, debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or the Debtors' predecessors or Affiliates (as such term is defined by section 101(2) of the Bankruptcy Code), reclamation claims, claims under the Perishable Agricultural Commodities Act of 1930 (as amended, "PACA") and state statutes of similar effect (together, the "PACA Claims"), claims under the under the Packers and Stockyards Act of 1921 (as

amended, "PASA" and any claims thereunder, the "PASA Claims"), demands, guaranties, options, rights, contractual or other commitments, restrictions, and matters of any kind and nature, whether known or unknown, asserted or unasserted, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the bankruptcy case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, the "Interests"), including, but not limited to, (i) those that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtors' interests in the Assets, or any similar rights, (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing Date and (iii) those that are defined as "Interests" under the Agreement. For avoidance of doubt, all Interests shall attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, if any, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto. The Debtors have satisfied, or provided for, any and all PACA Claims and PASA Claims and the Assets are being transferred free and clear of any trusts provided for in PACA or PASA

M. The Buyer would not have entered into the Agreement and would not consummate the transactions contemplated by the Agreement and this Order, thus adversely affecting the Debtors, their estates, and their creditors, if the transfer of the Assets to the Buyer

and/or NewCo, as applicable, the assumption and assignment of the Assigned Contracts to the Buyer and/or NewCo, as applicable, and the transfer of the NewCo Stock to Buyer were not free and clear of all Interests of any kind or nature whatsoever, or if the Buyer or NewCo, as applicable, would, or in the future could, be liable for any of the Interests.

N. The Buyer will not consummate the transactions contemplated by the Agreement and this Order unless the Agreement specifically provides, and the Bankruptcy Court specifically orders, that none of Buyer, NewCo or their affiliates, officers, directors or shareholders (other than the Debtors), the NewCo Stock or the Assets will have any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Retained Obligation.

O. The Debtors may transfer the Assets to the Buyer and/or NewCo, as applicable, and may sell the NewCo Stock to Buyer free and clear of any Interests of any kind or nature whatsoever because in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each entity with an Interest in the Assets and/or the NewCo Stock to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Order, consented to the Transaction or is deemed to have consented to the Transaction; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests who did not object to the Motion are deemed, subject to the terms of this Order, to have consented pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the property against or in which such Interests

are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, if any, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

P. Not transferring the Assets and the NewCo Stock free and clear of all Interests would adversely impact the Debtors' estates, and the transfer of the Assets and the NewCo Stock other than free and clear of all Interests would be of substantially less value to the Debtors' estates.

Q. No Fraudulent Transfer. The Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the Debtors nor the Buyer is entering into the transactions contemplated by the Agreement fraudulently.

R. Not a Successor. The Buyer and NewCo (a) are not successors to the Debtors, (b) have not, de facto or otherwise, merged with or into the Debtors, (c) are not a continuation or substantial continuation of the Debtors or any enterprise of the Debtors, (d) do not have a common identity of incorporators, directors, equity holders, members, managers or holder of membership interests with the Debtors, and (e) are not holding themselves out to the public as a continuation of the Debtors. Except as otherwise provided herein or in the Agreement, the (i) transfer of the Assets to the Buyer and/or NewCo, as applicable, and the NewCo Stock to the Buyer and (ii) assumption and assignment to the Buyer and/or NewCo of the Assigned Contracts, do not and will not subject the Buyer or NewCo, as applicable, to any liability whatsoever with respect to the operation of the Debtors' business before the Closing

Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable law, including, without limitation, any theory of antitrust or successor or transferee liability. Except as otherwise provided herein or in the Agreement, the Buyer and NewCo shall not have any liability to any broker or other professionals retained by the Debtors or to cure any default of the Debtors related to the Assets or Assigned Contracts.

S. **Cure/Adequate Assurance.** The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtors and their estates, creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors. Subject to the express terms of paragraph 25 of this Order with respect to Real Estate Leases, each of the Debtors, the Buyer and NewCo, as applicable, and to the extent necessary, has cured or provided adequate assurance of cure, of any defaults existing prior to the date hereof with respect to the Assigned Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assigned Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B) and 365(f)(2)(A). The Buyer's and/or NewCo's promise to perform the obligations under the Assigned Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of 11 U.S.C. §§ 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). The Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary. No provision of any Assigned Contract that (i)

purports to prohibit, restrict, or condition the Assigned Contract by virtue of the assignment of the Assigned Contract, the insolvency or financial condition of the Debtors, or the commencement of these Cases, (ii) purports to impose any penalty or modify the terms of the Assigned Contract by virtue of the assignment of the Assigned Contract, the insolvency or financial condition of the Debtors, or the commencement of these Cases, or (iii) purports to limit the rights of the Buyer and NewCo to enjoy the benefits of any Assigned Contract, shall have any force or effect.

T. Other than the following parties, no one has filed an objection to the Cure Amounts set forth in the notice of Debtors' proposed Cure Amounts filed on October 8, 2010 and appearing at Docket No. 224 (the "Original Cure Notice"): South Coast Plaza [Docket No. 241], National Retail Properties, [Docket No. 281], Macerich Company, Caruso Affiliated, Palomar & Co. and Jones Lang LaSalle [Docket Nos. 295 and 301], GGP Limited Partnership [Docket No. 297], Parker Family Trust [Docket No. 298], and PK Sale, LLC, PL Carne Mountain, LP, Redfield Promenade, LP and the Price Reit, Inc. [Docket No. 299] (collectively, the "Objecting Landlords"). Except with respect to the Objecting Landlords and the Real Estate Leases set forth in the Supplemental Cure Notice (as defined below), whose Cure Amounts shall be determined in accordance with Paragraph 25 of this Order, the counterparties to the Assigned Contracts set forth in the Original Cure Notice are deemed to consent to the Cure Amounts set forth in the Original Cure Notice and the Cure Amounts for such Assigned Contracts shall be the amounts set forth in the Original Cure Notice.

U. Prompt Consummation. The Transaction must be approved and consummated promptly in order to preserve the viability of the business subject to the

Transaction as a going concern, to maximize the value of the Debtors' estates. Time is of the essence in consummating the Transaction.

V. Retention of Hilco Real Estate, LLC. On October 5, 2010, the Debtors filed their Application for an Order Authorizing the Employment and Retention of Hilco Real Estate, LLC ("Hilco"), as Real Estate Consultants to the Debtors nunc pro tunc to September 22, 2010 [Docket No. 181] (the "Hilco Retention Application"). On October 19, 2010, the Court entered an order approving the Hilco Retention Application [Docket No. 265] (the "Hilco Retention Order") and the Real Estate Consulting and Advisory Services Agreement between the Debtors and Hilco (the "Hilco Engagement Agreement").

NOW, THEREFORE, IT IS ORDERED THAT:

1. Motion is Granted. The Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein.
2. Objections Overruled. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.
3. Notice. Notice of the Sale Hearing was fair and proper and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
4. Approval. The Agreement and all of the terms and conditions thereto are hereby authorized and approved. The Debtors hereby are authorized and directed to (1) execute the Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Agreement and this Order, provided that such

additional documents do not materially change the terms of the Agreement and this Order and are otherwise made in accordance with the DIP loan agreement and the order approving the DIP loan agreement; (2) consummate the Transaction in accordance with the terms and conditions of the Agreement, this Order and the instruments to the Agreement contemplated by the Agreement and this Order; and (3) take all other and further actions as may be reasonably necessary to implement the transactions contemplated by the Agreement and this Order.

5. **Implementation of the Transaction: Creation of NewCo:** The Debtors are hereby authorized to create a new subsidiary ("NewCo") pursuant to the terms of the Agreement, which shall be a corporation formed in a jurisdiction determined by Buyer in Buyer's sole discretion. On the Closing Date, Debtors may transfer all of the Assets, or such portion of the Assets as Buyer may direct, to NewCo free and clear of Interests pursuant to Bankruptcy Code sections 105(a) and 363(f) except as expressly permitted or otherwise specifically provided for in the Agreement or this Order, assume and assign each of the Assigned Contracts, or such portion thereof as Buyer may direct, to NewCo, and NewCo may assume some or all of the Assumed Obligations, to the extent directed by Buyer, and, in consideration therefore, the Debtors shall receive 100% of the equity ownership of NewCo (the "NewCo Stock"), which NewCo Stock shall be transferred to Buyer. The Buyer will assume all of the Assumed Obligations not assumed by NewCo.

6. **Free and Clear.** Except as expressly permitted or otherwise specifically provided for in the Agreement or this Order, pursuant to Bankruptcy Code sections 105(a) and 363(f), at the Closing, the Debtors are authorized to transfer the Assets to the Buyer and/or NewCo, as applicable, and to transfer the NewCo Stock to the Buyer and, as of the Closing Date, the Buyer and/or NewCo, as applicable, shall take title to and possession of the Assets, and the

Buyer shall take title to and possession of the NewCo Stock, in each instance, free and clear of all Interests of any kind or nature whatsoever, including but not limited to the Retained Obligations, with all such Interests to attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets, the NewCo Stock or their proceeds, if any, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

7. **Valid Transfer.** As of the Closing Date, (a) the transactions contemplated by the Agreement and this Order effect a legal, valid, enforceable and effective sale and transfer of the Assets to the Buyer and/or NewCo, as applicable, and the NewCo Stock to the Buyer, and shall vest the Buyer and/or NewCo, as applicable, with title to such Assets and NewCo Stock, in each instance, free and clear of all Interests and Retained Obligations, and (b) the Agreement, this Order and the transactions and instruments contemplated by the Agreement and this Order shall be enforceable against and binding upon the Buyer, NewCo, the Debtors, the Debtors' estates, creditors or Interest holders and not subject to rejection or avoidance by, the Debtors or any chapter 11 or chapter 7 trustee of the Debtors and their estates.

8. **General Assignment.** On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Assets. 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.

9. **Injunction.** Except as expressly permitted by the Agreement or by this Order, pursuant to sections 105 and 363 of the Bankruptcy Code, all persons and entities, including, but not limited to, the Debtors, affiliates, successors or assigns of the Debtors, the Committee, the Debtors' employees, former employees, all debt security holders, equity security holders, administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, lessors, parties or beneficiaries of any benefit plan, customers, trade creditors and all other creditors, holding Interests of any kind or nature whatsoever against or in the Debtors or in the Debtors' interests in the Assets and the NewCo Stock (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, such Assets and NewCo Stock or with respect to any Interests arising out of or related to the Transaction, shall be and hereby are forever barred, estopped and permanently enjoined from commencing, prosecuting, continuing, or otherwise pursuing such Interests, whether by payment, setoff, or in any manner any action or other proceeding of any kind, directly or indirectly, against the Buyer, NewCo, their property, their successors and assigns, alleged or otherwise, their affiliates and each of their respective current and former shareholders, officers, directors, investment advisors, attorneys, employees, partners, financial advisors, affiliates and representatives (each of the foregoing in its individual capacity) (other than the Debtors, as applicable) or such Assets and the NewCo Stock. Notwithstanding the foregoing, nothing herein shall prevent (i) the Debtors from pursuing an action against the Buyer arising under the Agreement, or (ii) any administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials from properly exercising their police and regulatory powers.

10. Other than the Assumed Obligations or as otherwise provided for in the Agreement and this Order, the Buyer and NewCo shall have no obligations with respect to any liabilities of any of the Debtors, including, without limitation, the Retained Obligations, and the Debtors and any of their affiliates, successors and assigns are deemed to release and forever discharge the Buyer and NewCo and any of their affiliates, successors and assigns (other than the Debtors, as applicable) from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the Transaction, except for Buyer's and NewCo's express liabilities and obligations under the Agreement.

11. **PACA Claims and PASA Claims**. The Debtors shall retain responsibility for any PACA Claims or PASA Claims, which shall be determined and settled pursuant to the terms of this Court's Order Pursuant to 11 U.S.C. §§ 105(a) and 541(d) Setting Procedures for the Treatment of Claims Arising Under the Packers and Stockyards Act of 1921 and the Perishable Agricultural Commodities Act of 1930 [Docket No. 202]. The Buyer and/or NewCo, as applicable, will take the Assets, and the Buyer with take the NewCo Stock, in each instance, free and clear of any and all PACA Claims and PASA Claims and the Assets and NewCo Stock are being transferred, in each instance, free and clear of any trusts provided for in PACA or PASA.

12. **Release of Interests**. Subject to Paragraphs 6 and 33 of this Order, this Order (a) shall be effective as a determination that, on the Closing Date, all interests of any kind or nature whatsoever existing as to the Assets and the NewCo Stock prior to and as of the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern

the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets or the NewCo Stock.

13. Direction to Release Interests. On the Closing Date and subject to the Interests attaching to the proceeds of the Transaction as provided for in Paragraphs 6 and 33 of this Order, the Debtors' creditors are authorized and directed to execute such documents and instruments and to take all other actions as may be reasonably necessary to document the release of their Interests in the Assets and NewCo Stock, if any, as such Interests may have been recorded or may otherwise exist. If any such creditor fails to execute any such documents or instruments or take any such actions, the Buyer and NewCo are authorized to execute such documents and instruments and to take such actions on behalf of the creditor so as to document the release of such Interests, and 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 Assets and NewCo Stock are ordered and directed to accept such documents, instruments and actions so as to release the Interests and to reflect that release on their records.

14. No Successor Liability. Neither the Buyer, NewCo nor their affiliates, successors or assigns (other than the Debtors, as applicable) shall be deemed, as a result of any action taken in connection with the transfer of the Assets and the NewCo Stock, to: (a) be a successor to the Debtors or their estates; (b) have, de facto or otherwise, merged or consolidated with or into the Debtors or their estates; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Obligations, the transfer of the Assets to the Buyer and/or NewCo, as applicable, and the transfer of the NewCo Stock to Buyer under the Agreement and this Order shall not result in (i) the Buyer, NewCo, their affiliates, members, or shareholders (other than the Debtors, as applicable), the NewCo Stock or the Assets, having any liability or responsibility for any claim against the Debtors or against an insider of the Debtors, (ii) the Buyer, NewCo, their affiliates, members, or shareholders (other than the Debtors, as applicable), the NewCo Stock or the Assets, having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Retain Obligation, or (iii) the Buyer, NewCo, their affiliates, members, or shareholders (other than the Debtors, as applicable), the NewCo Stock or the Assets, having any liability or responsibility to the Debtors except as is expressly set forth in the Agreement and this Order.

15. Without limiting the effect or scope of the foregoing, and except as otherwise provided in this Order or in the Agreement, the Buyer and NewCo 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 the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated

with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes or other government fees, contributions or surcharges arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Assets or ownership of NewCo prior to the Closing Date.

16. The Buyer has given substantial consideration under the Agreement to the Debtors' estates. The consideration given by the Buyer shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Buyer or NewCo, as applicable, which releases shall be deemed to have been given in favor of the Buyer and NewCo by all holders of Interests against the Debtors, the Assets or the NewCo Stock.

17. **Assumption and Assignment of Assigned Contracts.** Under 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Transaction, the Debtors' assumption and assignment of the Assigned Contracts set forth on Schedule 7.2(b) to the Agreement to the Buyer and/or NewCo, as applicable, free and clear of all interests pursuant to the terms set forth in the Agreement and this Order, as modified by the terms of any amendments reached with the respective counterparty, is hereby approved, and the requirements of 11 U.S.C. §§ 365(b)(1), 365(b)(3) and 365(f)(2) with respect thereto are hereby deemed satisfied. Each counterparty to an Assigned Contract hereby is forever barred, and estopped from raising or asserting against the Debtors, the Buyer, NewCo or the property of each, any assignment fee, default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the Assigned Contracts existing as of the Closing Date or arising by reason of the Closing. Notwithstanding anything set forth herein to the contrary, the

Buyer shall be entitled to amend the listing of Assigned Contracts set forth on Schedule 7.2(b) of the Agreement up to the Contract Determination Date.

18. There shall be no rent accelerations, assignment fees, increases (including advertising rates) or any other fees charged to the Buyer, NewCo or the Debtor as a result of the assumption and assignment of the Assigned Contracts.

19. Any provisions in any Assigned Contract that prohibit or condition the assignment of such Assigned Contract or allow the party to such Assigned Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assigned Contract, are either deemed satisfied or constitute unenforceable anti-assignment provisions that are void and of no force and effect solely with respect to the implementation and consummation of the Transaction and this Order.

20. No provision of any Assigned Contract that (i) purports to prohibit, restrict, or condition the Assigned Contract by virtue of the assignment of the Assigned Contract, the insolvency or financial condition of the Debtors, or the commencement of these Cases, (ii) purports to impose any penalty or modify the terms of the Assigned Contract by virtue of the assignment of the Assigned Contract, the insolvency or financial condition of the Debtors, or the commencement of these Cases, or (iii) purports to limit the rights of the Buyer or NewCo, as applicable, to enjoy the benefits of any Assigned Contract, shall have any force or effect solely with respect to the implementation and consummation of the Transaction and this Order.

21. Subject to paragraph 25 of this Order, the Buyer has provided adequate assurance of its or NewCo's future performance under the relevant Assigned Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. All other requirements and conditions under the Bankruptcy Code for the

assumption by the Debtors, and assignment to the Buyer or NewCo, as applicable, of the Assigned Contracts have been satisfied.

22. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, (i) the Buyer or NewCo, as applicable, shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assigned Contracts and (ii) the Debtors shall be relieved from any liability for any breach of such Assigned Contracts occurring thereafter pursuant to section 365(k) of the Bankruptcy Code except for the payment of Cure Amounts as provided in paragraph 24 of this Order.

23. To the extent any governmental license or permit is necessary for the operation of the business is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, the Buyer and/or NewCo, as applicable, shall apply for and obtain any necessary license or permit promptly after the Closing and such licenses or permits of the Debtors shall remain in place for the benefit of the Buyer and NewCo until new licenses and permits are obtained.

24. Cure. Pursuant to the terms of the Agreement, the Debtors shall pay all Cure Amounts relative to the contracts to be assigned on the Closing Date; provided, however, that in accordance with the Agreement, the Buyer shall be responsible for, and shall pay, up to \$800,000 in the aggregate for one half of the Cure Amounts due in connection with the assumption and assignment of any Real Estate Leases. Cure Amounts payable under the Assigned Contracts shall be paid as promptly as possible after closing, but in no event later than 20 Business Days after the Closing Date. The payment of the applicable Cure Amounts (if any) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and

(c) together with the assumption and assignment of the Assigned Contracts to the Buyer or NewCo, as applicable, constitute adequate assurance of future performance thereof. The non-Debtor party or parties to each Assigned Contract which is to be assigned on the Closing Date are forever barred from asserting against the Debtors, the Buyer, NewCo any of their affiliates or any of the Assets or the NewCo Stock: (i) any fee, default, breach, claim or pecuniary loss arising under or related to the Assigned Contract existing as of the Closing Date or arising by reason of the Closing; and (ii) any objection to the assumption and assignment of such non-Debtor party's Assigned Contracts.

25. Adequate Assurance and Cure Amounts for Real Estate Leases. With respect to (i) any Real Estate Lease that was not included in the Original Cure Notice, and (ii) any Real Estate Lease with the Objecting Landlords, paragraphs 17 through 24 of this Order shall be subject to the following conditions:

- a. Within one (1) business day of the entry of this Order, the Debtors shall provide notice (the "Supplemental Cure Notice") of the Debtors' proposed Cure Amounts for each Real Estate Lease that was not previously included in the Original Cure Notice.
- b. Any counterparty to a Real Estate Lease included in the Supplemental Cure Notice shall have until 4:00 p.m. (prevailing Eastern Time) on November 12, 2010 to file an objection to (i) the adequate assurance of future performance provided by Buyer, and (ii) the Cure Amount proposed by the Debtors. The Objecting Landlords are not required to file additional objections.
- c. Any counterparty to a Real Estate Lease (other than the Objecting Landlords) that was included in the Supplemental Cure Notice and who fails to timely assert an objection as set forth in subparagraph (b) shall be deemed to consent to the adequate assurance of future performance provided by Buyer and the Debtors proposed Cure Amount, and such counterparties and their applicable Real Estate Leases shall be subject to paragraphs 17 through 24 of this Order without the need for further order of the Court. The objections filed by the Objecting Landlords are deemed to be timely filed for purposes of paragraph 25 of this Order.
- d. The Debtors, subject to the sole discretion of the Buyer, may resolve any objection to the assumption and assignment of any Real Estate Lease included in

the Supplemental Cure Notice or any objection filed by an Objecting Landlord without the need for a hearing or further order of this Court.

- e. In the event that an objection to the assumption and assignment of any Real Estate Lease included in the Supplemental Cure Notice or filed by an Objecting Landlord has not been resolved prior to November 18, 2010 at 4:00 p.m. (prevailing Eastern Time), the Court shall hold a hearing at such time to address such objection.
- f. Notwithstanding anything to the contrary in this paragraph, in resolution of the cure amount objection filed by National Retail Properties [Docket No. 281], the aggregate cure amount with respect to the Debtors' real property leases for the Tempe, Arizona and Roseville, California restaurants shall be \$151,616.73, subject to appropriate reductions for amounts that (i) may already have been paid by the Debtors or (ii) may be paid by the Debtors prior to the closing of the Sale and the assignment of such leases.

Nothing set forth in Paragraphs 6, 9 and 15 of this Order shall relieve the Buyer of its obligations under the Agreement to make the Reconciliation Payments (as defined in the Agreement) with respect to any Real Estate Lease assumed and assigned to the Buyer.

26. **Binding Effect of Order.** This Order 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 Assets.

27. **Binding on Successors.** The terms and provisions of the Agreement and this Order shall be binding in all respects upon each of the Debtors, their estates, all creditors of (whether known or unknown) and holders of equity interests in the Debtors, the Buyer, NewCo and their respective affiliates, successors and assigns, and any affected third parties, including,

but not limited to, all persons asserting Interests in the Assets and NewCo Stock and all non-Debtor counterparties to the Assigned Contracts, notwithstanding any subsequent appointment of any trustee of the Debtors under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. This Order and the Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Buyer, and their respective successors and assigns.

28. **Bankruptcy Code Section 363(n)**. The consideration provided by the Buyer for the Assets and NewCo Stock under the Agreement and this Order is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n).

29. **Good Faith**. The transactions contemplated by the Agreement were negotiated at arm's length and are undertaken by the Buyer without collusion and in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction (including the assumption and assignment of the Assigned Contracts) with the Buyer and NewCo, unless such authorization is duly stayed pending such appeal. The Buyer and NewCo are deemed to be good faith purchasers of the Assets and the NewCo Stock, and are entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

30. **Fair Consideration**. The consideration provided by the Buyer to the Debtors pursuant to the Agreement and this Order for the purchase of the Assets and the NewCo Stock constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and under the laws of the United States and any state, district, territory or possession thereof.

31. **Surrender of Possession.** The Debtors agree to exercise commercially reasonable efforts to assist the Buyer and NewCo in assuring that all entities that are presently, or on the Closing Date may be, in possession of some or all of the Assets or NewCo Stock in which the Debtor hold an interest will surrender possession of the Assets and the NewCo Stock either to (i) the Debtors before the Closing Date, or (ii) to the Buyer and/or NewCo, as applicable, on the Closing Date.

32. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, including, but not limited to, retaining exclusive jurisdiction to: (a) compel delivery of the Assets and the NewCo Stock to the Buyer and/or NewCo, as applicable; (b) compel delivery of the Purchase Price or performance of other obligations owed to the Debtors; (c) interpret, implement and enforce the provisions of this Order and the Agreement; (d) to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transaction; and (e) protect the Buyer and NewCo against any Interests in the Debtors, the Assets and the NewCo Stock of any kind or nature whatsoever, attaching to the proceeds of the Transaction.

33. **Transaction Proceeds.** The liens and interests of the Prepetition Secured Lenders and the DIP Lenders shall attach to the NewCo Stock and the assets of NewCo, and shall be released upon the Closing. Any and all valid and perfected Interests in Assets of the Debtors or the NewCo Stock shall attach to any proceeds of such Assets and the NewCo Stock immediately upon receipt of such proceeds by the Debtors (or any party acting on the Debtors'

behalf) in the order of priority, and with the same validity, force and effect, which they now have against such Assets or the NewCo Stock, if any, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto, and subject to any limitations on the use of such proceeds pursuant to any provision of this Order.

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

35. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or any order confirming any such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agreement or this Order.

36. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreement be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any inconsistency between the Agreement (including all ancillary documents executed in connection therewith) and this Order. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

37. **No Stay of Order.** Notwithstanding the provisions of Interim Bankruptcy Rule 6004(h) and Bankruptcy Rule 6006(d), this Order shall not be stayed for fourteen days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtors and the Buyer intend to close the Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

38. **Cooperation with Administration of the Estates.** The Debtors will retain or have reasonable access to their books and records to administer its bankruptcy case. The Buyer, NewCo and any Transferred Employees shall cooperate with all reasonable requests of the Debtors and provide any information or documentation reasonably necessary to enable the Debtors to administer their estates and to reconcile claims.

39. **Confidentiality Agreements.** The Debtors are authorized to enforce their rights under any confidentiality agreements they entered into with other potential bidders with respect to the Assets for the benefit of the Buyer and NewCo for the term of each respective confidentiality agreement.

40. **Further Assurances.** From time to time, as and when requested by any party, each party to the Agreement shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Agreement including, such actions as may be necessary to vest, perfect or confirm, of record or otherwise, in Buyer its right, title and interest in and to the Assets.

41. **License Approvals.** The Debtors shall cooperate fully with and support Buyer and NewCo in executing such applications and furnishing such documents as are necessary for Buyer and/or NewCo, as applicable, to transfer, obtain or replace all Liquor Licenses used in the Business for all such restaurant locations acquired by Buyer and/or NewCo, as applicable, pursuant to the Agreement.⁵ All applicable state alcoholic beverage control, law enforcement, and regulatory agencies shall not interrupt any of the Business without first bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing Liquor Licenses of the Debtors until such licenses have been changed to the name of Buyer and/or NewCo, as applicable, including, but not limited to state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses needed to operate the Business with no interruption of the Business.

42. **Maricopa County Objection.** In resolution of the objection to the Motion filed by Maricopa County [Docket No. 246], the Debtors and Landy's agreed on the record of the Sale Hearing that 100% of the personal property taxes due and payable to Maricopa County will be paid pursuant to and in accordance with the Asset Purchase Agreement, subject to any appropriate reductions for amounts that have been or will be paid prior to the Closing Date. Based on this agreement and its inclusion in this order, Maricopa County's objection to the Motion is deemed withdrawn.

43. **Stalking Horse Buyer Expense Reimbursement.** In accordance with the timing requirements contained in Section 8.2 of the Asset Purchase Agreement between GRP, Claim Jumper Restaurants, LLC and Claim Jumper Management, LLC, dated as of September

⁵ The term "Business" means the business of the Sellers, including the following every aspect of the ownership or operation of the Restaurants under the "Claim Jumper" name in Arizona, California, Colorado, Illinois, Nevada, Oregon, Washington, and Wisconsin (including the ownership, use, and operation of the related properties and assets).

10, 2010 (the "Stalking Horse APA") and the terms of the Bid Procedures Order, the Debtors are authorized and directed to pay the Reimbursement Amount (as defined in the Bid Procedures Order and as modified at the hearing on the motion requesting entry of the Bid Procedures Order) to GRP or its designee (the "Stalking Horse Buyer"). If, prior to the time the Debtors are required to pay the Reimbursement Amount to the Stalking Horse Buyer, the Committee files with this Court a motion seeking reconsideration of the Bid Procedures Order (the "Reconsideration Motion"), the Debtors shall instead forward the Reimbursement Amount to Richards, Layton & Finger, P.A., as counsel to the Stalking Horse Buyer ("RLF"), to be held by RLF in escrow pending this Court's ruling on the Reconsideration Motion. If this Court denies the Reconsideration Motion for any reason, RLF shall transfer the Reimbursement Amount to the Stalking Horse Buyer as soon as practicable following such ruling and regardless of any appeal that may be pursued by any party of such ruling. If the Reconsideration Motion is granted, the Reimbursement Amount shall be released from escrow in accordance with further order of this Court. All rights of the Stalking Horse Buyer to oppose the Reconsideration Motion on any basis are fully preserved, including on the basis that any such Reconsideration Motion is time barred.

44. For the avoidance of doubt, pursuant to the terms of the Asset Purchase Agreement, the Hilco Engagement Agreement shall be assigned to the Buyer as of the Closing Date.

Dated: Wilmington, Delaware
November 4 2010



KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE