

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

In re:

G.I. JOE'S HOLDING  
CORPORATION and G.I. JOE'S,  
INC.,<sup>1</sup>

Debtors.

)  
) Chapter 11

) **Jointly Administered**

)  
) Case No. 09-10713 (KG)

**ADDENDUM 1**

**TO MODIFIED ORDER: (I) (A) APPROVING BID  
PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL THE DEBTORS'  
ASSETS, (B) SCHEDULING THE AUCTION, (C) SCHEDULING THE  
SALE HEARING, (D) APPROVING THE ASSUMPTION AND ASSIGNMENT  
PROCEDURES RELATED TO THE SALE, AND (E) APPROVING THE FORM OF  
THE SALE NOTICE; AND (II) (A) AUTHORIZING THE SALE OF SUCH ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER  
INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED  
THERE TO**

**BID PROCEDURES**

Set forth below is the general process to be employed by the Seller with respect to the proposed Sale of all or substantially all of the Debtors' assets (the "Purchased Assets") as contained in the Debtors' Motion for entry of orders: (I) (A) approving bid procedures for the sale of substantially all of the Debtors' assets, (B) scheduling the auction, (C) scheduling the sale hearing, (D) approving the assumption and assignment procedures related to the sale and (E) approving the form of the sale notice; and (II) (A) authorizing the sale of such assets free and 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 (the "Sale and Bid Procedures Motion").<sup>2</sup>

**BID PROCEDURES**

Set forth below is the general process to be employed by the Seller with respect to the

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<sup>1</sup> G.I. Joe's Holding Corporation (Federal Tax I.D. #20-8330022) and G.I. Joe's, Inc. (Federal Tax I.D. #93-0500948) have requested joint administration of their chapter 11 cases.

<sup>2</sup> Each capitalized term used but not defined herein shall have the meaning ascribed thereto in the Motion.

proposed sale of the Debtors' assets

a. **Assets to Be Sold.** The Debtors are offering the Purchased Assets for sale. The Debtors shall retain all rights and title to assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing.

b. **The Bidding Process.** The Debtors, in conjunction with their advisors, after consultation with WFRF, Crystal and the Official Committee of Unsecured Creditors (the "**Committee**"), shall (i) determine whether any person is a Qualified Bidder (hereinafter defined), (ii) coordinate the efforts of Qualified Bidders in conducting their respective due diligence investigations regarding the Debtors' businesses, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offer made to purchase the Assets, together or separately (collectively, the "**Bidding Process**"). Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Qualified Bidder.

c. **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtors, in order to participate in the Bidding Process each person (a "**Qualified Bidder**") must submit a bid that adheres to the following requirements (a "**Qualified Bid**"):

i. All Qualified Bids must be submitted to Patrick J. O'Malley, c/o Developmental Specialists, Inc., 70 West Madison Street, Chicago, IL 60602, with copies to (a) Mark K. Thomas and Paul V. Possinger, Proskauer Rose LLP, 70 West Madison Street, Chicago, Illinois 60602, (b) Steven M. Yoder, Potter Anderson & Corroon LLP, 1313 N. Market Street, Wilmington, Delaware 19899; (c) William Busko II, Financo, Inc., 535 Madison Avenue, New York, NY 10022, (d) Steven Levine, Brown Rudnick LLP, One Financial Center, Boston, MA 02111, (e) David Berman, Riemer & Braunstein LLP, Three Center Plaza, 6<sup>th</sup> Floor, Boston, MA 02108, and (f) Ronald Sussman and Seth Van Aalten, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 not later than 5:00 p.m. (CST) on March 27, 2009 (the "**Bid Deadline**").

ii. All Qualified Bids shall be in the form of an offer letter from a person or persons that the Debtors, after consultation with WFRF, Crystal and the Committee, deem financially able to consummate the purchase of the Assets, which letter states:

(a) that such Qualified Bidder offers to purchase some or all of the Purchased Assets upon the terms and conditions set forth in an enclosed asset purchase, liquidation agency or similar agreement (hard copy and an electronic version in Word format, together with its exhibits and schedules, including terms relating to price and the time of closing (the "**Proposed Agreement**"));

(b) that such Qualified Bidder is prepared to execute the Proposed Agreement upon designation of such Qualified Bidder as

a Successful Bidder and to consummate the transaction within two days following entry of an order of this Court approving the Sale to the Successful Bidder; and

(c) that such Qualified Bidder's offer is irrevocable until two (2) business days after the closing of a purchase of the Purchased Assets;

(d) the actual value of their Bid to the Debtors' estates; and

(e) which of the Debtors' leases and executory contracts are to be assumed in connection with the consummation of their Bid.

- iii. All Qualified Bids shall include an agreement to abide by and be bound by the rights and obligations in the Proposed Agreement;
- iv. All Qualified Bids shall obligate the Bidder, upon execution of its Proposed Agreement, to deposit into escrow with the Debtors an amount equal to 10% of the value of their Bid (the "Good Faith Deposit");
- v. All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtors, after consultation with WFRF, Crystal and the Committee, of committed financing or other ability to perform.

d. **Due Diligence.** The Debtors shall afford each Potential Bidder (hereinafter defined) due diligence access to the Purchased Assets. Due diligence access may include management presentations as may be scheduled by the Debtors, access to data rooms, on site inspections and such other matters which a Potential Bidder may request and as to which the Debtors, in their sole discretion, may agree to. Neither the Debtors nor any of their affiliates (nor any of their respective representatives) are obligated to furnish any information relating to the Purchased Assets to any person except to Potential Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtors or their representatives. Unless otherwise ordered by the bankruptcy Court for cause shown, to be a "Potential Bidder," each bidder must have delivered the following:

- i. an executed confidentiality agreement in form and substance satisfactory to the Debtors, after consultation with WFRF, Crystal and the Committee; and
- ii. current audited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited financial statements or other financial information of the Potential Bidder's equity holder, or such other form of financial disclosure acceptable to the Debtors, demonstrating that such

Potential Bidder's ability to close the proposed transaction and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.

e. **"As Is, Where Is"**. The sale of the Purchased Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estate, except to the extent set forth in the Proposed Agreement of the Successful Bidder. Except as otherwise provided in the Proposed Agreement, all of the Debtors' right, title and interest in and to the Purchased Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions and other encumbrances of any kind or nature thereon and there against pursuant to 11 U.S.C. § 363 (collectively, the "**Transferred Liens**"), with such Transferred Liens to attach to the net proceeds of the sale of such Purchased Assets. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection with the Purchased Assets, the Bidding Process or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, in the applicable Proposed Agreement.

f. **Stalking Horse**. As soon as possible after receipt of Qualified Bids, and in no event later than March 31, 2009, the Debtors in consultation with WFRF, Crystal and the Committee shall select the highest and best bid or combination of bids to serve as a stalking horse (collectively, the "**Stalking Horse**") and shall execute the related Proposed Agreement(s) on or before April 3, 2009. The Debtors shall provide notice of the selection of the Stalking Horse, together with copies of the Proposed Agreement(s) thereof, to counsel to WFRF, Crystal and the Committee, as well as to all other Qualified Bidders. In addition, to the extent the Stalking Horse Bid contemplates assumption and assignment of any executory contracts or unexpired leases (the "Assumed Parties") copies of the Proposed Agreement will be provided to the Assumed Parties immediately thereafter *via* Federal Express and email along with documents evidencing adequate assurance to the Assumed Parties.

g. **Post Stalking Horse Bids / Credit Bids**: A holder of a lien on assets of the Debtor shall be permitted to credit bid pursuant to section 363(k) of the Bankruptcy Code so long as such credit bid otherwise constitutes a Qualified Bid. Such credit bid shall be submitted in writing not later than 4:00 p.m. EDT on April 6, 2009. In addition, and at the discretion of the Debtors, in consultation with WFRF, Crystal, and the Committee, any bid received after the selection of the Stalking Horse bid that would otherwise be deemed a Qualified Bid, shall be considered for purposes of the Auction (as defined below).

h. **Auction**. The Debtors shall conduct an auction (the "**Auction**") at the offices of Potter Anderson Corroon LLP, 1313 Market Street, 6<sup>th</sup> Floor, Wilmington, DE 19801, on April 7, 2009, beginning at 11:00 a.m. (EDT) or such later time or other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids. Only representatives of the Stalking Horse bidder, the Debtors, the United States Trustee, WFRF, Crystal, and the Committee, and any Qualified Bidders who have timely submitted Qualified Bids or are

otherwise deemed to be Qualified Bidders shall be entitled to attend the Auction. The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent overbids) for conducting the Auction, so long as such rules are not inconsistent with these Bidding Procedures. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtors determine is relevant, the Debtors, after consultation with WFRF, Crystal and the Committee, may conduct the Auction in the manner they determine will achieve the maximum value for the Purchased Assets. At the Auction, the minimum initial bid against the Stalking Horse bid must exceed the value of the Stalking Horse bid by \$150,000. Subsequent bids shall be made in minimum increments of \$100,000.

As soon as practicable after the conclusion of the Auction, the Debtors after consultation with WFRF, Crystal and the Committee shall (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale and (ii) identify the highest or otherwise best offer or combination of offers for the Purchased Assets and any second-highest offer. Following the identification of the Successful Bidder, the Debtors shall provide notice to all of the Assumed Parties immediately thereafter via fax and/or email. At the Sale Hearing, the Debtors may present to the Bankruptcy Court for approval the Successful Bid. The Debtors reserve all rights not to submit any bid which is not acceptable to the Debtors, after consultation with WFRF, Crystal and the Committee, for approval to the Bankruptcy Court.

j. **Acceptance of Qualified Bids.** The Debtors shall sell the Assets to the Stalking Horse bidder or the Successful Bidder, as the case may be, submitting the highest or otherwise best Qualified Bid at the Auction, upon approval of such Qualified Bid by the Bankruptcy Court at the Sale Hearing. The Debtors' presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Debtors' acceptance of such Qualified Bid. The Debtors shall have accepted a Qualified Bid only when that Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

k. **The Sale Hearing.** After conclusion of the Auction, the Bankruptcy Court shall conduct a Sale Hearing, on April 9, 2009 at 11:00 a.m. At the Sale Hearing, the Debtors will seek entry of an order, among other things, authorizing and approving the Sale to the Successful Bidder(s), as determined by the Debtors, after consultation with WFRF, Crystal and the Committee, in accordance with the Bidding Procedures, pursuant to the terms and conditions set forth in the Proposed Agreement(s) submitted by the Successful Bidder(s) (as such agreement may be modified prior to, during or after the Auction with the agreement of the Debtors). The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the Sale Hearing.

Following the Sale Hearing approving the sale, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), as disclosed at the Sale Hearing, shall be deemed to be the Successful Bid(s) and the Debtors shall be authorized to effectuate such sale without further order of the Bankruptcy Court.

l. **Return of Good Faith Deposit.** The Good Faith Deposits of all Qualified

Bidders shall be retained by the Debtors and all Qualified Bids will remain open and irrevocable, notwithstanding Bankruptcy Court approval of a sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until the earlier of two (2) business days after the closing of the sale of the Assets or 30 days after the conclusion of the Sale Hearing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which shall be retained by the Debtors as liquidated damages.

m. **Modifications.** The Debtors, after consultation with WFRF, Crystal and the Committee, may (i) determine, in their business judgment, which Qualified Bid, if any, is the highest or otherwise best offer, and (ii) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that, the Debtors', after consultation with WFRF, Crystal and the Committee, determine, is (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (z) contrary to the best interests of the Debtors, their estates, their creditors and other parties in interest. At or before the Sale Hearing, the Bankruptcy Court, or, consistent with the purposes of the Bidding Procedures to obtain the highest or otherwise best offer(s) for the Assets, the Debtors, after consultation with WFRF, Crystal and the Committee, may impose such other terms and conditions as it may determine to be in the best interests of the Debtors' estates, their creditors and other parties in interest.