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9
10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 In re

13 Lumber Products, an Oregon Corporation,

14 Debtor.

Case No. 12-32729-elp11

**TRUSTEE'S MOTION FOR ORDER
APPROVING (A) SALE OF ASSETS
FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES,
(B) ASSUMPTION AND
ASSIGNMENT OF EXECUTORY
CONTRACTS, AND (C) BID
PROCEDURES**

EXPEDITED HEARING REQUESTED

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19 Edward C. Hostmann (the "Trustee") files this Motion for Order Approving
20 (A) Sale of Assets Free and Clear of Liens, Claims and Encumbrances, (B) Assumption and
21 Assignment of Executory Contracts, and (C) Bid Procedures (the "Motion").

22 **JURISDICTION**

23 1. The Court has subject matter jurisdiction to consider this matter
24 pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)
25 and may be determined by the Court. Venue is proper before this Court pursuant to
26 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105(a), 363 and 365 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Oregon (the "Local Rules"), and the Guidelines Regarding Motions for Sale of All or Substantially All Assets and Sale Procedures Motions adopted by the Bankruptcy Court on March 8, 2010 (LBF 363) (the "Guidelines").

INTRODUCTION

3. On April 11, 2012, (the "Petition Date"), Lumber Products, an Oregon Corporation ("Debtor") filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On April 18, 2012, Edward C. Hostmann ("Trustee") was appointed as Chapter 11 trustee of the estate of Debtor.

RELIEF REQUESTED

4. The Trustee has made the strategic decision to sell substantially all of the personal property assets of Debtor (as more particularly defined below, the "Assets"). The Trustee has agreed to sell the Assets to Rugby IPD Corp. ("Rugby") and, by this Motion, seeks approval of that transaction. To assure that the proposed price is the best and highest offer, however, the Trustee requests that the Court first enter an Order approving the Bid Procedures (defined below) so the Trustee may subject the Assets to higher and better offers through an auction process. If the auction yields a higher and better offer, the Trustee seeks authority to effect a sale with the winning bidder.

5. By this motion, the Trustee seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bid Procedures Order"):

- a. Authorizing and approving bid procedures in connection with the receipt and analysis of competing bids, substantially in the form attached hereto as **Exhibit B** (the "Bid Procedures"), including bid protections for Rugby pursuant to the Asset Purchase Agreement to be entered into

between Debtor, as seller, and Rugby or its assignee or designee as buyer, (the "Purchase Agreement"). A summary of the material terms of the Purchase Agreement is set forth below. The Trustee and Rugby are still negotiating the Purchase Agreement. The Trustee will file the Purchase Agreement with the Court no later than May 21, 2012.

- b. Authorizing and approving procedures for the assumption and assignment of the Assumed Agreements (defined below) in connection with the sale.
- c. Approving the form and manner of notice of (i) the sale and hearing thereon, and (ii) the assumption, assignment and proposed cure costs of the Assumed Agreements, substantially in the form attached hereto as **Exhibit C** (the "Sale Notice"); and
- d. Establishing the following dates and deadlines, subject to modification as needed, relating to competitive bidding and approval of the sale:
 - Bid Deadline: June 12, 2012 at 5:00 p.m. prevailing Pacific Time, as the deadline by which all binding bids must be actually received by the Trustee's counsel pursuant to the Bid Procedures (the "Bid Deadline").
 - Objection Deadline: June 11, 2012, at 5:00 p.m. prevailing Pacific Time, as the deadline to object to the sale transactions and/or the assumption and assignment of Assumed Agreements or cure costs related thereto.
 - Auction: June 15, 2012 at 10:00 a.m. prevailing Pacific Time, as the date and time the auction, if one is needed (the "Auction"), will be held at the offices of Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, OR 97204.
 - Sale Hearing: June 15, 2012 at 1:00 p.m. or such other time as is announced at the conclusion of the Auction (the "Sale Hearing"), which will be held before the Honorable Judge Elizabeth L. Perris, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Oregon, Courtroom No. 1, 1001 SW Fifth Avenue, Portland, Oregon.

6. By this motion, Debtor also seeks entry of an order, (the "Sale Order"), substantially in the form attached hereto as **Exhibit D**, authorizing and approving (a) the sale of the Assets (free and clear of all liens, claims, interests and encumbrances) and (b) the assumption and assignment of the Assumed Agreements in accordance with the Assumption Procedures (defined herein).

BACKGROUND

7. Founded in 1938 as a family-owned and operated business, Debtor's business is wholesale distribution of high-quality hardwood lumber, hardwood plywood, and door and millwork products, selling to retailers throughout the Western United States. Debtor distributes a large variety of building and construction products, with clients that include pre-hung door companies, millwork fabricators, cabinet manufacturers, retail building material outlets and O.E.M.'s. Debtor's clients in turn sell Debtor's products to end users, including "do-it-yourselfers," remodelers, home builders, apartment builders, commercial builders, and other consumers.

8. Debtor's corporate headquarters is located in Tualatin, Oregon, and Debtor currently has operations in Oregon, Washington, Idaho, Utah, Arizona, and New Mexico. Debtor employs over 200 employees at its various locations. Approximately 18 of Debtor's employees are members of either (a) Teamsters Local No. 206 (warehouse employees) or (b) Teamsters Local No. 162 (drivers).

9. Debtor has been experiencing financial difficulties over approximately the past four years, as a result of the sustained downturn in the U.S. housing market. Debtor has struggled with a lack of adequate working capital and liquidity.

10. Debtor faces several economic challenges, including, most importantly, the sustained downturn in the U.S. housing construction market in the wake of Lehman Brothers' bankruptcy and seizure of the credit markets, particularly in the real estate sector. This had a severe negative impact on the demand for Debtor's products. During

1 2011, the Company's net sales were approximately \$150.4 million, down from
2 approximately \$217.0 million during 2010, an approximately 31% decline. Since 2007, the
3 decline has been even more dramatic, with net sales declining by approximately two-thirds
4 (2/3) between 2007 and 2011.

5 11. Further, Debtor sustained a net loss of approximately \$22.1 million in
6 2011 (including approximately \$19.3 million from operations), as compared to a net loss of
7 approximately \$16.5 million in 2010 (including approximately \$12.8 million from
8 operations). Debtor has not been profitable since 2007.

9 12. As a result, Debtor has been facing a liquidity shortage for
10 approximately the past 18 months, which has substantially impacted its business and ability
11 to purchase inventory.

12 13. Pre-petition, Debtor engaged in active turnaround and restructuring
13 efforts over several years in an effort to overcome the challenges facing its industry. During
14 that time, Debtor closed or consolidated several physical locations, sold various parcels of
15 real property, sold equipment, and reduced employee headcount.

16 14. Debtor also considered several alternative financing options, including
17 banks and other traditional lenders, as well as certain potential partnering opportunities with
18 vendors. None of these efforts resulted in a financing transaction.

19 15. Shortly before the Petition Date, most of Debtor's vendors ceased
20 extending credit to Debtor, insisting on cash in advance or cash on delivery, drastically
21 impacting Debtor's liquidity and draining its working capital.

22 16. In consultation with its professionals and following discussions with
23 Wells Fargo, Debtor's primary secured lender, and after careful examination by Debtor's
24 Board of Directors, Debtor determined that the commencement and prosecution of the
25 Chapter 11 Case, with the stipulated appointment of a Chapter 11 trustee, would be the best
26 and most efficient way to maximize the value of Debtor's enterprise for the benefit of its

1 estate and all parties-in-interest, including Debtor's employees, customers, and vendors to the
 2 maximum extent possible, and with the added goal of preserving jobs to the maximum extent
 3 possible.

4 17. Promptly after his appointment as Chapter 11 trustee, the Trustee, with
 5 the assistance of Debtor, identified potentially interested parties which the Trustee and its
 6 advisors believed might be interested in acquiring Debtor's assets. The Trustee sent out
 7 letters to more than 45 potentially interested parties and solicited offers from each one that
 8 expressed interest. The Trustee has sent nondisclosure agreements to more than 20 such
 9 parties that expressed an interest in acquiring some or all of Debtor's personal property
 10 assets. The Trustee has received signed nondisclosure agreements from at least 15 such
 11 parties, and those parties have been granted access to a data room that contains substantial
 12 financial information and due diligence materials with which to evaluate Debtor's assets.

13 18. Rugby has emerged as a potential buyer.

14 19. After extensive negotiations with Rugby, and extensive discussions
 15 and communications with other potential buyers, the Trustee has determined that the
 16 proposed sale of Assets to Rugby pursuant to the terms set forth in the Purchase Agreement
 17 offers potentially the most value to Debtor's estate. Accordingly, the Trustee seeks Court
 18 approval for the proposed sale to Rugby, subject to higher and better offers, as described
 19 below.

20 **THE PROPOSED SALE**

21 20. The Purchase Agreement (which is still being negotiated, and which
 22 will be filed with the Court no later than May 21, 2012) provides that the offer will be subject
 23 to higher and better bids and that an auction will take place if qualified bids are received.

24 * * *

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21. The principal terms of the Purchase Agreement are summarized in the following chart:¹

PROVISION	SUMMARY DESCRIPTION
Purchaser	Rugby IPD Corp., a Delaware corporation
Purchase Price	Formula based purchase price based upon percentage of eligible accounts receivable and eligible inventory, plus \$500,000 for the customer and supplier list, plus an amount equal to the orderly liquidation value of Debtor's equipment, as determined pursuant to an appraisal. The Trustee estimates that, based upon such formula, the purchase price (if the closing occurred on the date of this Motion) would exceed \$13,000,000
Purchased Assets	Substantially all of the personal property assets of Debtor (collectively, the " <u>Assets</u> ")
Excluded Assets	Real estate, bank accounts, cash, notes receivable, avoidance actions, books and records
Assumed Liabilities	Liabilities and obligations associated with personal property leases and executory contracts being assumed and assigned
Excluded Liabilities	All liabilities associated with excluded assets, executory contracts and unexpired leases that are not being assumed and assigned
Assumption and Assignment of Executory Contracts	Rugby will assume certain executory contracts and unexpired personal property leases to be identified by Rugby
Payment of Cure Costs	Rugby will be responsible for payment of Cure Costs associated with the assumed and assigned executory contracts and personal property leases
Closing Conditions	Closing conditions typical and customary for transactions of this kind
Representations, Warranties and Covenants	Representations, warranties and covenants made or agreed to by the parties typical and customary for

¹ This summary is provided for the convenience of the Court and interested parties. It is not intended to be a complete summary of the Purchase Agreement. To the extent there is any conflict between this summary and the Purchase Agreement, the Purchase Agreement governs in all respects. The Purchase Agreement will be filed separately with the Court no later than May 21, 2012.

1	PROVISION	SUMMARY DESCRIPTION
2		transactions of this kind
3	Bid Protections	Breakup fee of \$330,000, initial minimum overbid of \$430,000, and subsequent bid increments of \$100,000
4	SALE PROVISIONS TO BE HIGHLIGHTED UNDER THE GUIDELINES	
5	22. In addition, the following sale provisions are to be highlighted	
6	pursuant to the Guidelines:	
7	(i)	<u>Purchase Price.</u> See Article II of the Purchase Agreement.
8		Formula based purchase price based upon percentage of
9		eligible accounts receivable and eligible inventory, plus
10		\$500,000 for the customer and supplier list, plus an amount
11		equal to the orderly liquidation value of Debtor's equipment, as
12		determined pursuant to an appraisal. The Trustee estimates
13		that, based upon such formula, the purchase price (if the
14		closing occurred on the date of this Motion) would exceed
15		\$13,000,000.
16	(ii)	<u>Sale to Insider.</u> Rugby is not an insider, as defined in
17		Bankruptcy Code Section 101(31).
18	(iii)	<u>Agreements with Insiders or Management.</u> Rugby has not
19		entered into any agreements with any insiders of Debtor or
20		with any executives or other key employees regarding
21		compensation or future employment.
22	(iv)	<u>Sale Free and Clear.</u> The sale will be free and clear of liens
23		and other interests, and the parties with such interests and the
24		nature of those interests are set forth below.
25	(v)	<u>Assumption, Assignment and Rejection of Executory Contracts</u>
26		<u>and Unexpired Leases.</u> The sale contemplates the assumption
		of certain executory contracts and personal property leases to
		be identified by Rugby, and contemplates that Debtor will
		reject all real estate leases where Debtor is the lessee.
	(vi)	<u>Releases and Insider Benefits.</u> None.
	(vii)	<u>Private Sale; No Competitive Bidding.</u> The Motion
		contemplates an auction and the auction procedures are set
		forth in the Bid Procedures. Rugby has met all bid
		requirements set forth in the Bid Procedures. There are no
		provisions restricting the Trustee's ability to solicit competing
		offers or that otherwise limit the Trustee's ability to shop the
		Assets.

- (viii) Closing Deadlines and Contingencies. The auction is to occur on or about June 15, 2012, with the sale to close no later than June 29, 2012. All deadlines relating to the closing of the proposed sale have been highlighted in this Motion. Any closing contingencies are set forth in the Purchase Agreement (see Article X and Article XI of the Purchase Agreement).
- (ix) Good Faith Deposit. Qualified Bidders (including Rugby) will be required to submit a \$1,000,000 sale deposit. The Bid Procedures set forth the terms of when such deposit will be returned to any Qualified Bidder.
- (x) Interim Arrangements with Proposed Buyer. Rugby is a supplier of inventory to Debtor. There are no interim agreements or arrangements with Rugby, other than an agreement by Rugby to, if requested by Debtor, repurchase from Debtor during the pendency of this Case any inventory sold by Rugby to Debtor during the pendency of this Case.
- (xi) Use of Proceeds. Proceeds from the sale will be distributed pursuant to further Court order.
- (xii) Record Retention. After the sale, the Trustee will have reasonable access to the books and records to enable the Trustee to administer the Chapter 11 case.
- (xiii) Sale of Avoidance Actions. The sale does not include the sale of any avoidance claims under Chapter 5 of the Bankruptcy Code.
- (xiv) Requested Findings as to Successor Liability. The proposed order approving the sale provides that Rugby shall have no liability or responsibility for any liability or other obligation of Debtor arising under or related to the Assets other than as expressly set forth in the Purchase Agreement, and that the transfer of the Assets to Rugby will not subject Rugby to any liability for claims against Debtor or the Assets by reason of such transfer.
- (xv) Credit Bidding. This Motion does not seek to limit credit bidding under Section 363(k) of the Bankruptcy Code.
- (xvi) Standard for Approval. This Motion seeks approval of the proposed sale pursuant to the business judgment standard.
- (xvii) Relief from Bankruptcy Rule 6004(h). This Motion requests relief from the 14-day stay imposed by Bankruptcy Rule 6004(h) as set forth below.
- (xviii) Solicitation Process. This Motion identifies to whom notice has been given or will be given and the efforts that have and

will be taken to publicize the sale to Debtor's competitors or other possible bidders.

AUCTION AND BID PROCEDURES

23. The Bid Procedures are intended to permit a fair and efficient competitive sale to confirm that the Rugby bid is indeed the best bid, or promptly identify any alternative bid that is a higher or otherwise better bid. Because the Bid Procedures are attached hereto as **Exhibit B**, they are not restated herein. Generally speaking however, the Bid Procedures establish, among other things:²

- The deadlines and requirements for becoming a Potential Bidder, submitting competing bids and the method and criteria by which such competing bids are to become entitled to be Qualified Bids sufficient to trigger an Auction, including the minimum consideration that must be provided and the terms and conditions that must be satisfied by any Bidder (other than Rugby) to be entitled to be a Potential Bidder and a Qualified Bidder" (*See Bid. Proc. at ¶¶ B, D*).
- The manner in which Qualified Bids will be evaluated by the Trustee to determine the starting bid for the Auction (*See Bid. Proc. at ¶ E*).
- The procedures for conducting the Auction, if any (*See Bid. Proc. at ¶ G*).
- The criteria by which the "Successful Purchaser" will be selected by the Trustee, in consultation with its advisors (*See Bid. Proc. at ¶ I*).
- Various other matters relating to the sale process generally, including the Sale Hearing, designation of a Back-Up Bidder, payment of the bid protections, return of any Sale Deposits and certain reservations of rights (*See Bid. Proc. at ¶¶ J-N*).

24. The Bid Procedures recognize the Trustee's fiduciary obligations to maximize sale value, and, as such, do not impair the Trustee's ability to consider all

² Capitalized terms used but not defined in this paragraph shall have the meanings set forth in the Bid Procedures. This summary is for the convenience of the Court and interested parties. It is not intended to be a complete summary of the bid procedures. To the extent there is any conflict between this summary and the Bid Procedures, the Bid Procedures govern in all respect.

qualified bid proposals, and preserve the Trustee's right to modify the Bid Procedures as necessary or appropriate to maximize value for Debtor's estate in consultation with key parties set forth therein.

BID PROVISIONS TO BE HIGHLIGHTED UNDER THE LOCAL RULES.

25. The Bid Procedures contain the following provisions that are required to be highlighted pursuant the Guidelines:

- (i) Provisions Governing Qualification of Bidders. The provisions governing an entity's right to become a qualified bidder are set forth in paragraphs B and D of the Bid Procedures.
- (ii) Provisions Governing Qualified Bids. The provisions governing qualified bids are set forth in paragraph D of the Bid Procedures. Such provisions include, among other things, the deadlines for submitting a bid, the requirements for submitting a bid, the assets to be included in the bid, the period the bid must remain open, and the requirement to provide the Sale Deposit. Rugby has satisfied all of the bidding conditions.
- (iii) Provisions Providing Bid Protections to "Stalking Horse" Bidder. Paragraph A of the Bid Procedures sets forth the "stalking horse" bidder protections. The Purchase Agreement does not include any limitations on the Trustee's ability to solicit higher or better bids. The Purchase Agreement provides for the provision of a Break-Up Fee in the amount of \$330,000, which shall be paid in the event that the Assets are sold to a party other than Rugby.
- (iv) Bidding Increments. Paragraphs D and G of the Bid Procedures set forth the amount of the initial bid and any successive bidding increments.
- (v) Due Diligence Period. Interested parties shall have until the Bid Deadline to conduct due diligence. Paragraph C of the Bid Procedures sets forth the requirements for obtaining due diligence access.
- (vi) Modification of Bidding and Auction Procedures. Paragraph N of the Bid Procedures authorizes the Trustee, without further order of the Court, to modify the Bid Procedures.
- (vii) Closing with Alternative Backup Bidders. Paragraph K of the Bid Procedures addresses the ability of the Trustee to sell the Assets to the Back-Up Bidder.

(viii) Provisions Governing the Auction. Paragraph G of the Bid Procedures sets forth the provisions governing the auction, and this Motion specifies the date, time and place at which the Auction will be conducted and the method for providing notice to parties of any changes thereto. Further, Paragraph D(1) of the Bid Procedures requires each bidder to identify whether it is bidding for itself or others and if for others, the identities of such parties and whether the bidder is party to any agreement limiting the bidders at the auction. Paragraph H of the Bid Procedures provides that the Auction will be transcribed by a court reporter and that the Auction shall be open only to certain specified parties and not all creditors.

SUMMARY OF THE ASSUMPTION AND ASSIGNMENT PROCEDURES

26. The Trustee is also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Assumed Agreements in connection with the Sale (the "Assumption Procedures"). The Assumption Procedures are as set forth below.

Notice of Cure Procedures. The Trustee will file a cure schedule (the "Cure Schedule") and serve such schedule and an Assumption and Assignment Notice by first class mail on the parties to those executory contracts and unexpired leases that will be included in any sale and those other executory contracts and unexpired leases that may be included in the sale (the "Assumed Agreements") by May 30, 2012. The Cure Schedule will include the (i) Assumed Agreements; (ii) the name and contact information of the counterparty to each Assumed Agreement; and (iii) the proposed cure amount for each Assumed Agreement.

Objections. Any objection to the assumption and assignment of the Assumed Agreements identified on the Cure Schedule, including objections to the cure amount set forth on such schedule and to adequate assurance of future performance, must be filed with the Bankruptcy Court no later than June 11, 2012.

Resolution of Objections. If no objection is timely filed to the assumption and assignment of an Assumed Agreement, the counterparty to such Assumed Agreement will be barred from objecting thereto and shall be deemed to consent to the assumption and assignment of such Assumed

1 Agreement. If no objection is timely filed to the
 2 proposed cure amount with respect to an Assumed
 3 Agreement, then the cure amount set forth in the
 4 Cure Schedule shall be binding upon the nondebtor
 5 party to such Assumed Agreement for all purposes in
 6 this Chapter 11 case and will constitute a final
 7 determination of the total cure amount required to be
 8 paid in connection with the assumption and
 9 assignment thereof.

10 If a timely objection is filed and such objection
 11 cannot otherwise be resolved by the parties, the
 12 Bankruptcy Court may hear such objection at the
 13 Sale Hearing, or any adjourned date thereof. The
 14 pendency of a dispute relating to a proposed cure
 15 amount will not delay the closing of the sale,
 16 including the assumption and assignment of
 17 Assumed Agreements necessary to effectuate such
 18 closing, provided that, for any dispute relating to a
 19 proposed cure amount that is unresolved by the date
 20 of the closing on the sale, the Trustee shall escrow
 21 the cure amount proposed with respect to such
 22 unresolved objection pending such resolution.

13 **LOCAL BANKRUPTCY RULE 2002-1 DISCLOSURE**

14 27. The following information is provided to comply with
 15 LBR 2002-1(b)(2)(A)-(G):

16 a. The assets to be sold consist of substantially all of Debtor's
 17 personal property assets. The assets to be sold do not include Debtor's cash or Debtor's real
 18 property.

19 b. Rugby is the only other party to the proposed transaction at this
 20 time. Rugby has no relationship to Debtor, other than as a supplier of inventory to Debtor.

21 c. A complete description of the assets to be sold may be obtained
 22 by contacting counsel for the Trustee.

23 d. The terms and conditions of submitting bids, conditions
 24 imposed on competing bidders, and the time, place and terms and conditions of the Auction,
 25 are set forth above and in the Bid Procedures.
 26

e. The Purchase Price for the Assets is discussed previously in this Motion. The Trustee has engaged an independent appraiser to appraise the hard Assets.

f. The sale is in the best interests of the estate for the following reasons: (i) the sale will likely result in the continued employment of many of Debtor's employees; (ii) the sale will preserve business relationships and sales for vendors, customers, and other parties who are presently doing business with Debtor; and (iii) the sale will result in a greater distribution to creditors than would result from a piecemeal liquidation of the Assets.

g. The Trustee is proposing the sale in advance of approval of a plan of reorganization because Debtor is continuing to lose money, it does not have any post-petition financing in place, and it is not feasible for the Trustee to wait until a plan has been confirmed before closing the sale of Debtor's Assets.

BASIS FOR RELIEF REQUESTED

A. Sale of Assets

28. Section 363(b)(1) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” This provision generally allows a trustee (subject to court approval) to sell property of the estate outside the ordinary course of business where the proposed sale is a sound exercise of the trustee's business judgment and when the sale is proposed in good faith and for fair value. *Committee of Equity Security Holders v. Lionel Corporation (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Ernst Home Center, Inc.*, 209 B.R. 974, 980 (Bankr. W.D. Wash. 1997). When a trustee articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the [trustee’s] conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

29. The decision to sell the Assets has substantial business justification. Debtor does not have the resources to maintain its business as a going concern. Rather than allow the value of the Assets to decline or to pursue piecemeal liquidation, which would yield less value than the proposed sale and be a less desirable result for both employees and creditors, the Trustee has determined that it is in the best interests of Debtor's estate to sell the Assets to Rugby or another buyer who can continue some or all of Debtor's operations.

30. The Purchase Agreement was negotiated at arm's length, in good faith, and the Trustee believes its terms are fair and reasonable. Rugby is not an "insider" of Debtor and neither Debtor nor its management has a financial interest in the transactions contemplated by the Purchase Agreement.

31. The Trustee also believes that the price to be paid by Rugby represents fair and reasonable consideration for the Assets. As described above, prior to executing the Purchase Agreement, the Trustee solicited expressions of interest from industry participants and other interested parties. Rugby came forward with the best offer.

32. Furthermore, the Trustee proposes to effect the sale only after holding the Auction pursuant to the Bid Procedures, which procedures are designed to procure the highest and best offer for the sale of the Assets.

B. Sale Free and Clear of Liens, Claims and Encumbrances

33. The Trustee requests that the Court authorize the sale of the Assets free and clear of all liens, claims and encumbrances which may be asserted against the Assets, with any such liens, claims and encumbrances attaching to the proceeds of the sale.

34. Rugby (and potential bidders in the Auction process) will only buy the Assets if they are "free and clear" of liens.

35. Holders of liens and interests in the Assets will be adequately protected because their interests will attach to the proceeds of the sale, subject to any claims and defenses the Trustee may have thereto.

C. Assumption and Assignment of Executory Contracts

36. As described above, as part of the sale contemplated by the Purchase Agreement, the Trustee intends to assume and assign certain executory contracts to Rugby.

37. Under § 365(a), the Trustee may assume or reject an executory contract, subject to the court's approval. In determining whether to approve a request for approval of assumption of an executory contract, the bankruptcy court applies the business judgment rule.

38. In addition to passing the business judgment test, Section 365(b) of the Bankruptcy Code requires that a trustee meet certain additional requirements to assume an executory contract:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

39. Similarly, Section 365(f)(2) applies similar requirements to the assignment of an executory contract, stating that the contract may be assigned if:

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

40. In this case, the Trustee's proposed assumption and assignment of the executory contracts to Rugby would fulfill the "cure" and "adequate assurance" requirements for assumption and assignment set forth in the aforementioned statutes. Any defaults under the contracts and leases would be cured at closing or as soon thereafter as the Court establishes the amount of the cure payment needed (or the parties agree on such amount) from Rugby. If another entity is the successful purchaser, it will have had to satisfy the Trustee and the Court of its financial strength and, therefore, similarly will fulfill the "adequate assurance" requirement.

41. Some, if not all, of the executory contracts at issue may contain provisions purporting to prohibit or condition the assignment to third parties. The Bankruptcy Code specifically prohibits the termination or modification of executory contracts based on such clauses that restrict assignment. 11 U.S.C. § 365(f).

D. Bid Protections

42. Debtor also requests approval of a breakup fee equal to \$330,000 (which is approximately 2.5% of the estimated purchase price). The breakup fee would be payable to Rugby in the event a Qualified Bidder prevails at the Auction and the alternate sale ultimately is approved.

43. In evaluating breakup and similar fees, courts have applied three basic standards: (a) the business judgment test; (b) the best interests of creditors test; and (c) the "actual and necessary" or administrative expense test. It appears that the Ninth Circuit has not adopted (or rejected) any of the foregoing tests. No matter which test it chooses to apply, however, it would be appropriate for the Court to approve the Break-Up Fee.

44. Although courts may apply different analytical standards, they generally reach the same conclusion: breakup fees are appropriate when they encourage bidding and are in the best interest of the estate. *See, e.g., In re Integrated Resources, Inc.*, 147 B.R. 650 (S.D.N.Y. 1992), *app. dismissed on jurisdictional grounds*, 3 F.3d 49 (2d Cir.

1993) (applying the business judgment standard to approve breakup fee that helped attract and retain a potentially successful bid and attract other bidders); *In re America West Airlines, Inc.*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994) (applying the best interest of creditors tests and focusing on “whether the transaction will further the diverse interests of the debtor, creditors and equity holders alike”); *In re O’Brien Environmental Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999) (applying the “actual and necessary” test and stating that the estate benefits if the breakup fee induced “a bid that otherwise would not have been made * * *”); *In re 995 Fifth Avenue Associates, L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”).

45. Here, the breakup fee is designed to compensate Rugby for the time and expense of negotiation and due diligence in connection with its proposed purchase. The amount of the breakup fee is fixed at \$330,000 (which is approximately 2.5% of the estimated purchase price). This amount is in line with, or less than, break-up fees approved in other cases. *See, e.g., Consumer News & Business Channel Partnership v. Financial News Network, Inc. (In re Financial News Network, Inc.)*, 980 F.2d 165, 167 (2d Cir. 1992) (noting without discussion \$8.2 million breakup fee on \$149.3 million transaction (5.5% of consideration offered)); *In re CXM, Inc.*, 307 B.R. 94 (Bankr. N.D. Ill. 2004) (approving breakup fee which represented an expense reimbursement of 2.59%); *see also LTV Aerospace & Defense Co. v. Thomson-CSF, S.A. (In re Chateaugay Corp.)*, 1998 B.R. 848, 861 (S.D.N.Y. 1996) (enforcing \$20 million “reverse breakup fee” payable to debtor on \$450 million offer (4.4% of consideration)). *Compare In re Twenver, Inc.*, 149 B.R. 954 (disapproving of proposed topping fee, which exceeded 10% of total bid).

E. Non-Applicability of Stays

46. In addition to the other sale-related relief sought herein, the Trustee requests that the Court specifically find inapplicable any stays that might otherwise inhibit

1 the Trustee's ability to close the proposed transactions for the sale of the Assets immediately
 2 after the Court enters an order approving the transactions, including, without limitation, those
 3 arising under Bankruptcy Rules 6004 or 6006. Any delay in a closing of the sale would
 4 mean substantial potential harm to Debtor, its creditors and its estate.

5 47. The decision to sell the Assets has substantial business justification.
 6 Debtor does not have funding necessary to maintain its business as a going concern. The sale
 7 of Debtor's assets is the best way to realize value for Debtor's estate and its creditors.

8 48. The Trustee believes the minimum bid price represents fair and
 9 reasonable consideration for the Assets.

10 NOTICE

11 49. The Trustee proposes to give notice of the Auction, this Motion, and
 12 the Sale Hearing as follows: serve a copy of this Motion and the Sale Notice upon
 13 (i) counsel for the unsecured creditors appointed in this case; (ii) all persons or entities
 14 required to be served pursuant to orders of this Court; (iii) all parties who have filed requests
 15 for notice under Bankruptcy Rule 2002 as of the date of service; (iv) all persons or entities
 16 who to the knowledge of the Trustee hold a lien upon the Assets; (v) the individuals or
 17 entities believed by the Trustee to be potential qualified bidders; (vi) the Office of the United
 18 States Trustee; and (vii) all nondebtor parties to the Assumed Agreements.

19 50. The Trustee submits that such notice constitutes good and sufficient
 20 notice of the competitive offer procedures, this Motion, and all proceedings to be held
 21 thereon and that no other or further notice need be given.

22 WHEREFORE, the Trustee respectfully requests that the Court (a) enter an
 23 order approving the Bid Procedures; and (b) as soon as practicable after completion of the
 24 Auction, enter an order (i) approving the sale of the Assets to Rugby or other successful
 25 purchaser, (ii) approving such sale free and clear of all liens, claims and encumbrances with
 26 such interests attaching to the sale proceeds; (iii) approving the assumption and assignment

1 of executory contracts and unexpired leases to Rugby or other successful purchaser;
2 (iv) declaring all stays including, without limitation, those arising under Bankruptcy Rules
3 6004 or 6006 inapplicable; and (v) such other and further relief as may be just and proper.

4 DATED this 14th day of May, 2012.

5 TONKON TORP LLP

6
7 By /s/ Michael W. Fletcher

8 Albert N. Kennedy, OSB No. 821429

9 Michael W. Fletcher, OSB No. 010448

10 Attorneys for Edward C. Hostmann, Chapter 11
11 Trustee
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EXHIBIT A

Bid Procedures Order

**MOTION FOR ORDER APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND ENCUMBRANCES, (B) ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS, AND (C) BID PROCEDURES**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Lumber Products, an Oregon Corporation,
Debtor.

Case No. 12-32729-elp11

**ORDER (A) APPROVING BID
PROCEDURES, (B) SCHEDULING AN
AUCTION AND HEARING TO
CONSIDER SALE OF DEBTOR'S
PERSONAL PROPERTY ASSETS, AND
(C) ESTABLISHING OBJECTION
DEADLINES**

This matter came before this Court on the Trustee's Motion for Order Approving (A) Sale of Assets Free and Clear of Liens, Claims and Encumbrances, (B) Assumption and Assignment of Executory Contracts, and (C) Bid Procedures (the "Motion") filed by Edward C. Hostmann (the "Trustee") [Dkt. #_____]. The Court having held a hearing on the Motion on _____, 2012, and having considered the submissions and arguments of counsel and the files and records herein, and being now fully advised of the premises,

THE COURT FINDS as follows:

A. This Court has core jurisdiction over the Chapter 11 case of Lumber Products, an Oregon Corporation ("Debtor") (the "Bankruptcy Case"), this Motion and the

**Page 1 of 6 - ORDER (A) APPROVING BID PROCEDURES, (B) SCHEDULING AN
AUCTION AND HEARING TO CONSIDER SALE OF DEBTOR'S PERSONAL
PROPERTY ASSETS, AND (C) ESTABLISHING OBJECTION DEADLINES**

parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The notice provided regarding the Motion constitutes sufficient and adequate notice. No other or further notice in connection with the entry of this Order is or shall be required.

C. The Bid Procedures (attached as Exhibit B to the Motion) were proposed by the Trustee in good faith with the goal of maximizing the value of Debtor's Assets (defined below) for the benefit of all creditors of the estate and other parties-in-interest. The Trustee has articulated good and sufficient reasons for authorizing and approving the Bid Procedures, which are reasonable and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of, the Assets.

D. The Trustee's proposed sale notice (attached as Exhibit C to the Motion) is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the sale, the auction, and the assumption procedures.

E. Approval of the \$330,000 Break-Up Fee is necessary and appropriate to compensate the Purchaser (defined below) for (1) making the initial offer that serves as the floor for further bidding, and (2) negotiating and entering into the Purchase Agreement (defined below).

F. The Bid Procedures (including the Break-Up Fee) are fair and reasonable. The Bid Procedures represent an exercise of the Trustee's sound business judgment, will facilitate an orderly sale process, and are in the best interests of Debtor's estate.

G. On or about May ____, 2012, the Trustee entered into an Asset Purchase Agreement (the "Purchase Agreement") with Rugby IPD Corp. ("Rugby") providing for the sale to Rugby of substantially all of Debtor's personal property assets (the "Assets").

H. Entry of this Order is in the best interests of Debtor, its estate and creditors and other parties-in-interest.

Now, therefore,

IT IS HEREBY ORDERED as follows:

1. The Motion is granted.
2. The Bid Procedures attached as **Exhibit A** are hereby approved and shall be used in connection with the proposed sale of the Assets.
3. All responses or objections to the relief requested in the Motion that have not been withdrawn, waived or settled are overruled.
4. Any objections to the proposed sale shall be in writing and filed with this Court no later than June 11, 2012 at 5:00 p.m. Pacific time. Any party filing such an objection must attend the Sale Hearing and advocate its objection at such hearing. Any objection not filed, served, and/or advocated in accordance with this paragraph may be deemed waived and may be forever barred.
5. The Auction for the Assets will be held on June 15, 2012, at 10:00 a.m., at the offices of Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, Oregon 97204.
6. The Sale Hearing will be conducted on June 15, 2012 promptly following the Auction at the time announced by the Trustee at the Auction, before the Honorable Elizabeth L. Perris in U.S. Bankruptcy Court, Courtroom No. 1, 1001 SW Fifth Avenue, Portland, Oregon 97204, at which time Trustee will present for approval by this Court the Successful Bid (if there is an Auction) or the Purchase Agreement with the Purchaser (if there is not an Auction), pursuant to the provisions of Sections 105, 363(b), 363(f), 363(m) and 365 of the Bankruptcy Code. The Trustee shall be deemed to have accepted a bid only when the bid for the Assets has been approved by the Court at the Sale Hearing.

7. The \$330,000 Break-Up Fee is approved. The Trustee is authorized to pay the Break-Up Fee in accordance with the terms set forth in the Purchase Agreement. The Break-Up Fee shall be treated as an administrative expense claim in the Bankruptcy Case payable solely from and secured by a first priority lien on the sale proceeds and any sale deposit under Section 364(d) of the Bankruptcy Code. As applicable, the Break-Up Fee shall be paid to Rugby at the closing of such sale or disposition of the sale deposit prior to the payment of the proceeds of such sale to any third party asserting a lien on the Assets, and shall be free and clear of any such lien.

8. The Assumption Procedures are hereby approved as set forth below.

Notice of Cure Procedures. The Trustee will file a cure schedule (the "Cure Schedule") and serve such schedule and Assumption and Assignment Notice by first class mail on the parties to those executory contracts and unexpired leases that will be included in any sale and those other executory contracts and unexpired leases that may be included in the sale (the "Assumed Agreements") by May 30, 2012. The Cure Schedule will include the (i) Assumed Agreements; (ii) the name and contact information of the counterparty to each Assumed Agreement; and (iii) the proposed cure amount for each Assumed Agreement.

Objections. Any objection to the assumption and assignment of the Assumed Agreements identified on the Cure Schedule, including the cure amount set forth on such schedule and to adequate assurance of future performance must be filed with the Bankruptcy Court no later than June 11, 2012.

Resolution of Objections. If no objection is timely filed to the assumption and assignment of an Assumed Agreement, the counterparty to such Assumed Agreement will be barred from objecting thereto and shall be deemed to consent to the assumption and assignment of such Assumed Agreement. If no objection is timely filed to the proposed cure amount with respect to an Assumed Agreement, then the cure amount set forth in the Cure Schedule shall be binding upon the nondebtor party to such Assumed Agreement for all purposes in

this Chapter 11 case and will constitute a final determination of the total cure amounts required to be paid in connection with the assumption and assignment thereof.

9. If a timely objection is filed to the assumption and assignment of any unexpired contract and unexpired lease and such objection cannot otherwise be resolved by the parties, the Bankruptcy Court may hear such objection at the Sale Hearing, or any adjourned date thereof. The pendency of a dispute relating to a proposed cure amount will not delay the closing of the sale, including the assumption and assignment of Assumed Agreements necessary to effectuate such closing, provided, that for any dispute relating to a proposed cure amount that is unresolved by the date of the closing of the sale, the Trustee shall escrow the cure amount proposed with respect to such unresolved objection pending such resolution.

10. The Sale Notice, substantially in the form attached hereto as **Exhibit B**, is hereby approved.

11. The failure of any third party to file and serve an objection as ordered and directed herein shall be deemed the consent of such a party to the sale and transfer of the Assets to Rugby or the Successful Purchaser (including the assumption and assignment of the Assumed Agreements and the fixing of any applicable Cure Costs).

12. Pursuant to the Guidelines Regarding Motions for Sale of All or Substantially All Assets and Sale Procedures Motions adopted by the Bankruptcy Court on March 8, 2010 (LBF 363), the Trustee is hereby excused from the requirement of using Local Bankruptcy Form 760.5 [Notice of Intent to Sell Real or Personal Property, Compensate Real Estate Broker, and/or Pay and Secured Creditor's Fees and Costs; Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing].

13. As provided by Bankruptcy Rule 6004(h), this Order shall not be stayed for 14 days after the entry thereof and shall be effective and enforceable immediately on its entry on the docket.

Page 5 of 6 - ORDER (A) APPROVING BID PROCEDURES, (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER SALE OF DEBTOR'S PERSONAL PROPERTY ASSETS, AND (C) ESTABLISHING OBJECTION DEADLINES

14. Unless otherwise specified, all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

#

Presented by:

TONKON TORP LLP

By

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Attorneys for Edward C. Hostmann, Chapter 11 Trustee

cc: List of Interested Parties

EXHIBIT A

Bid Procedures

[TO BE ATTACHED]

EXHIBIT B

Sale Notice

[TO BE ATTACHED]

EXHIBIT B

Bid Procedures

**MOTION FOR ORDER APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND ENCUMBRANCES, (B) ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS, AND (C) BID PROCEDURES**

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6 888 S.W. Fifth Avenue

Portland, OR 97204

7
8 Attorneys for Edward C. Hostmann,
Chapter 11 Trustee

9
10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 In re

13 Lumber Products, an Oregon Corporation,

14 Debtor.

Case No. 12-32729-elp11

**BID PROCEDURES FOR THE
SUBMISSION, RECEIPT AND
ANALYSIS OF BIDS IN
CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF DEBTOR'S
PERSONAL PROPERTY ASSETS**

16
17 These Bid Procedures have been approved by order of the United States
Bankruptcy Court for the District of Oregon (the "Court") in connection with the above-
captioned bankruptcy case of Lumber Products, an Oregon Corporation ("Debtor"),
18 which order was entered on _____, 2012 [Dkt. #___] (the "Bid Procedures
Order").

19
20 These Bid Procedures set forth the process by which Edward C. Hostmann, the
Chapter 11 trustee for Debtor's estate (the "Trustee"), is authorized to conduct the sale
(the "Sale") by auction (the "Auction") of substantially all of Debtor's personal property
21 assets (the "Assets"). These Bid Procedures also set forth the terms by which
prospective bidders may qualify for and participate in the Auction, thereby competing to
22 make the highest or otherwise best offer for the Assets.

23 **A. Stalking Horse Bidder**

24 On May ____, 2012, Debtor and Rugby entered into a Purchase Agreement for
the acquisition of the Purchased Assets (as defined in the Purchase Agreement) pursuant
25 to which, among other things, Rugby agreed to pay an amount equal to [\$_____] (collectively, the "Purchase Price") for the Purchased Assets, subject to the outcome of
26 the Auction and the entry of an order of the Court (the "Sale Order") approving the sale

of the Purchased Assets; and Debtor agreed to pay to Rugby a break-up fee of \$330,000 (the "Break-Up Fee") in the event that the Court approves, and the Trustee consummates, the acquisition of substantially all of the Assets by any Person or combination of Persons other than Rugby. A copy of the Purchase Agreement has been filed with the Court and may be obtained by contacting Michael W. Fletcher at (503) 802-2169.

B. Participation Requirements

To participate in the bidding process and to obtain access to due diligence materials, a person (other than Rugby) interested in purchasing the Assets (a "Potential Bidder") must deliver (unless previously delivered) to both the Trustee and counsel for the Trustee the following (the "Preliminary Bid Documents"):

- (1) An executed confidentiality agreement in form and substance acceptable to the Trustee and its counsel;
- (2) Preliminary written proof by the Potential Bidder of its financial capacity to close the proposed transaction, including, but not limited to, its ability to satisfy the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under Section 365 of the Bankruptcy Code, which may include current unaudited or verified financial statements of, or verified financial commitments (i.e., banking or capital references) obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which must be deemed satisfactory to the Trustee in its business judgment.

As soon as practicable, and in any event within two business days after a Potential Bidder delivers the Preliminary Bid Documents, the Trustee shall determine and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents. The Trustee shall work with Potential Bidders during the two business-day period (as it may be extended by the Trustee) to attempt to correct or cure any deficiencies in any Preliminary Bid Documents. Only those Potential Bidders whose Preliminary Bid Documents have been deemed acceptable at the end of such two business-day period (as it may be extended by the Trustee) (each, an "Acceptable Bidder") may conduct a due diligence review with respect to the Assets or submit bids to acquire the Assets. Rugby is deemed an Acceptable Bidder.

C. Obtaining Due Diligence Access

After receipt of an executed confidentiality agreement and notification of Acceptable Bidder status, the Trustee will provide each Acceptable Bidder reasonable due diligence information, as requested, including access to an electronic data room, as soon as reasonably practicable after such request. The Trustee shall be entitled to use its business judgment in determining the extent to which a Potential Bidder is entitled to receive confidential competitive information.

D. Bid Requirements

Any Acceptable Bidder that is interested in being a participant in the Auction and acquiring all or substantially all of the Assets (each a "Bidder") must submit a "Bid" as provided herein prior to 5:00 p.m. Pacific time on June 12, 2012 (the "Bid Deadline"). Any such Bid must:

- (1) Identify the bidder, i.e., including any party for whom it may be bidding with or on behalf and whether the bidder is a party to any agreement limiting the bidders at the Auction and any relation of such parties to Debtor.
- (2) Contain (x) a signed definitive asset purchase agreement in substantially the form of the Purchase Agreement (a "Competing Purchase Agreement") and (y) a comparison of such Competing Purchase Agreement to the Purchase Agreement, showing all the differences between the two. A Competing Purchase Agreement must:
 - (i) Be in form and substance satisfactory to the Trustee;
 - (ii) Clearly designate the assets to be acquired (which must be all or substantially all of the Assets);
 - (iii) Provide for a purchase price with respect to such assets in an amount that is at least equal to the Purchase Price, plus \$430,000 (the "Initial Overbid Amount");
 - (iv) Provide that the Bidder will forfeit the Sale Deposit (defined below), as liquidated damages if such purchaser defaults under the Competing Purchase Agreement;
 - (v) Not be subject to any (a) financing contingency; (b) contingency relating to the completion of unperformed due diligence; (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or consents; or (d) any conditions precedent to the Bidder's obligation to purchase the Assets, other than those conditions included in the Purchase Agreement; and
 - (vi) Not provide for the payment to the Bidder of any Break-Up Fee, topping fee, expense reimbursement or other similar fee or arrangement.
- (3) Include a \$1,000,000 deposit (the "Sale Deposit") in the form of either a wire transfer to an account specified by the Trustee or a certified check. The Sale Deposit shall be held in escrow by the Trustee in a segregated account pending the closing of the sale. The full amount of the Sale Deposit shall be forfeited as liquidated damages if such Bidder is the Successful Purchaser (defined below) and fails to close the transaction because of a breach or failure to perform on the part of the Successful Purchaser.
- (4) To the extent not previously provided to the Trustee, be accompanied by evidence satisfactory to the Trustee in his business judgment that the Bidder:

is willing, authorized, capable and qualified financially, legally and otherwise, of performing all obligations under its proposed Competing Purchase Agreement in the event it submits the Successful Bid (as hereinafter defined) at the Auction, including its ability to provide adequate assurances under the Bankruptcy Code.

- (5) Be submitted to counsel for the Trustee so as to be received not later than the Bid Deadline. Any Bid that meets all of the foregoing requirements, as determined by the Trustee in his good faith discretion, shall be considered a "Qualified Bid." Counsel for the Trustee shall, as soon as practicable, send a copy of each Qualified Bid received, if any, to the following parties: (i) counsel to Rugby; (ii) counsel to Wells Fargo Bank, (iii) counsel to the Official Committee of Unsecured Creditors of Debtor (the "Creditors Committee"); and (iv) counsel to each Bidder submitting a Qualified Bid (or if a Bidder does not have counsel, to the Bidder).

E. Evaluation of Qualified Bids

Prior to the Auction, the Trustee shall evaluate the Qualified Bids and identify the Qualified Bid that is, in the Trustee's business judgment, the highest or otherwise best bid (the "Starting Bid"). No later than 5:00 p.m. Pacific time on June 13, 2012, the Trustee shall notify Rugby and all parties who have submitted Qualified Bids as to whether there will be an Auction, and if so, which Qualified Bid is the Starting Bid.

F. No Qualified Bids

If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur and Rugby will be deemed the Successful Purchaser. Subject to the termination rights under the Purchase Agreement, the Trustee will immediately pursue entry of a Sale Order by the Court approving the Purchase Agreement and authorizing the sale of the Purchased Assets to Rugby.

G. Auction

In the event the Trustee determines that one or more Bids are Qualified Bids, then the Trustee will conduct the Auction on June 15, 2012 at 10:00 a.m. (the "Auction") with respect to the sale of the Assets at the offices of Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, OR 97204, or at such other location as may be designated by the Trustee.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (1) The Qualified Bidders, including Rugby, shall appear in person or through duly-authorized representatives at the Auction.
- (2) Only Qualified Bidders, including Rugby, shall be entitled to bid at the Auction.
- (3) Bidding at the Auction shall begin at the Starting Bid.

- (4) Subsequent bids at the Auction, including any bids by Rugby, shall be made in minimum increments of \$100,000.
- (5) For purposes of determining Rugby's bid amounts, Rugby shall receive a credit equal to the Break-Up Fee in each round of bidding.
- (6) All bidding will be open and transparent to all persons permitted to attend the Auction.
- (7) The bidding may be transcribed by a certified court reporter to ensure an accurate recording of the bidding at the Auction.
- (8) Each Qualified Bidder will be required to confirm on the record at the Auction that it has not colluded with any other person with respect to the bidding or the Sale.
- (9) Absent irregularities in the implementation of these Bid Procedures or in the conduct of the Auction, neither the Trustee nor the Court will consider bids made after the Auction is closed.
- (10) The Auction shall be governed by such other procedures as may be announced by the Trustee or its counsel from time to time at the Auction; provided that any such other procedures shall not be inconsistent with the Bid Procedures Order or any other order in Debtor's Chapter 11 case.

H. Acceptance of the Successful Bid

Upon the conclusion of the Auction (if such Auction is conducted), the Trustee, in the exercise of his reasonable, good-faith business judgment, shall identify the highest or otherwise best bid (the "Successful Bid"). The Qualified Bidder having submitted the Successful Bid will be deemed the "Successful Purchaser." The Successful Purchaser and the Trustee shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which the Successful Bid was made.

The Trustee will present the results of the Auction to the Court at the Sale Hearing, at which certain findings will be sought from the Court regarding the Auction, including, among other things, that (1) the Auction was conducted, and the Successful Purchaser was selected, in accordance with these Bid Procedures, (2) the Auction was fair in substance and procedure, (3) the Successful Bid was a Qualified Bid, and (4) consummation of the Sale contemplated by the Successful Bid is in the best interests of Debtor and its estate.

If an Auction is held, the Trustee shall be deemed to have accepted a Qualified Bid only when (1) such bid is declared the Successful Bid at the Auction or by the Court, and (2) definitive documentation has been executed in respect thereof. Such acceptance is conditioned on approval by the Court of the Successful Bid and the entry of an Order approving such Successful Bid.

I. Bankruptcy Court Approval of Sale

A hearing to consider approval of the sale to the Successful Purchaser (or to approve the Purchase Agreement if no Auction is held) (the "Sale Hearing") and seek entry of a Sale Order is presently scheduled to take place at 1:00 p.m. on June 15, 2012 or at such other time _____, promptly following the conclusion of the Auction at a time announced at the Auction by the Trustee. The Sale Hearing will be held before the Honorable Elizabeth L. Perris, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Oregon, in Courtroom No. 1, 1001 SW Fifth Avenue, Portland, Oregon. The Trustee and the Successful Purchaser, once the Successful Purchaser has been determined, shall each use their commercially reasonable efforts, and shall cooperate, assist and consult with each other, to secure the entry of a Sale Order in a form reasonably acceptable to the Trustee and the Successful Purchaser. Any objections to the sale must be filed with the Court by June 10, 2012.

The Sale Hearing may be continued to a later date by the Trustee by sending notice to all prospective bidders prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

J. Designation of Back-Up Bidder

Upon the conclusion of the Auction and the selection of the Successful Purchaser, the Trustee shall select the person submitting the next highest or otherwise best bid (the "Back-Up Bidder"). The bid of the Back-Up Bidder shall remain open until the second business day following the closing of a sale to the Successful Purchaser. If for any reason the Successful Purchaser is unable or unwilling to consummate an approved sale because of breach or failure to perform on the part of the Successful Purchaser, (1) it will forfeit its Sale Deposit to Debtor as liquidated damages in lieu of any other damages with respect to such breach, and (2) the Back-Up Bidder shall be deemed to be the Successful Purchaser. The purchase price shall be the amount of such Back-Up Bidder's last bid, and the Trustee shall be authorized to effectuate the sale to the Back-Up Bidder without further order of the Bankruptcy Court. If, for any reason, the Back-Up Bidder fails to perform, Rugby agrees that if Debtor tenders full performance of all of its obligations under the Purchase Agreement to Rugby on or before June 29, 2012, and the Purchase Agreement is not otherwise materially breached by Debtor, Rugby shall purchase the Purchased Assets under the terms of the Purchase Agreement.

K. Break-Up Fee

At the closing of the sale to the Successful Purchaser, if the Successful Purchaser is not Rugby, the Trustee shall cause Debtor to pay the Break-Up Fee to Rugby by wire transfer in immediately available funds to an account designated by Rugby.

L. Return of Sale Deposit

The Sale Deposit of the Successful Purchaser shall, upon consummation of the sale, be credited to the purchase price paid by the Successful Purchaser. If the Successful Purchaser fails to consummate the sale, then the full amount of the Sale Deposit shall be forfeited to, and be retained irrevocably by, Debtor.

The Sale Deposit of any unsuccessful Qualified Bidder will be returned to such unsuccessful Qualified Bidder within two business days after (1) the conclusion of the Auction (if the Bidder does not submit the Successful Bid and is not designated the Back-Up Bidder) or (2) consummation of the sale (if the Bidder is designated the Back-Up Bidder).

M. Reservation of Rights to Modify Bid Procedures

The Trustee reserves the right to modify these Bid Procedures in any manner that will best promote the goals of the bidding process and may impose, at or prior to the Auction, additional customary terms and conditions on the sale, including, without limitation, extending the deadlines set forth in these Bid Procedures, adjourning the Auction at the Auction, and/or adjourning the Sale Hearing in open court without further notice.

DATED this _____ day of _____, 2012.

TONKON TORP LLP

By _____
 Albert N. Kennedy, OSB No. 821429
 Michael W. Fletcher, OSB No. 010448
 Attorneys for Edward C. Hostmann, Chapter 11
 Trustee

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EXHIBIT C

Sale Notice

**MOTION FOR ORDER APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND ENCUMBRANCES, (B) ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS, AND (C) BID PROCEDURES**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Lumber Products, an Oregon Corporation,
Debtor.

Case No. 12-32729-elp11

**NOTICE OF MOTION TO APPROVE
SALE TO RUGBY IPD CORP. OR
HIGHER AND BETTER BIDDER AT
AUCTION, AUCTION, BIDDING
PROCEDURES, SALE HEARING,
AND OBJECTION DEADLINES**

PLEASE TAKE NOTICE that Edward C. Hostmann, the Chapter 11 Trustee (the "Trustee") for the estate of Lumber Products, an Oregon Corporation ("Debtor") moved for approval of the sale of all or substantially all of the personal property assets of Debtor (the "Assets") free and clear of all liens, claims and encumbrances to Rugby IPD Corp. ("Rugby") if there are no higher and better offers from qualified bidders at an auction scheduled for June 15, 2012 at 10:00 a.m. [Dkt. #___].

The sale to Rugby would be pursuant to a Purchase Agreement entered into between Debtor and Rugby. A copy of the Purchase Agreement has been, or will be, filed with the Court, and may be obtained by contacting Michael Fletcher at (503) 802-2169.

The Trustee believes that the sale to Rugby is in the best interests of the estate for the following reasons: (1) the sale will likely result in continued employment for many of Debtor's employees; (2) the sale will likely preserve business relationships and sales for vendors, customers and other parties who are presently doing business with Debtor; and (3) the sale will result in a greater overall distribution to creditors in general than a piecemeal liquidation.

The Trustee is proposing the sale in advance of approval of a plan of reorganization. Debtor does not presently have access to post-petition financing. The Trustee does not believe it is feasible for Debtor to wait until a plan has been confirmed before closing the sale of its Assets.

The proposed order approving the sale provides that Rugby shall have no liability or responsibility for any liability or other obligation of Debtor arising under or related to the Assets other than as expressly set forth in the Purchase Agreement, and that the transfer of the Assets to Rugby will not subject Rugby or its affiliates, successors or assigns, or their respective properties, to any liability for claims against Debtor or the Assets by reason of such transfer.

PLEASE TAKE FURTHER NOTICE that the Court entered an order [Dkt. #___] authorizing the Trustee to hold an auction to sell the Assets free and clear of all liens, claims and encumbrances. The auction, if one occurs, is scheduled for June 15, 2012 at 10:00 a.m. Pacific time at the offices of Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, Oregon.

PLEASE TAKE FURTHER NOTICE that the Court entered an order [Dkt. #___] approving bidding procedures in connection with the sale and the auction.

PLEASE TAKE FURTHER NOTICE that competing bidders are required to submit competing bids and otherwise qualify as bidders in accordance with the approved bidding procedures prior to 5:00 p.m. Pacific time on June 12, 2012.

PLEASE TAKE FURTHER NOTICE that a hearing on the proposed sale to Rugby, or any higher and better bidder at the auction (the "Sale Hearing"), is scheduled to be held at 1:00 p.m. on June 15, 2012, or at such later time as may be announced at the auction by the Trustee, at the United States Bankruptcy Court for the District of Oregon, Courtroom 1, 1001 SW Fifth Avenue, Portland, Oregon.

PLEASE TAKE FURTHER NOTICE that if you wish to object to the sale of the Assets, you must attend the Sale Hearing and, on or before June 11, 2012 at 5:00 p.m. Pacific time, you must file a written objection to the sale with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, Seventh Floor, Portland, Oregon 97204.

PLEASE TAKE FURTHER NOTICE that June 11, 2012 at 5:00 p.m. Pacific time (the "Deadline") is the deadline for any party to a contract or lease (the "Assumed Agreements") that Debtor proposes to assume and assign to Rugby (or other higher and better bidder at the auction) to object to the amount the Trustee asserts must be paid to cure any existing defaults under the Assumed Agreements (the "Cure Amounts"). The Assumed Agreements and the Cure Amounts proposed by the Trustee are set forth on the attached **Schedule A**.

PLEASE TAKE FURTHER NOTICE that any party to an Assumed Agreement who disagrees with the Cure Amount or who objects to the assumption of its Assumed Agreement or to the assignment of its Assumed Agreement, must, on or before the Deadline, file with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, Seventh Floor, Portland, Oregon 97204, a written objection stating the specific facts upon which the objection is based.

PLEASE TAKE FURTHER NOTICE that unless a timely objection is filed as to a Cure Amount scheduled by Debtor, the Cure Amount scheduled by Debtor shall be binding upon the nondebtor party to such Assumed Agreement for all purposes in this Chapter 11 case and will constitute a final determination of the total Cure Amount required to be paid in connection with the assumption and assignment of such Assumed Agreement. Further, unless a timely objection is filed, no further evidence shall be required to satisfy the requirements for assumption and assignment, including, without limitation, any further evidence of adequate assurance of performance by Rugby or other qualified purchaser, and the nondebtor party to the Assumed Agreement shall be barred from objecting to the assumption and assignment of such Assumed Agreement and shall be deemed to consent to the assumption and assignment of the Assumed Agreement.

PLEASE TAKE FURTHER NOTICE that a hearing on the Cure Amounts and Debtor's proposed assumption and assignment of the Assumed Agreements is scheduled to be held at 1:00 p.m. on June 15, 2012, or at such later time as may be announced at the auction by the Trustee, at the United States Bankruptcy Court for the District of Oregon, Courtroom 1, 1001 SW Fifth Avenue, Portland, Oregon.

Copies of any of the pleadings or documents referenced herein may be obtained by contacting Michael W. Fletcher at (503) 802-2169.

DATED this _____ day of _____, 2012.

TONKON TORP LLP

By _____
Albert N. Kennedy, OSB No. 821429
Michael W. Fletcher, OSB No. 010448
Attorneys for Edward C. Hostmann, Chapter 11
Trustee

036291/00001/3567465v3

EXHIBIT D

Sale Order

**MOTION FOR ORDER APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND ENCUMBRANCES, (B) ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS, AND (C) BID PROCEDURES**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Lumber Products, an Oregon Corporation,
Debtor.

Case No. 12-32729-elp11

ORDER (I) AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENT; (II) AUTHORIZING SALE OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; (IV) ESTABLISHING CURE AMOUNTS THEREFOR, AND (V) APPROVING OTHER RELATED RELIEF

This matter came before this Court on the Trustee's Motion for Order Approving (A) Sale of Assets Free and Clear of Liens, Claims and Encumbrances, (B) Assumption and Assignment of Executory Contracts, and (C) Bid Procedures [Dkt. #___] (the "Motion") filed by Edward C. Hostmann, the Chapter 11 trustee (the "Trustee") for the estate of Lumber Products, an Oregon Corporation ("Debtor"). Pursuant to that certain Order (A) Approving Bid Procedures; (B) Scheduling an Auction and Hearing to Consider Sale of Debtor's Assets; and

Page 1 of 12 - ORDER (I) AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENT; (II) AUTHORIZING SALE OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; (IV) ESTABLISHING CURE AMOUNTS THEREFOR, AND (V) APPROVING OTHER RELATED RELIEF

(C) Establishing Objection Deadlines [Dkt. #___] (the "Bid Procedures Order"), this Court established Bid Procedures regarding the sale of Debtor's Assets, scheduled the Auction, set objection deadlines, and scheduled the Sale Hearing. The Court having held the Sale Hearing on _____, 2012, and having considered the submissions and arguments of counsel and the files and records herein, and being now fully advised of the premises,

THE COURT FINDS as follows:

A. Lumber Products, on Oregon Corporation ("Debtor") filed its petition under Chapter 11 of the Bankruptcy Code on April 11, 2012. On April 18, 2012, Edward C. Hostmann (the "Trustee") was appointed as Chapter 11 trustee for Debtor's estate. On April 19, 2012, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in this Chapter 11 case.

B. This Court has jurisdiction over this matter and the parties and property affected thereby, pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 363 and 365. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Due and adequate notice of the Motion, auction, Sale Hearing, sale, and the transactions contemplated thereby was given and such notice was good, sufficient and appropriate under the circumstances. No other or further notice of the Motion, auction, Sale Hearing, sale, or the transactions contemplated thereby (including, without limitation, the assumption and assignments of the Contracts (defined below)), is or shall be required.

D. Debtor, as seller, and Rugby IPD Corp., as purchaser ("Purchaser"), entered into a Purchase Agreement (the "Purchase Agreement"), pursuant to which, among other things, Purchaser agreed to purchase substantially all of the personal property assets of Debtor (as more particularly described in the Purchase Agreement, the "Assets"), plus the assumption of certain liabilities related to or arising out of the Assets (as more particularly described in the

Page 2 of 12 - ORDER (I) AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENT; (II) AUTHORIZING SALE OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; (IV) ESTABLISHING CURE AMOUNTS THEREFOR, AND (V) APPROVING OTHER RELATED RELIEF

Purchase Agreement, the "Assumed Liabilities"). The Assets include certain executory contracts and personal property leases of Debtor (the "Contracts") that are set forth in the cure schedule filed with the Bankruptcy Court on _____, 2012 (the "Cure Schedule").

Certain of the Contracts, as determined by Purchaser prior to the Closing (the "Assumed Contracts"), are to be assumed and assigned to Purchaser as part of the transaction. The Assumed Liabilities include all obligations pursuant to the Assumed Contracts, including the Cure Amounts related thereto. Excluded Assets, as defined in the Purchase Agreement, are not being sold, conveyed, or otherwise transferred to Purchaser. Causes of action of Debtor's estate under federal and state avoidable transfer law are among the Excluded Assets, as Debtor is retaining all avoidance actions. In order to maximize the value of Debtor's estate for the benefit of creditors, the Trustee required that the sale to Purchaser, described in the Purchase Agreement, remain subject to higher or otherwise better offers.

E. In connection with the sale of the Assets, the Trustee requested in the Motion that the Court approve the Bid Procedures in order to fairly and expeditiously maximize the return to the estate. The Bid Procedures Order established Bid Procedures for the Assets. The solicitation by the Trustee with respect to the Auction for the Assets was adequate and reasonable to obtain the highest and best price therefor. The Motion and the Bid Procedures Order provided timely and adequate disclosure to all parties in interest required to receive notice thereof (including parties to the Contracts) regarding the Auction and the proposed assumption and assignment of the Contracts and the procedures in connection therewith.

F. At the Sale Hearing, the Trustee sought Court approval of the Purchase Agreement and the assumption and assignment of the Contracts.

G. In order to effectuate the sale of the Assets to Purchaser, Debtor must transfer to Purchaser its interest in the Assumed Contracts and assign them to Purchaser.

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Accordingly, Debtor sought authority in the Motion to assume the Contracts and assign them to Purchaser.

H. Based on a review of Debtor's books and records, the Trustee set forth on the Cure Schedule the amounts believed and determined by Debtor to be necessary to cure defaults under the Contracts pursuant to Section 365(B) of the Bankruptcy Code (the "Cure Amounts"). Debtor requested in the Motion that unless an objection to the proposed Cure Amounts was properly and timely filed and served by the non-debtor party to a Contract, the Court enter an order determining that the Cure Amounts with respect to the Contracts shall be fixed at the amounts shown on the Cure Schedule, and shall constitute the entire amount necessary to cure any defaults under Section 365(B) of the Bankruptcy Code, and that payment of these amounts will cure any and all such defaults. The Bid Procedures Order issued by this Court specifically provided that the parties to the Contracts would be bound by the Cure Amounts listed on the Cure Schedule unless the non-debtor parties to the Contracts timely filed an objection to the proposed Cure Amount. The Cure Amounts set forth on the Cure Schedule are the sole amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Contracts.

I. The Court finds that Purchaser has provided adequate assurance of future performance with respect to each of the Contracts within the meaning of Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

J. Approval of the Purchase Agreement and consummation of the sale of the Assets at this time are in the best interests of Debtor, its creditors, and its estate. The Trustee has established that there are sufficient business justifications to authorize the sale of the Assets prior to confirmation of a Chapter 11 plan.

K. The sale of the Assets was conducted in a fair and reasonable manner. The terms of the Purchase Agreement for the Assets are fair and reasonable and the transactions

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contemplated thereunder reflect the Trustee's prudent business judgment under all of the relevant circumstances. The proposed transactions contemplated in the Purchase Agreement are in the best interests of Debtor, its creditors and its estate. Debtor has good title in and to the Assets.

L. The transfer of the Assets to Purchaser pursuant to the Purchase Agreement represents an arm's length transaction between Debtor and Purchaser for a fair and reasonable price. The Purchase Price represents the highest and best offer for the Assets and constitutes fair consideration and reasonably equivalent value under the Bankruptcy Code and applicable state law. Debtor and Purchaser are not affiliates of one another within the meaning of Section 101(2) of the Bankruptcy Code. There is no evidence that the Trustee, Debtor or Purchaser engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under Section 363(n) of the Bankruptcy Code, and neither the Trustee, Debtor nor any other person affiliated with Debtor has violated Section 363(n) of the Bankruptcy Code by any action or inaction (with the Trustee having represented that all agreements and understandings with respect to such finding have been disclosed to the Court).

M. The Bid Procedures Order entered by this Court established bidding and other procedures for the sale of the Assets. The Court finds and concludes that the Trustee actively marketed the Assets to potential purchasers and complied with the Bid Procedures Order.

N. By and as a consequence of the entry of this Order: (1) Debtor has full power and authority to execute and deliver the Purchase Agreement on behalf of Debtor and all other documents contemplated thereby, and the sale of the Assets by Debtor has been duly and validly authorized by all necessary action of Debtor; (2) Debtor has all of the power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; and (3) no other consents or approvals are required for assignment of the Contracts or the transfer of the Assets to Purchaser.

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O. Debtor may sell the Assets free and clear of all liens, encumbrances, and interests that encumber, relate to, or purport to encumber or relate to, the Assets (except as otherwise provided in the Purchase Agreement as to Permitted Liens and Assumed Liabilities) (the foregoing being collectively referred to hereinafter as the "Liens") because either each entity with a security interest in any Assets to be transferred on the Closing Date, including the Assumed Contracts: (1) has consented to the Sale (including the assumption and assignment of the Assumed Contracts) or is deemed to have consented to the sale; (2) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (3) otherwise falls within the provisions of Section 363(F) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in Section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens who have been properly noticed and who did not object to the Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code.

P. The transfer of the Assets to Purchaser pursuant to the Agreement will be a legal, valid and effective transfer of the Assets, and vests or will vest Purchaser with all right, title and interest of Debtor to the Assets free and clear of Liens, including any right of setoff, with the exception of Permitted Liens and Assumed Liabilities (as defined in the Purchase Agreement), with all such interests to attach to Debtor's interest in any cash proceeds of the Sale (the "Sale Proceeds") in order of priority, subject to any rights, claims and defenses of Debtor, or objections of other interested parties with respect thereto, and subject to the remaining provisions of this Order.

Q. The Court having reviewed the Motion, and having considered the presentations of counsel, and having considered any objections filed to the Motion, and it appearing that the Motion is in the best interest of Debtor and its estate, and for good cause shown, and for the reasons stated by the Court on the record at the hearing on the Motion, which are incorporated herein by reference,

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Motion is granted.
2. All objections to the Motion that have not been withdrawn, waived, settled, or expressly reserved pursuant to the terms of this Order are overruled.
3. The Purchase Agreement between Debtor and Purchaser, and all transactions contemplated thereby, are approved. Pursuant to Section 363(B) of the Bankruptcy Code, the Trustee is authorized and empowered to sell all of the estate's and Debtor's right, title and interest in and to the Assets to Purchaser in accordance with the terms and conditions of the Purchase Agreement, the terms and provisions of which are hereby approved as if fully set forth and incorporated herein. Pursuant to Section 363 of the Bankruptcy Code, the sale shall be free and clear of any and all Liens (except as provided in the Purchase Agreement and except as provided herein), with any and all such Liens, attaching to the proceeds of the sale to the same extent, validity and in the same order of priority as in the underlying Assets. The Liens, if any, asserted by any person or entity in or to any of the Purchase Price cash proceeds shall be in the same priority and subject to the same infirmities and defenses as existed with respect to the Liens in the property prior to the sale of the Assets.
4. Entry of this Order constitutes an assignment of all Debtor's interest in and to the Assets, including all contracts, agreements, intellectual property, and rights or interests in any other licenses, permits or agreements.
5. Debtor is authorized to perform and consummate the transactions contemplated by the Purchase Agreement, and to execute and deliver all documents and instruments thereby required, and to transfer to Purchaser all right, title, and interest of Debtor in and to the Assets.
6. All Liens asserted against the Assets shall be deemed released, terminated, and satisfied (except as provided in the Purchase Agreement and except as provided herein), and

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this Order is and shall be binding on and 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. All such Liens of record as of the date of this Order shall be forthwith removed and stricken as against the Assets. All such Liens shall attach to the proceeds of the Assets in the same extent, validity and order of priority as in the underlying Assets. All such persons and entities described above are authorized to strike all such recorded Liens against the Assets from their records, official and otherwise.

7. Notwithstanding anything to the contrary contained herein, in the event the closing of the sale of the Assets does not occur, the Liens shall not be deemed released, terminated, and satisfied.

8. This Order is and shall be effective as a determination that all Liens (except as otherwise provided in the Purchase Agreement as to Permitted Liens and Assumed Liabilities and except as provided herein) shall be, and are, without further action by any person or entity, released with respect to the Assets as of the Closing Date.

9. On or before the Closing Date, each of Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Liens may have been recorded or otherwise exist.

10. Debtor is authorized to assume those Contracts designated by Purchaser as Assumed Contracts, and to assign the Assumed Contracts to Purchaser, in accordance with Section 365 of the Bankruptcy Code. The amounts required to cure defaults, if any, in order to assume the Assumed Contracts, as required by Section 365(B) of the Bankruptcy Code, are as

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listed in the "Cure Amount" column of the Cure Schedule, and payment of the Cure Amounts will cure said defaults, and Debtor and the non-debtor parties under the Assumed Contracts will be bound by said Cure Amounts unless the parties otherwise determine or agree that the Cure Amounts are overstated.

11. In the event the Closing of the Assets does not occur, Debtor shall not have any obligation to assume any Contract or pay any Cure Amounts and none of the Contracts shall be considered to have been assumed by Debtor pursuant to Section 365 of the Bankruptcy Code.

12. With respect to the Assumed Contracts: (a) the Contracts shall be transferred and assigned to, and following the closing shall remain in full force and effect for the benefit of, Purchaser in accordance with their respective terms, notwithstanding any provision in any such Contract (including those of the type described in Sections 365(b)(2) and (F) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer; (b) Debtor may assign each Contract in accordance with Sections 363 and 365 of the Bankruptcy Code and any provisions in any Contract that prohibit or condition the assignment of such Contract or allow the party to such Contract to terminate, recapture, impose any penalty, condition, renewal, or extension, or modify any term or condition on the assignment of such Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect; and (c) on Closing, in accordance with Sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title and interest of each Contract.

13. On assignment of the Assumed Contracts to Purchaser on the Closing Date, Debtor and its estate shall be relieved from any liability for any breach of the Assumed Contracts occurring after such assignment.

14. Subject to the terms hereof with respect to the Cure Amounts, all defaults or other obligations of Debtor under the Assumed Contracts arising or accruing prior to the

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Closing Date will be cured as of the Closing Date in accordance with the terms of the Agreement such that Purchaser shall have no liability or obligation with respect to any default or obligation arising or accruing under any Assumed Contract or prior to the Closing Date, except to the extent expressly provided in the Purchase Agreement. Each non-debtor party to an Assumed Contract is forever barred, estopped and permanently enjoined from asserting against Purchaser or its property or affiliates, any breach or default under any Assumed Contract, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other matter arising prior to the Closing Date for such Assumed Contract or with regard to the assumption and assignment thereof pursuant to the Agreement or this Order.

15. The consideration provided by Purchaser for the Assets under the Purchase Agreement is fair and reasonable and may not be avoided under Section 363(n) of the Bankruptcy Code.

16. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transfer of the Assets to Purchaser.

17. The Court has jurisdiction under 28 U.S.C. §§ 157, and 1334 and Sections 105, 363, 365, and 506 of the Bankruptcy Code, to determine the matters addressed herein as core proceedings under 28 U.S.C. § 157(b). This Court shall retain jurisdiction over any issues relating to the Purchase Agreement and to enforce this Order pursuant to Section 105 of the Bankruptcy Code.

18. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment, or supplement is not material.

19. Nothing contained in any order of any type or kind entered in this Chapter 11 case or any related proceeding subsequent to entry of this Order, nor in any

Page 10 of 12 - ORDER (I) AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENT; (II) AUTHORIZING SALE OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; (IV) ESTABLISHING CURE AMOUNTS THEREFOR, AND (V) APPROVING OTHER RELATED RELIEF

Chapter 11 plan confirmed in this Chapter 11 case, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of an order which may be entered confirming any plan of liquidation for Debtor or the conversion of Debtor's case from Chapter 11 to a case under Chapter 7 of the Bankruptcy Code.

20. Purchaser shall have no liability or responsibility for any liability or other obligation of Debtor arising under or related to the Assets other than as expressly set forth in the Purchase Agreement. Without limiting the effect or scope of the foregoing, the transfer of the Assets from Debtor to Purchaser does not and will not subject Purchaser or its affiliates, successors or assigns, or their respective properties (including the Assets), to any liability for claims (as that term is defined in Section 101(5) of the Bankruptcy Code) against Debtor or the Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. The limitations of successor liability set forth in this paragraph are subject to any statutes or regulations that would impose successor liability notwithstanding an order of a Bankruptcy Court with jurisdiction over the Assets.

21. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent. In the event of any direct conflict between the terms of the Purchase Agreement and this Order, this Order shall be controlling.

22. This is a final order and is enforceable on entry by the Clerk of the Court. To the extent necessary under Federal Rules of Bankruptcy Procedure 5003, 9021, and 9002, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein, and the stay of Federal Rules of

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Bankruptcy Procedure 6004(h) and 6006(D) is hereby modified and shall not apply to the sale of the Assets and the assumption and assignment of the Contracts in accordance with the Purchase Agreement, and the Trustee is authorized to take all actions and enter into all transactions authorized by this Order immediately. Time is of the essence in closing the transactions referenced herein and the Trustee and Purchaser intends to close the sale as soon as practicable.

23. This Order and the Purchase Agreement shall be binding in all respects on all creditors and interest holders (whether known or unknown) of Debtor, all non-debtor parties to the Contracts, all successors and assigns of Purchaser, Debtor, the Trustee, any trustee appointed on a conversion to Chapter 7 under the Bankruptcy Code, and shall not be subject to rejection under Section 365 of the Bankruptcy Code.

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Presented by:

TONKON TORP LLP

By _____
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cc: List of Interested Parties

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **MOTION FOR ORDER APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (B) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS, AND (C) BID PROCEDURES** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as "Non-ECF" on the attached List of Interested Parties by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 14th day of May, 2012.

TONKON TORP LLP

By /s/ Michael W. Fletcher

Albert N. Kennedy, OSB No. 821429
Michael W. Fletcher, OSB No. 010448
Proposed Attorneys for Edward C. Hostmann,
Chapter 11 Trustee

036291/00001/3566758v5

LIST OF INTERESTED PARTIES
In re Lumber Products, an Oregon Corporation
U.S. Bankruptcy Court Case No. 12-32729-elp11

ECF PARTICIPANTS

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NON-ECF PARTICIPANTS

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