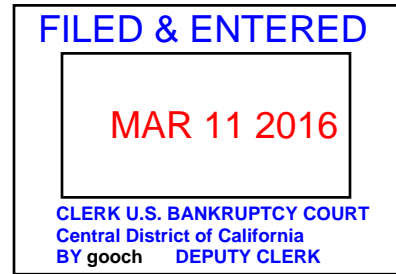


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9

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 RIVERSIDE DIVISION

13 In re:
14 METROPOLITAN AUTOMOTIVE
15 WAREHOUSE, INC., a California
16 corporation,
17 and
18 STAR AUTO PARTS, INC., a California
19 corporation,
20 Debtors and
Debtors-in-Possession.
21
22
23
24
25

Case No. 6:16-bk-10096 WJ
Jointly Administered with
Case No. 6:16-bk-10105 WJ
CHAPTER 11

**ORDER GRANTING DEBTORS' MOTION
FOR ORDER (1) APPROVING THE SALE
OF SUBSTANTIALLY ALL ASSETS OF THE
ESTATE FREE AND CLEAR OF LIENS,
CLAIMS, AND INTERESTS PURSUANT TO
11 U.S.C. § 363; (2) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND
(3) AUTHORIZING THE REJECTION OF
THE DEBTOR'S INTERESTS, IF ANY, IN
CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES**

DATE: March 10, 2016
TIME: 11:00 a.m.
PLACE: Courtroom 304
3420 Twelfth Street

1 The hearing on the *Debtors' Motion for Order (1) Approving the Sale of Substantially All*
2 *of the Assets of the Debtors Free and Clear of Liens, Claims and Interests Pursuant to*
3 *11 U.S.C. § 363; (2) Authorizing the Assumption and Assignment of Certain Executory Contracts*
4 *and Unexpired Leases; and (3) Authorizing the Rejection of Certain Executory Contracts and*
5 *Unexpired Leases* ("Motion") filed by Metropolitan Automotive Warehouse, Inc. and Star Auto
6 Parts, Inc., the jointly administered debtors and debtors-in-possession in these chapter 11 cases
7 (collectively, "Debtors") was held on March 10, 2016 at 11:00 a.m. and March 11, 2016 at
8 11:00 a.m. Garrick A. Hollander, Esq. of Winthrop Couchot Professional Corporation appeared
9 on behalf of the Debtors. Jeffrey E. Bjork, Esq. and Christina Craige, Esq. of Sidley Austin LLP
10 appeared on behalf of the Official Committee of Creditors Holding General Unsecured Claims.
11 Other appearances were reflected on the record.

12 The Court having read and considered the Motion, the declarations and other evidence
13 submitted in support of the Motion, the papers, pleadings and other documents on file in this
14 chapter 11 case, and the Court having heard the arguments of counsel, and after due deliberation
15 thereon, and good cause appearing therefor;

16 IT IS HEREBY FOUND AND DETERMINED THAT:

17 A. This Court has jurisdiction to hear and determine the Motion pursuant to
18 28 U.S.C. §§ 157 and 1334.

19 B. Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 157(b) and
20 1409(a).

21 C. Determination of the Motion constitutes a core proceeding pursuant to 28 U.S.C.
22 § 157.

23 D. The statutory predicates for the relief requested herein are sections 363 and 365 of
24 the Bankruptcy Code and Rules 2002, 6004, 6006, 9006 and 9008 of the Federal Rules of
25 Bankruptcy Procedure ("Bankruptcy Rules").

26 E. Proper, timely, adequate and sufficient notice of the Motion, and this proposed
27 sale has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code
28 and Bankruptcy Rules 2002, 6004, 6006, 9006 and 9008, and no other or further notice of the

1 Motion and this hearing is required or necessary under the circumstances.

2 F. Good cause exists to grant all relief sought in the Motion.

3 G. This Order constitutes a final and appealable order within the meaning of
4 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d) and 7062, and to
5 the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil
6 Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is
7 no just reason for delay in the implementation of this Order.

8 H. Parts Authority Metro, LLC a California limited liability company (“PAM”) is
9 determined by this Court to be the Successful Bidder¹ for the reasons set forth on the record.

10 I. The bid by the Successful Bidder, as reflected by the Asset Purchase Agreement
11 (“APA”) attached as Exhibit “1” to the Declaration of Garrick A. Hollander re Exhibits in
12 Support of Sale Order [Docket No. 321] (“Exhibits to Sale Order”), including the form and total
13 consideration to be realized by the Debtors under the APA: (i) constitutes the highest or
14 otherwise best offer received by the Debtors for the Assets; (ii) constitutes fair value, fair, full
15 and adequate consideration, reasonably equivalent value and reasonable market value for the
16 Assets; and (iii) is in the best interests of the Debtors, their estates, their creditors and all other
17 parties in interest.

18 J. A reasonable opportunity to object or be heard regarding the relief requested in
19 the Motion has been afforded to all interested persons and entities.

20 K. Non-Debtor counterparties to the Assumed Contracts² have had an adequate
21 opportunity to object to or be heard regarding assumption and assignment of the applicable
22 Assumed Contracts and the Cure Amount set forth in the Motion. To the extent that any such
23 party did not timely file an objection, such party is deemed to have consented to (i) the
24 assumption and assignment of the Assumed Contracts pursuant to the terms of this Order, and
25

26 ¹ Capitalized terms not defined herein shall have the same meaning as set forth in the Motion.

27 ² The term “Assumed Contract(s)” as used herein only include the executory contracts and unexpired leases
28 identified by the Debtors as being assumed at the time they filed the Motion, and not to any executory contracts or
unexpired leases identified by the Debtors as being “held” at the time they filed the Motion. The Assumed
Contracts for purposes of this Order are listed in the “Assume” column set forth on Exhibit 2 to the Exhibits to Sale
Order.

1 (ii) the proposed Cure Amount for such Assumed Contract set forth in the Motion.

2 L. The Debtors have withdrawn, without prejudice, any request for relief under
3 11 U.S.C. § 365 with respect to the executory contracts and unexpired leases referenced with an
4 “x” in the “Hold” column set forth on Exhibit “2” to the Exhibits to Sale Order. The Debtors
5 may seek assumption and assignment or rejection of any such contracts through a subsequent
6 motion, and in the event the Debtors obtain the applicable non-debtor counterparty’s agreement
7 to an assumption and assignment, the Debtors may file a stipulation and agreed order in respect
8 of such assumption and assignment, without the need of a separate motion.

9 M. The Debtors have full power and authority to execute and deliver the APA and all
10 other documents contemplated thereby and to perform the transactions contemplated thereby; no
11 consents or approvals, other than those expressly provided for in the APA, are required for the
12 Debtors to consummate the transactions contemplated thereby.

13 N. The Debtors have demonstrated both (i) good, sufficient and sound business
14 judgment, purposes and justifications, and (ii) compelling circumstances for the sale of the
15 Assets pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of
16 reorganization in that, among other things, absent the immediate consummation of the sale of
17 Assets, the value of the Debtors’ assets will be harmed. It is a reasonable exercise of the
18 Debtors’ business judgment to consummate a sale of Assets on the terms and conditions set forth
19 in the APA, and for the Debtors to execute, deliver and perform their obligations thereunder.

20 O. PAM is a good faith buyer within the meaning of section 363(m) of the
21 Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise
22 has proceeded in good faith in all respects in connection with these proceedings. None of the
23 Debtors or PAM has engaged in any conduct that would prevent the application of section
24 363(m) of the Bankruptcy Code.

25 P. The Assets constitute property of the Debtors’ estates and exclusive title thereto is
26 presently vested in the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy
27 Code.

28

1 Q. The sale of all of the Assets to PAM under the terms of the APA meets the
2 applicable provisions of section 363(f) of the Bankruptcy Code such that the sale of the Assets
3 will be free and clear of any and all Claims (as defined herein) and, except as expressly provided
4 in the APA with respect to Assumed Liabilities (as such term is defined in the APA), (i) the
5 transfer of the Assets to PAM, and (ii) the assignment to PAM of the Assumed Contracts will be
6 free and clear of all Claims and will not subject PAM or any of its assets to any liability for any
7 Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust,
8 setoff or successor or transferee liability). All holders of Claims are adequately protected – thus
9 satisfying section 363(e) of the Bankruptcy Code – by having their Claims, if any, attach to the
10 proceeds of the sale of the Assets ultimately attributable to the property against or in which they
11 assert a Claim or other specifically dedicated funds, in the same order of priority and with the
12 same validity, force and effect that such Claim holder had prior to the sale of the Assets, subject
13 to any rights, claims and defenses of the Debtors or their estates, as applicable.

14 R. PAM is not a successor to the Debtors or their respective estates by reason of any
15 theory of law or equity, and neither PAM nor any of its affiliates shall assume or in any way be
16 responsible for any liability or obligation of either of the Debtors or their respective estates,
17 except as otherwise expressly provided in the APA or this Order. PAM is not a continuation of
18 the Debtors or their respective estates and there is no continuity between PAM and the Debtors.
19 The sale of the Assets does not amount to a consolidation, merger or de facto merger of PAM
20 and the Debtors.

21 S. The transfer of the Assets to PAM under the APA will be a legal, valid and
22 effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the
23 Assets, free and clear of all Claims other than the Assumed Liabilities. The transfer of the
24 Assets to PAM will vest PAM with good and marketable title to the Assets.

25 T. It is essential that the sale of the Assets be consummated as soon as reasonably
26 practicable to maximize their value. There is no legal or equitable reason to delay the sale of the
27 Assets. All factual predicates to the waiver of any stay of this Order under Bankruptcy Rules
28 6004(h) and 6006(d) have been satisfied.

1 U. Entry into the APA and consummation of the sale of the Assets do not constitute a
2 sub rosa chapter 11 plan.

3 V. The assumption and assignment of the Assumed Contracts (as such Assumed
4 Contracts may be amended, supplemented or otherwise modified prior to assumption and
5 assignment without further order of the Court with the consent of the Debtors, the contract
6 counterparty and PAM) is in the best interests of the Debtors, their estates, their creditors and all
7 other parties in interest, and represents the reasonable exercise of sound and prudent business
8 judgment by the Debtors.

9 W. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code
10 for each of the Assumed Contracts. The Debtors have (i) cured and/or provided adequate
11 assurance of cure of any default existing prior to the Closing (as defined in the APA) under all of
12 the Assumed Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and
13 (ii) provided compensation or adequate assurance of compensation to any counterparty for actual
14 pecuniary loss to such party resulting from a default prior to the Closing under any of the
15 Assumed Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code.

16 X. PAM has demonstrated adequate assurance of its future performance under the
17 relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the
18 Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assumed Contracts to
19 be assumed and assigned under the APA shall be assigned and transferred to, and remain in full
20 force and effect for the benefit of, PAM notwithstanding any provision in the Assumed Contracts
21 or other restrictions prohibiting their assignment or transfer.

22 Y. No monetary or non-monetary defaults exist in the Debtors' performance under
23 the Assumed Contracts as of the date of this Order other than the failure to pay amounts equal to
24 the applicable Cure Amounts or defaults that are not required to be cured as contemplated in
25 section 365(b)(1)(A) of the Bankruptcy Code. The applicable Cure Amounts shall be paid in
26 accordance with the terms set forth in the APA.

27
28

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

3 1. The Motion is granted in all respects, except as otherwise provided herein.
4 2. Any objections to the Motion or the relief requested therein that have not been
5 withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled
6 on the merits and denied with prejudice. All persons and entities given notice of the Motion that
7 failed to timely object thereto are deemed to consent to the relief sought therein, including,
8 without limitation, all non-Debtor counterparties to the Assumed Contracts.

9 3. The findings and conclusions set forth herein constitute the Court's findings of
10 fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this
11 proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact
12 constitute conclusions of law, they are adopted as such. To the extent any of the following
13 conclusions of law constitute findings of fact, they are adopted as such.

14 4. The APA, all of the terms and conditions thereof, and consummation of the sale
15 of the Assets contemplated therein, are authorized and approved in all respects pursuant to
16 section 363(b) of the Bankruptcy Code. The failure specifically to include any particular
17 provision of the APA in this Order shall not diminish or impair the effectiveness of such
18 provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

19 5. The Debtors and their respective officers, employees and agents are authorized to:
20 (i) take any and all actions necessary, appropriate or reasonably requested by PAM to perform,
21 consummate, implement and close the sale of the Assets, including, without limitation, (x) the
22 sale to PAM of all the Assets in accordance with the terms and conditions set forth in the APA
23 and this Order, and (y) executing, acknowledging and delivering such deeds, assignments,
24 conveyances and other assurance, documents and instruments of transfer and taking any action
25 for purposes of assigning, transferring, granting, conveying and confirming to PAM, or reducing
26 to possession, the Assets, including any further cooperation after the Closing pursuant to the
27 APA; and (ii) to assume and assign any and all of the Assumed Contracts to PAM. The Debtors
28 are further authorized to pay, without further order of this Court, whether before, at or after the

1 Closing, any expenses or costs that are required to be paid by the Debtors in order to
2 consummate the sale of the Assets or perform their respective obligations under the APA.

3 6. Except as otherwise expressly provided in the APA or in the terms of this Order
4 with respect to Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy
5 Code, the Assets shall be sold, transferred conveyed and assigned to PAM free and clear of all
6 claims, liens (including, without limitation, any statutory lien on real and personal property and
7 any and all “liens” as that term is defined and used in the Bankruptcy Code, including section
8 101(37) thereof), liabilities, interests, rights and encumbrances, including, without limitation, the
9 following: all mortgages, restrictions (including, without limitation, any restriction on the use,
10 voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of
11 ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses,
12 options, deeds of trust, security interests, equity interests, conditional sale rights or other title
13 retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets,
14 contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights,
15 contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego
16 claims, environmental rights and claims (including, without limitation, toxic tort claims), labor
17 rights and claims, employment rights and claims, pension rights and claims, tax claims, charges
18 of any kind or nature, debts arising in any way in connection with any agreements, acts or
19 failures to act, reclamation claims or rights, obligation claims, demands, guaranties, option rights
20 or claims, rights, contractual or other commitment rights and claims, rights of licensees or
21 sublicensees (if any) under section 365(n) of the Bankruptcy Code or any similar statute, rights
22 of tenants and subtenants (if any) under section 365(h) of the Bankruptcy Code or any similar
23 statute, and all other matters of any kind and nature, whether known or unknown, choate or
24 inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or
25 unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent,
26 liquidated or unliquidated, matured or unmatured, material or non-material, disputed or
27 undisputed, whether arising prior to or subsequent to the commencement of these Chapter 11
28 cases (but, for the avoidance of doubt, in each case arising from the ownership of the Assets or

1 the operation of the Debtors' business prior to the Closing Date (as defined in the APA)), and
2 whether imposed by agreement, understanding, law, equity or otherwise, including claims
3 otherwise arising under any theory, law or doctrine of successor liability or related theories (all
4 of the foregoing collectively being referred to in this Order as "Claims"), and, as used in this
5 Order, the term "Claims" includes, without limitation, any and all "claims" as that term is
6 defined and used in the Bankruptcy Code, including section 101(5) thereof), with all such Claims
7 to attach to the proceeds of the sale of the Assets to be received by the Debtors with the same
8 validity, force, priority and effect which they now have as against the Assets, subject to any
9 claims and defenses the Debtors may possess with respect thereto.

10 7. At the Closing, all of the Debtors' right, title and interest in and to, and possession
11 of, the Assets shall be immediately vested in PAM pursuant to sections 105(a), 363(b), 363(f)
12 and 365 of the Bankruptcy Code, free and clear of any and all Claims, except for the Assumed
13 Liabilities.

14 8. This Order is and shall be binding upon and govern the acts of all entities,
15 including, without limitation, all filing agents, filing officers, title agents, title companies,
16 recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks
17 or other intellectual property, administrative agencies, governmental departments, secretaries of
18 state, federal and local officials and all other persons and entities who may be required by
19 operation of law, the duties of their office or contract, to accept, file, register or otherwise record
20 or release any documents or instruments, and each of the foregoing persons and entities is hereby
21 authorized and directed to accept for filing any and all of the documents and instruments
22 necessary and appropriate to consummate the sale of the Assets to PAM as contemplated by the
23 APA.

24 9. Except as otherwise expressly provided in the APA with respect to the Assumed
25 Liabilities, all persons and entities (and their respective successors and assigns), including, but
26 not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and
27 regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation
28 claimants and other creditors holding Claims against the Debtors or the Assets arising under or

1 out of, in connection with, or in any way relating to, the Debtors, the Debtors' predecessors or
2 affiliates, the Assets, the ownership, sale or operation of the Assets and the Debtors' business
3 prior to the Closing or the transfer of the Assets to PAM, are hereby forever barred, estopped and
4 permanently enjoined from asserting such Claims against PAM, its successors or assigns, their
5 property or the Assets. Following the Closing, no holder of any Claim shall interfere with
6 PAM's title to or use and enjoyment of the Assets based on or related to any such Claim, or
7 based on any action the Debtors may take in the Chapter 11 cases.

8 10. The provisions of this Order authorizing the sale and assignment of the Assets to
9 PAM free and clear of all Claims shall be self-executing, and neither of the Debtors nor PAM
10 shall be required to execute or file releases, termination statements, assignments, consents or
11 other instruments in order to effectuate, consummate and implement the provisions of this Order.

12 11. To the maximum extent permitted under applicable law, PAM shall be authorized,
13 as of the Closing Date, to operate under any license, permit, registration and governmental
14 authorization or approval of the Debtors with respect to the Assets, and all such licenses, permits,
15 registrations and governmental authorizations and approvals are deemed to have been, and
16 hereby are, directed to be transferred to PAM as of the Closing Date.

17 12. No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or
18 any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or
19 similar grant relating to the operation of the Assets and/or the Debtors' business on account of
20 the filing or pendency of the Chapter 11 cases or the consummation of the sale of the Assets to
21 the extent that any such action by a governmental unit or any representative thereof would
22 violate section 525 of the Bankruptcy Code.

23 13. PAM shall not be deemed, as a result of any action taken in connection with the
24 APA, the consummation of the sale of the Assets contemplated by the APA, or the transfer or
25 operation of the Assets (except as otherwise provided in the APA) to: (i) have any liability
26 whatsoever with respect to the Debtors' (or their predecessors' or affiliates') respective
27 businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations
28 (as described herein, "Successor or Transferee Liability"); (ii) have, de facto or otherwise,

1 merged with or into the Debtors; or (iii) be an alter ego or a mere continuation or substantial
2 continuation of the Debtors or the enterprise(s) of the Debtors, including, without limitation,
3 within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee
4 Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act
5 (“COBRA”), WARN Act (29 U.S.C. §§ 2101 *et seq.*) (“WARN”), Comprehensive
6 Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard
7 Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and
8 Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended),
9 the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (the “NLRA”), environmental
10 liabilities, debts, claims or obligations arising from conditions first existing on or prior to the
11 Closing Date (including, without limitation, the presence of hazardous, toxic, polluting, or
12 contaminating substances or wastes), which may be asserted on any basis, including, without
13 limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the
14 Debtors for any taxes of any kind for any period, labor, employment or other law, rule or
15 regulation (including, without limitation, filing requirements under any such laws, rules or
16 regulations), or under any products liability law or doctrine with respect to the Debtors’ liability
17 under such law, rule or regulation or doctrine.

18 14. Except as otherwise provided in the APA, nothing in this Order or in the APA
19 shall require PAM to: (i) continue or maintain in effect, or assume any liability in respect of, any
20 collective bargaining agreement or any employee, pension, welfare, fringe benefit or any other
21 benefit plan, trust arrangement or other agreements to which the Debtors are a party or have any
22 responsibility therefor including, without limitation, medical, welfare and pension benefits
23 payable after retirement or other termination of employment; or (ii) assume any responsibility as
24 a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the
25 funding, investment or administration of, any employee benefit plan, arrangement or agreement
26 (including, but not limited to, pension plans) or the termination of any such plan, arrangement or
27 agreement.

28 15. Effective upon the Closing Date, all persons and entities are forever prohibited

1 and enjoined from commencing or continuing in any matter any action or other proceeding,
2 whether in law or equity, in any judicial, administrative, arbitral or other proceeding against
3 PAM, or its assets (including the Assets), with respect to any (i) Claim (other than an Assumed
4 Liability), or (ii) Successor or Transferee Liability.

5 16. Because the APA has been negotiated and executed, and the sale of the Assets
6 contemplated by the APA is and has been undertaken, by the Debtors, PAM and their respective
7 representatives at arms' length, without collusion and in "good faith" (as that term is defined in
8 section 363(m) of the Bankruptcy Code), the reversal or modification on appeal of the
9 authorization provided in this Order to consummate the sale of the Assets shall not affect the
10 validity of such sale (including the assumption and assignment of the Assumed Contracts),
11 unless such authorization and consummation of such sale are duly and properly stayed pending
12 such appeal.

13 17. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, the Debtors are
14 authorized to assume and assign to PAM each of the Assumed Contracts upon the Closing of the
15 sale of the Assets, free and clear of all Claims (other than the Assumed Liabilities). The
16 payment of the applicable Cure Amounts pursuant to the terms of the APA: (i) cures all
17 monetary and non-monetary defaults existing thereunder as of the Closing Date; (ii) compensates
18 the applicable non-Debtor counterparties for any actual pecuniary loss resulting from such
19 default; and (iii) together with the assumption of the Assumed Contracts by the Debtors and the
20 assignment of the Assumed Contracts to PAM, constitutes adequate assurance of future
21 performance thereof.

22 18. To the extent that any counterparty to an Assumed Contract did not timely file a
23 timely objection to the Motion, such counterparty is deemed to have consented to (i) the
24 assumption and assignment of the Assumed Contract pursuant to the terms of this Order, and
25 (ii) the proposed Cure Amounts set forth in the Motion. The Cure Amounts for Assumed
26 Contracts set forth on Exhibit 2 to Exhibits to Sale Order are fixed in the amounts set forth on
27 Exhibit 2.
28

1 19. Any provision in any Assumed Contract that prohibits or conditions the
2 assignment of such Assumed Contract or allows the non-Debtor counterparty to such Assumed
3 Contract to impose any penalty, fee, rent increase, profit sharing arrangement or other condition
4 on renewal or extension, or to modify any term or condition upon the assignment of such
5 Assumed Contract, constitutes an unenforceable anti-assignment provision that is void and of no
6 force and effect. All other requirements and conditions under sections 363 and 365 of the
7 Bankruptcy Code for the assumption by the Debtors and the assignment to PAM of the Assumed
8 Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the
9 Bankruptcy Code, except as otherwise provided in the APA with respect to claims retained by
10 the Debtors, PAM shall be fully and irrevocably vested with all right, title and interest of the
11 Debtors under the Assumed Contracts, and such Assumed Contracts shall remain in full force
12 and effect for the benefit of PAM.

13 20. Upon the Closing and the payment of the relevant Cure Amounts, PAM shall be
14 deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts, and the
15 Debtors and their estates shall be released, pursuant to section 365(k) of the Bankruptcy Code,
16 from any liability under the Assumed Contracts.

17 21. Each non-Debtor counterparty to an Assumed Contract is forever barred, estopped
18 and permanently enjoined from asserting against PAM or its property (including, without
19 limitation, the Assets): (i) any assignment fee, acceleration, default, breach or claim or pecuniary
20 loss, or condition to assignment existing, arising or accruing as of the Closing Date or arising by
21 reason of the Closing, including any breach related to or arising out of a change-in-control in
22 such Assumed Contracts, or any purported written or oral modification to the Assumed
23 Contracts; or (ii) any claim, counterclaim, defense, breach, default, condition, setoff or other
24 claim asserted or capable of being asserted against the Debtors existing as of the Closing Date or
25 arising by reason of the Closing, except for the Assumed Liabilities.

26 22. Other than the Assumed Contracts, PAM has not yet assumed any of the Debtors'
27 other contracts or leases and shall have no liability whatsoever at this time.
28

1 23. Nothing in the Motion or this Order shall be deemed or construed as a waiver of
2 any claims or causes of action that the Debtors or PAM have or may have against a non-Debtor
3 counterparty to any Assumed Contract, whether or not such claims arise under, are related to the
4 assumption of or are independent of the Assumed Contracts. Notwithstanding anything else in
5 this Order, the assumption and assignment of any Assumed Contract shall not operate to divest
6 the Debtors' estates from any claims specifically retained under the APA against any
7 counterparties to such Assumed Contract, or to impair or affect such claims in any way.

8 24. The Debtors' interests, if any, in all executory contracts identified as being
9 rejected in the "Reject" column on Exhibit 2 to the Exhibits to Sale Order are rejected effective
10 as of the dates set forth on Exhibit 2.

11 25. Except as otherwise provided in the APA, the proceeds of the sale of the Assets
12 shall be paid directly into the Debtors' debtor in possession bank account, and shall not be
13 disbursed without further Order of this Court.

14 26. PAM shall not be required to seek or obtain relief from the automatic stay under
15 section 362 of the Bankruptcy Code to give any notice permitted by the APA or to enforce any of
16 its remedies under the APA or any other sale-related document. The automatic stay imposed by
17 section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the
18 preceding sentence; *provided however*, that this Court shall retain exclusive jurisdiction over any
19 and all disputes with respect thereto.

20 27. The APA and any related agreements, documents or other instruments may be
21 modified, amended or supplemented by the parties thereto and in accordance with the terms
22 thereof without further order of the Court; *provided* that any such modification, amendment or
23 supplement does not have a material adverse effect on the Debtors' estates.

24 28. The Court shall retain exclusive jurisdiction (for as long as the Chapter 11 cases
25 are open) to, among other things, interpret, implement and enforce the terms and provisions of
26 this Order and the APA, all amendments thereto and any waivers and consents thereunder and
27 each of the agreements executed in connection therewith to which the Debtors are a party or
28 which has been assigned by the Debtors to PAM, and to adjudicate, if necessary, any and all

1 disputes concerning or relating in any way to the sale of the Assets to PAM. This Court retains
2 jurisdiction to compel delivery of the Assets, to protect PAM and its assets, including the Assets,
3 against any Claims and Successor and Transferee Liability, and to enter orders, as appropriate,
4 pursuant to sections 105(a), 363 or 365 (or other applicable provisions) of the Bankruptcy Code
5 necessary to transfer the Assets and the Assumed Contracts to PAM.

6 29. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this
7 Order shall be effective immediately upon entry and shall not be subject to the stay provisions
8 contained in Bankruptcy Rules 6004(h) and 6006(d) or any similar rule that would delay the
9 effectiveness of this Order.

10 30. Upon Closing of the sale(s) of the Assets contemplated herein, the Debtors are
11 authorized to pay from the sale proceeds the secured claim held by the Bank of the West, subject
12 to the terms of the Cash Collateral Stipulation filed on February 25, 2016 [Docket 266].

13 31. This Order and the APA shall be binding in all respects upon all creditors of
14 (whether known or unknown), and holders of equity interests in, either Debtor, any holders of
15 Claims in, against or on all or any portion of the Assets, all non-Debtor counterparties to the
16 Assumed Contracts, all successors and assigns of PAM and its affiliates, the Debtors and their
17 affiliates and subsidiaries and any subsequent trustee appointed in these Chapter 11 cases or
18 upon a conversion to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection.
19 Nothing contained in any chapter 11 plan confirmed in these Chapter 11 cases, any order
20 confirming any such chapter 11 plan or any order approving wind-down or dismissal of these
21 Chapter 11 cases or any subsequent chapter 7 cases shall conflict with or derogate from the
22 provisions of the APA and/or this Order, and to the extent of any conflict or derogation between
23 this Order and/or the APA and such future plan or order, the terms of this Order and the APA
24 shall control.


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1 32. To the extent any provisions of this Order conflict with, or are otherwise
2 inconsistent with, the terms and conditions of the APA, the terms of this Order shall govern and
3 control.

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Date: March 11, 2016



Wayne Johnson
United States Bankruptcy Judge