

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

MUSICLAND HOLDING CORP., et al.,¹

Debtors.

)
)
) Chapter 11
)
) Case No. 06-10064 (SMB)
) Jointly Administered
)
)
)

**ORDER APPROVING MOTION FOR ORDER APPROVING (A) SALE OF
SUBSTANTIALLY ALL DEBTORS' ASSETS; (B) ASSET PURCHASE AGREEMENT;
(C) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND LEASES; (D) SALE OF DESIGNATION RIGHTS; AND (E) EXTENSION OF
TIME BY WHICH DEBTORS MUST ASSUME OR REJECT LEASES**

Upon the motion, dated February 28, 2006 (the "Motion"),² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for order approving (A) sale of substantially all Debtors' assets; (B) asset purchase agreement; (C) agency agreement to conduct GOB Sales; (D) assumption and assignment of certain executory contracts and leases; (E) sale of designation rights; and (F) extension of date by which Debtors must assume or reject leases (the "Sale Relief"); and the Debtors having determined that the highest and otherwise best offer for the sale of Assets submitted for the Auction was made by Trans World Entertainment Corporation (the "Purchaser") in the form of the Asset Purchase Agreement, dated as of

¹ The Debtors are: Musicland Holding Corp., Media Play, Inc., MG Financial Services, Inc., MLG Internet, Inc., Musicland Purchasing Corp., Musicland Retail, Inc., Request Media, Inc., Sam Goody Holding Corp., Suncoast Group, Inc., Suncoast Holding Corp., Suncoast Motion Picture Company, Inc., Suncoast Retail, Inc., TMG Caribbean, Inc., TMG-Virgin Islands, Inc., The Musicland Group, Inc.

² Capitalized terms used but not defined in this Order shall have the meanings given to such terms in the Motion or the Asset Purchase Agreement.

February 17, 2006 by and between Trans World Entertainment Corporation and Musicland Holding Corp. (as amended, the “APA”); and the Court having held a hearing on March 22, 2006 (the “Sale Hearing”) to approve the sale of substantially all of the Debtors’ assets pursuant to the terms and conditions of the APA, and the Court having considered (i) the Motion, (ii) the proposed Sale by the Debtors to the Purchaser pursuant to the APA, a copy of which is attached hereto as Exhibit A, and the exhibits and schedules thereto (collectively with the APA, the “Sale Documents”); (iii) the arguments of counsel made, and the evidence submitted, proffered or adduced, at the Sale Hearing, and (iv) the record in these Cases, of which the Court took judicial notice at the Sale Hearing; and the Court having determined that the relief requested in the Motion and the Sale to the Purchaser in accordance with the Sale Documents and the provisions of this Order is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that reasonable and adequate notice of the Motion, the Bid Procedures Order, the Sale and the Sale Hearing having been provided to all persons required to be served in accordance with 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), the Bankruptcy Rules, and the Local Rules and orders of this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DECLARED THAT:³

A. This Court has jurisdiction over this matter and over the property of the **SMB 3/24/06 Debtors’ Estates** ~~Debtors~~, including the Assets to be sold, transferred and conveyed pursuant to the Sale Documents, and their respective bankruptcy estates pursuant to 28

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion and the basis for the approvals and authorizations herein are sections 105, 363, 365 and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

C. On January 12, 2006 (the "Petition Date"), the Debtors filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

D. On February 21, 2006, this Court entered the Final Order (A) Authorizing Debtors To Obtain Post-Petition Financing And Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. Sections 105 and 364(C); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. Section 362; (C) Authorizing Debtors to Enter into Agreements with Wachovia Bank, National Association; and (D) Authorizing Debtors to use the Cash Collateral of Secured Trade Creditors and Granting Adequate Protection and Administrative Expense Priority Thereto (as amended, the "Financing Order") (Docket No. 488), pursuant to which, among other things, Agent and Senior Lenders have made loans and advances and provided other financial accommodations to Debtors secured by super-priority administrative expense claims and first priority liens upon and security interests in the Collateral (as defined in the Financing Order).

E. Proper, timely, adequate and sufficient notice of the Motion, the Bid Procedures Order, the Auction, the Sale Hearing, the Sale Relief and the Sale has been provided

in accordance with 11 U.S.C. §§ 102(l), 105, 363, 365 and 1146(c) and Bankruptcy Rules 2002, 6004, 6006 and 9014 and in compliance with the Bid Procedures Order; such notice was good and sufficient, and appropriate under the particular circumstances; and no other or further notice of the Motion, the Auction, the Sale Hearing, the Sale Relief or the Sale is or shall be required.

F. A fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein, as well as the Sale, has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee for the Southern District of New York, (ii) counsel for the Purchaser, (iii) counsel for the Lenders, (iv) counsel for the Secured Trade Committee, (v) counsel for the Official Committee, (vi) all entities (or counsel therefor) known to have asserted any Interests or Claims (as defined below) in or upon the Assets, (vii) all federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion, (viii) all parties known to have expressed a bona fide interest in acquiring the Assets, (ix) the Internal Revenue Service, (x) all entities who have filed a notice of appearance and request for service of papers in these cases, and (xi) all other known prepetition creditors of the Debtor.

G. The Debtors and their professionals have actively marketed the Assets and conducted the sale process in compliance with the Bid Procedures Order, and have afforded interested potential purchasers a full and fair opportunity to make higher and better offers.

H. The Purchaser submitted the highest and/or best offer for the Assets, and its offer is fair and reasonable.

I. The Debtors have demonstrated a sound business purpose and justification for the Sale, including the sale of the TWEC Store Lease Rights.

J. The Debtors and Purchaser negotiated the Sale Documents in good faith, without collusion, and at arm's length within the meaning of 11 U.S.C. § 363(m). Purchaser is a good faith purchaser under 11 U.S.C. § 363(m), and, as such, is entitled to the protections of 11 U.S.C. § 363(m). **SMB 3/24/06** ~~Purchaser will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the Sale and the transactions contemplated by the Sale Documents after the entry of this Order, and is entitled to the protection of 11 U.S.C. § 363(m).~~

K. **SMB 3/24/06 No evidence has been proffered that** ~~Neither the Debtors or the Purchaser has~~ engaged in any conduct that would cause or permit the Sale Documents or the transactions contemplated thereby to be avoided or otherwise challenged under 11 U.S.C. § 363(n).

L. The Purchaser is not an "insider" of any of the Debtors, as that term is defined in 11 U.S.C. § 101(31).

M. Each entity with **SMB 3/24/06 an** ~~a security~~ interest in the Assets has consented to the Sale, is deemed to have consented to the Sale, or could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of such interest, or the Sale otherwise satisfies the requirements of Section 363(f) of the Bankruptcy Code.

N. All of the transactions contemplated by the APA are in the best interest of the Debtors' estates.

O. The Sale does not constitute a sub rosa Chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford.

P. The Purchaser **SMB 3/24/06 has not agreed to assume** ~~is not assuming~~ any liabilities of the Debtors or their subsidiaries and affiliates other than the Assumed Liabilities expressly set forth in the Sale Documents.

Q. If the Sale of the Assets to Purchaser were not free and clear of all Interests or Claims (as defined below), or if Purchaser would, or in the future could, be liable for any of the Interests or Claims, Purchaser would not have entered into the Sale Documents and would not consummate the Sale or the transactions contemplated by the Sale Documents, thus adversely affecting the Debtors, their estates, and their creditors.

R. **SMB 3/24/06 By consummating the Sale or the transactions contemplated by the Sale Documents,** the Purchaser does not constitute a successor to the Debtor or its estate and nothing in the Agreement or the transactions contemplated thereby amount to a consolidation, merger or de facto merger of the Purchaser and the Debtors or their estate.

S. The lease designation procedures as set forth in the Motion and APA are fair and reasonable and provide interested parties with adequate notice and ample opportunity to protect their respective rights and interests in the TWEC Store Leases.

T. The Debtors are authorized to sell, transfer, convey or assign to Purchaser, all of the Debtors' right, title and interest (including common law rights) to all of their intangible property included in the Assets to the broadest extent permitted by law and the terms of the Sale Documents.

U. Upon entry of this Order, each of the Debtors (i) has full corporate power and authority to execute the Sale Documents, and the Sale by the Debtors has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the Sale contemplated by the Sale Documents, and (iii) has taken all corporate action necessary to authorize and approve the Sale, the Sale Documents and the consummation by the Debtors of the transactions contemplated

thereby, and (iv) no consents or approvals, other than those expressly provided for in the Sale Documents, are required for the Debtors to consummate the Sale and such transactions.

V. The Sale Transaction must be approved and consummated promptly in order to preserve the value of the Assets. Therefore, time is of the essence in consummating the Purchase Agreement and the Sale Transaction, and the Debtors and the Purchaser intend to close the Sale Transaction as soon as possible.

W. All findings of fact and conclusions of law made or announced by the Court at the Sale Hearing are incorporated herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is GRANTED **SMB 3/24/06 to the extent** as set forth below.

2. Any and all Objections not withdrawn, waived, settled or otherwise resolved herein are hereby overruled and denied.

Approval of Sale

3. Pursuant to 11 U.S.C. § 363(b), the Sale, the Sale Documents and the transactions contemplated thereby are approved. **SMB 3/24/06** ~~in all respects~~.

4. Pursuant to 11 U.S.C. § 363(b), the Debtors are hereby authorized to and directed to sell the Assets to the Purchaser and consummate the Sale in accordance with and subject to the terms and conditions of the Sale Documents, and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed in accordance with and subject to the terms and conditions of the Sale Documents, and are further authorized and directed to execute and deliver, and are empowered to perform under,

consummate and implement, the Sale Documents, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale Documents, including without limitation the related documents, exhibits and schedules, and to take all further actions as may be reasonably requested by Purchaser for the purposes of assigning, transferring, granting, conveying and conferring to Purchaser or reducing to possession, the Assets, or as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Sale Documents.

5. The Debtors reserve their right to contest, pursuant to section 505 of the Bankruptcy Code, the legality or amount of taxes assessed on the transfer of Assets.

6. In accordance with the Financing Order, the Loan Agreement (as defined in the Financing Order) and the other Financing Agreements (as defined in the Financing Order), the Debtors are authorized and directed to remit or cause to be remitted to (i) the Agent, for the benefit of itself and the other Senior Lenders, from the net proceeds of the Sale, the amount necessary to indefeasibly pay in full in cash all Obligations (as defined in the Financing Order) owing to Agent and the Senior Lenders under and in connection with the Financing Order, the Loan Agreement and the other Financing Agreements, (ii) a segregated account, the estimated amount necessary to fund in full the Carve-Out Expenses described in Section 2.3.1 (a) and (b) of the Financing Order (as defined in the Financing Order), and (iii) a segregated account held by the Debtors' for the benefit of the Professionals (as defined in the Financing Order), the amount necessary to fund in full the \$3.5 million Professional Fee Carve-Out (as defined in the Financing Order). To the extent of a conflict between the terms of this Order, the APA or the other Sale Documents, on the one hand, and the Financing Order, on the other hand, the terms of the Financing Order shall control the respective obligations between the Debtors and the Senior

Lenders. Subject to the Debtors' payment obligations specified in this paragraph and in paragraph 38 hereof, the Debtors shall hold in escrow, pursuant to an arrangement to be agreed to in writing by the Secured Trade Committee, the Official Committee and the Debtors, the balance of the cash portion of the Purchase Price and not pay any pre-petition debt or adequate protection claim related thereto, unless such payments were previously or are subsequently approved by the Court; provided, however, nothing contained in this paragraph is intended to prevent the Debtors from paying post-petition obligations in the ordinary course as they come due. **SMB 3/24/06 Notwithstanding the above, nothing in this Order shall permit payment of any pre-petition debt to the Secured Trade Creditors without (a) agreement by the Secured Trade Committee, the Official Committee and the Debtors or (b) further order of this Court.**

Transfer of Assets

7. Pursuant to 11 U.S.C. §§ 363(b) and 363(f), upon the Closing Date, under the APA, the Assets shall be transferred to the Purchaser free and clear of all mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any Court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors or

affiliates, claims (as that term is defined in the Bankruptcy Code) including but not limited to the alleged mechanic's liens identified in Schedule 3.5(ii) of the APA, reclamation claims, obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, the "Interests or Claims"), with all such Interests or Claims to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto; provided, that the Debtors shall remit or cause to be remitted to (i) Agent, on behalf of itself and the other Senior Lenders, the net proceeds of the Sale in an amount sufficient to indefeasibly pay in full in cash all Obligations (as defined in the Financing Order) owing to Agent and Senior Lenders in accordance with the Financing Order and the other Financing Agreements (as defined in the Financing Order); and (ii) the net proceeds of the sale in an estimated amount sufficient to fund in full the Carve-Out Expenses and Professional Fee Carve-Out (as both are defined in the Financing Order). Following the Closing Date, no holder of any Interests or Claims in the Assets shall interfere with Purchaser's use and enjoyment of the Assets based on or related to such Interests or Claims, or any actions that the Debtors may take in their chapter 11 cases and no

person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Sale Documents or this Order.

8. **SMB 3/24/06** ~~Except as expressly provided in the Sale Documents, Purchaser is not assuming nor shall it or any affiliate of Purchaser be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Assets prior to the consummation of the transactions contemplated by the Sale Documents, or any liabilities calculable by reference to the Debtors or their operations or the Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Sale Documents, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate of the Purchaser.~~

9. **SMB 3/24/06** ~~All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding interests or claims arising in any way in connection with any acts, or failure to act, of the Debtors or the Debtors' predecessors or affiliates, claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, or guaranties of any kind and nature against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' Business prior to the Closing Date, or the transfer of the Assets to the Purchaser and the subsequent assumption and assignment of the TWEC Store Leases, hereby are, and will be, (upon consummation of an assumption and assignment of a~~

~~TWEC Store Lease in accordance with this Order or subsequent orders of the Court) forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, their property, or any designee, such persons' or entities' Interests or Claims.~~

10. The obligations payable to the Purchaser pursuant to the APA shall constitute administrative claims pursuant to 11 U.S.C. § 507(a) notwithstanding anything set forth in any other order entered in these cases to the contrary.

11. Subject to the terms and conditions of this Order, including without limitation, paragraph 6 of this Order, the transfer of the Assets to Purchaser pursuant to the Sale Documents does not require any consents other than as specifically provided for in the Sale Documents and constitutes a legal, valid, and effective transfer of the Assets, and shall vest Purchaser with all right, title, and interest of the Debtors in and to the Assets free and clear of all Interests of any kind or nature whatsoever (except for the Assumed Liabilities).

12. This Order clarifies and confirms that the following are Excluded Assets: (i) the insurance program or other agreements related to the Debtors' previous insurance coverage by ACE (the "ACE Insurance Policies") and the claim administration services provided by ESIS (the "ESIS Agreement"); (ii) any agreements related to ACE's or ESIS' administration of claims made against the Debtors, including claims that may be covered under the Insurance Policies (including without limitation, high deductible agreements ("High Deductible Agreements") where the Debtors have posted collateral to secure their deductible and other obligations under the Insurance Policies); (iii) any collateral posted pursuant to the High Deductible Agreements; (iv) any third party administration service agreements ("TPAs") relating to claims against the Debtors that require the Debtors to pre-fund loss and expense payments; and (v) any funds provided pursuant to those TPAs. With respect to the Debtors' personnel and

business records relating to claims that may be covered under the ACE Insurance Policies or the TPA's that are being transferred to the Buyer, the provisions of the APA (Amendment No. 2, paragraph added at the end of section 9.9) providing access to books and records and notice of destruction of such books and records shall also apply to ACE and ESIS.

13. This Order clarifies that the Debtors will not transfer to the Purchaser any assets, equipment or software it leases or licenses from Advanced Communication Design, Inc. ("ACD") and that the Debtors will return to ACD all of its equipment, software and other proprietary data.

Designation Rights and Procedures for Leases and Assumption and Assignment of Executory Contracts

14. Nothing contained in the Bid Procedures Motion, the Bid Procedures Order, the Motion or this Order shall impair the Debtors' right to assume and assign other leases pursuant to section 365 of the Bankruptcy Code. Likewise, the rights of counterparties to any other such leases shall not be impaired by the Bid Procedures Motion, the Bid Procedures Order, the Motion or this Order, and all rights of lessors with respect to other such leases are specifically reserved under section 365 of the Bankruptcy Code.

15. As to all Leases (those being the leases identified in the Debtors' March 6 and March 7, 2006 assumption and cure notices) not proposed to be assumed and assigned at Closing to Purchaser, if the Debtors desire to assume and assign any such Leases, the Debtors will file a subsequent motion for authority to so assume and assign such Lease, and Lessors shall have the right to object to such motion, on any and all grounds, subject to the limitations set forth in this paragraph. Lessors who failed to timely file objections to Cure Amounts on or before March 18, 2006 shall be barred from asserting any cure objection to such subsequent motion,

other than with respect to (i) alleged non-payment or non-compliance under the applicable Lease following March 18, 2006 (including the Debtors' failure to pay rent or taxes when due) and/or end of year adjustments for the year or a portion of the year 2005 that had not been billed to the Debtors as of March 18, 2006. Lessors who timely filed objections to Cure Amounts shall be entitled to pursue such objections and amend or supplement such objections for alleged non-payment or non-compliance under the applicable Lease following March 18, 2006.(including the Debtors' failure to pay rent or taxes when due) and/or (ii) end of year adjustments for the year or a portion of the year 2005 that had not been billed to the Debtors as of March 18, 2006; provided, however, that nothing herein shall impact or prejudice the Debtors' ability to assert that amounts related to tax or rent obligations not yet due and payable under the terms of a Lease do not constitute Cure Amounts.

16. Pending assumption and assignment or rejection of the leases, the Debtors are not being relieved of applicable obligations under such leases.

17. Except as provided in the next paragraph, nothing in this Order is intended to, nor shall it, impair the rights under section 365 of the Bankruptcy Code of either the Debtors or the non-debtor parties to the Debtors' unexpired leases of non-residential real property, which rights are reserved by the Debtors and such parties; it being understood that this Order does impose objection and other deadlines applicable to the Debtors and such parties.

18. Pursuant to section 365(d)(4) of the Bankruptcy Code, the time period within which the Debtors must file a motion to assume and assign or reject their unexpired leases of non-residential property is extended through and including August 10, 2006. Notwithstanding the foregoing, this Order is without prejudice to the right of a lessor to seek an order, upon proper motion and notice to the Debtors, requiring, for good cause shown, the Debtors to elect to

assume or reject such unexpired leases based upon the Debtors' non-payment of rent that is due and owing or other appropriate reason; provided, however, for the reasons stated in Court by counsel for CBL & Associates Management, Inc. ("CBL") and Glimcher Properties Limited Partnership ("Glimcher"), if any dispute regarding post-petition obligations have not been resolved by April 19, 2006, then CBL and/or Glimcher may file a motion to compel immediate assumption/rejection and/or immediate payment of the post-petition amounts due, and provision of schedules for the post-petition amounts due. If such a motion is filed, the burden of proof as to any continued extension shall remain on the Debtors. Moreover, if such a motion is filed by April 21, then the matter will be heard on April 26, 2006. Notwithstanding anything to the contrary in this Order or in the Order Approving Agency Agreement to Conduct GOB Sales, no GOB Sale may begin in the Columbia Mall unless and until Columbia Mall has been fully paid post-petition rent at the contract rate of \$6,518.00 per month for February and March, 2006."

19. The Debtors shall be, and hereby are, authorized and empowered to sell, transfer, and convey the TWEC Store Lease Rights to the Purchaser pursuant to the APA.

20. The Purchaser shall have until August 10, 2006 (the "TWEC Designation Period"), to direct the Debtors to assume and assign any TWEC Store Lease to Purchaser or its affiliates pursuant to the terms and conditions set forth in the APA.

21. The Debtors are authorized to assume and assign to Purchaser, the non-real property executory contracts identified in Schedule 2.1(b)(x) and such assumption and assignment is hereby approved. The Debtors will have no obligation to assign any other non-real property executory contracts to Purchaser, and any obligation they may have to assign the executory contracts identified in Schedule 2.1 (b)(x) shall be subject to any reservation of rights provided in such Schedule.

22. Notwithstanding anything herein to the contrary, the approval of the APA does not impact the terms of the unexpired leases of non-residential property nor the landlord's rights upon assumption or assignment thereof.

23. The Debtors will set aside, in a segregated account, 105% of the estimated cure amounts that, as of the Closing Date, the Debtors project will exceed the \$4.2 million Purchaser is required to satisfy under the APA. Upon the Debtors' subsequent motion to assume and assign particular non-residential real property leases as contemplated by the APA, the Debtors and the affected counterparties may agree, or the Court may order, that the Debtors set-aside additional funds in the segregated account on a case-by-case basis.

Additional Provisions

24. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Assets or a bill of sale transferring good and marketable title in such Assets to Purchaser, on the Closing Date pursuant to the terms of the Sale Documents.

25. Except as otherwise provided in the Sale Documents, on the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Interests or Claims against the Assets, if any, as may have been recorded or may otherwise exist.

26. Each and every federal, state and governmental agency or department, and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

27. If any person or entity that has filed financing statement, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests or Claims against or in the Assets shall not have delivered to the Debtors prior to the Closing, in proper

form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Assets, or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets, including, without limitation, the Consent, Release and Termination Agreement in favor of Agent and Senior Lenders (in accordance with the terms of the Financing Order, the Loan Agreement and the other Financing Agreements) and (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests or Claims in the Assets of any kind or nature.

28. All entities who are presently, or on the Closing may be, in possession of some or all of the Assets to be sold, transferred or conveyed pursuant to the Sale Documents are hereby directed to surrender possession of the Assets to the Purchaser on the Closing Date.

29. Upon the granting of this Order by this Court with respect to the Sale Documents, Purchaser shall be entitled to the protection of section 363(m) of the Bankruptcy Code.

30. **SMB 3/24/06** ~~The consideration paid by Purchaser in the Sale for the Assets under the Sale Documents is fair and reasonable, and may not be avoided or otherwise challenged under 11 U.S.C. § 363(n).~~

31. **SMB 3/24/06** ~~Other than the Assumed Liabilities, the sale, transfer, assignment and delivery of the Assets pursuant to the Sale Documents shall not be subject to any Interests or Claims, and Interests or Claims of any kind or nature whatsoever shall attach only to the net proceeds of the Sale in their order of priority. All persons holding Interests or Claims~~

~~against the Assets of any kind or nature whatsoever (other than persons holding Assumed Liabilities) shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests or Claims of any kind or nature whatsoever against Purchaser, its property, its successors and assigns, its affiliates or the Assets, with respect to any Interests or Claims of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, or the Assets. Following the Closing Date, no holder of an Interest or Claim (other than holders of Assumed Liabilities) against the Debtors shall interfere with Purchaser's title to or use and enjoyment of the Assets based on or related to such Interests or Claims and all such Interests and Claims, if any, shall be and hereby are channeled, transferred and attached solely and exclusively to the proceeds of the Sale in their order of priority.~~

32. **SMB 3/24/06** Except as otherwise provided in the Sale Documents, the Purchaser is not, **by virtue of the consummation of the transactions contemplated by the Sale Documents,** assuming nor shall it ~~in any way whatsoever~~ be liable or responsible, as a successor or otherwise, for any liabilities, debts, commitments or obligations (whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed or otherwise) of the Debtors or any liabilities, debts, commitments or obligations in any way whatsoever relating to or arising from the Assets or the Debtors' operation of their businesses or use of the Assets on or prior to the Closing Date or any such liabilities, debts, commitments or obligations that in any way whatsoever relate to periods on or prior to the Closing Date or are to be observed, paid, discharged or performed on or prior to the Closing Date (in each case, including any liabilities that result from, relate to or arise out of tort or other product liability claims), or any liabilities calculable by reference to the Debtor or their assets or operations, or relating to continuing

conditions existing on or prior to the Closing Date, which liabilities, debts, commitments and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments or obligations has delivered to the Purchaser a release thereof. Without limiting the generality of the foregoing, except as provided in the Sale Documents, the Purchaser shall not, **SMB 3/24/06** by virtue of **the consummation of the transactions contemplated by the Sale Documents**, be liable or responsible, as a successor or otherwise, for the Debtors' liabilities, debts, commitments or obligations, whether calculable by reference to the Debtors, arising on or prior to the Closing and under or in connection with (i) any employment or labor agreements, consulting agreements, severance arrangements, change-in-control agreements or other similar agreement to which any Debtor is a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of the Debtors, (iii) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, obligations that might otherwise arise from or pursuant to the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, or the Worker Adjustment and Retraining Notification Act, (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims, (v) environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or

wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (vi) any bulk sales or similar law, (vii) any liabilities, debts, commitments or obligations of, or required to be paid by, the Debtors for any Taxes of any kind for any period, (viii) any liabilities, debts, commitments or obligations for any Taxes relating to the business of the Debtors or the Assets for or applicable to the pre-closing period, (ix) any litigation, and (x) any products liability or similar claims, whether pursuant to any state or any federal laws or otherwise.

33. The recitation, in the immediately preceding paragraph of this Order, of specific agreements, plans or statutes is not intended, and shall not be construed, to limit the generality of the categories of liabilities, debts, commitments or obligations referred to therein.

34. Except as otherwise expressly provided in the Sale Documents, no person or entity, including, without limitation, any federal, state or local governmental agency, department or instrumentality, shall assert by suit or otherwise against the Purchaser or its successors in interest any claim that they had, have or may have against the Debtors, or any liability, debt or obligation relating to or arising from the Assets, or the Debtors' operation of the Business or use of the Assets, including, without limitation, any liabilities calculable by reference to the Debtors or their assets or operations, **SMB 3/24/06 by virtue of the consummation of the transactions contemplated by the Sale Documents,** and all persons and entities are hereby enjoined from asserting against the Purchaser in any way any such claims, liabilities, debts or obligations.

35. **SMB 3/24/06** ~~Upon the closing of the transactions contemplated by the Sale Documents, Purchaser shall not be deemed to (i) be the successor of the Debtors, (ii) have,~~

~~de facto, or otherwise, merged with or into the Debtors, or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise(s) of the Debtors.~~

36. The Debtors, including but not limited to their respective officers, employees and agents, are hereby authorized to execute such documents and do such acts as are necessary or desirable to carry out the transactions contemplated by the terms and conditions of the Sale Documents and this Order. The Debtors shall be, and they hereby are, authorized to take all such actions as may be necessary to effectuate the terms of this Order.

37. To the extent applicable, the automatic stay pursuant to 11 U.S.C. § 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court (i) to allow the Purchaser to give the Debtors any notice provided for in the Asset Purchase Agreement, and (ii) to allow the Purchaser to take any and all actions permitted by the Sale Documents in accordance with the terms and conditions thereof.

38. All amounts, if any, to be paid by the Debtors pursuant to or in connection with the Sale Documents constitute administrative expenses under 11 U.S.C. §§ 503(b) and 507(a)(1) and are payable as provided under the Sale Documents without further order of the Court, including but not limited to any amount payable pursuant to section 2.3(c) of the Asset Purchase Agreement.

39. This Order and the Sale Documents shall be binding in all respects upon all creditors (whether known or unknown) of any Debtor, all successors and assigns of the Purchaser, the Debtors and their affiliates and subsidiaries, and any subsequent trustees appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code and shall not be subject to rejection. To the extent any provision of this Order is inconsistent with the terms of the APA, this Order shall govern.

40. The terms and provisions of the Sale Documents and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Purchaser, and its respective affiliates, successors, and assigns, and any affected third parties, including, but not limited to, all persons asserting an Interest in the Assets to be sold to Purchaser pursuant to the Sale Documents, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding.

41. Notwithstanding anything contained herein to the contrary, the term “Assets” as defined herein does not include property that is not property of the Debtors’ estates, such as funds that are trust funds under any applicable state lien laws.

42. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 cases or the consummation of the Sale.

43. Notwithstanding any other provisions of this Order, the Agency Agreement, any associated orders or agreements, including the Financing Order, the amount of \$416,000.00, consisting of the following claims, shall be placed in a segregated account, to be held by the Debtors, from the first Proceeds of the Debtors' sale of substantially all of their assets:

- A. Local Tax Authorities represented by Linebarger, Goggan, Blair & Sampson, LLP - \$275,000.00

- B. Texas Ad Valorem Tax Authorities represented by McCreary, Veselka, Brag & Allen,
PC - \$65,000.00
- C. Texas Ad Valorem Tax Authorities represented by the Law Offices of Robert Luna – \$4,000.00
- D. Texas Ad Valorem Tax Authorities represented by Perdue, Brandon, Fielder, Collins & Mott. LLP. - \$72,000.00

44. The liens of the Texas Ad Valorem Tax Authorities and Local Tax Authorities (jointly "Objecting Tax Authorities") shall attach to these segregated funds to the same extent and with the same priority they currently hold on the assets being sold, as defined by applicable state law. The segregated account shall be in the nature of adequate protection for the secured claims of the Objecting Tax Authorities, and shall constitute neither the allowance of their claims nor a cap on the amounts they may be entitled to be paid from the proceeds of the sale of their collateral. The claims and liens of the Objecting Tax Authorities shall remain subject to all defenses that might otherwise exist as to the validity, extent or priority of their liens, and no funds shall be distributed from this segregated account apart from agreement between the Debtor and the Objecting Tax Authorities, other than by subsequent Order of the Court, upon notice to the Objecting Tax Authorities.

45. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

46. Any provision in any agreement to which any of the Debtors is a party that purports to declare a breach or default as a result of a change of control in respect of the sale or

transfer of the Assets is hereby deemed unenforceable and all such agreements shall remain in full force and effect.

47. The failure specifically to include or to reference any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

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

49. The provisions of this Order are nonseverable and mutually dependent.

50. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Cases, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Sale Documents or the terms of this Order.

51. **SMB 3/24/06** ~~Nothing in this Order shall alter or amend the APA and the obligations of the Debtors and Purchaser thereunder.~~

52. Notwithstanding anything in this Order, all rights of parties to TWEC Store Leases subject to the Purchaser's TWEC Store Lease Rights regarding assumption and assignment, cure and adequate protection are hereby reserved until such time as the Purchaser exercises such TWEC Store Lease Rights with respect to a particular TWEC Store Lease, and to the extent such matters cannot be resolved consensually between or among the parties to such TWEC Store Lease and the Purchaser or its designees, such matters shall be resolved by an order of the Court.

53. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bid Procedures Order, the Sale Documents in all respects and to decide any disputes arising between the Debtors, the Purchaser, and/or their respective successors and assigns, with respect thereto, including, but not limited to, interpretation of the terms, conditions and provisions thereof, and the status, nature and extent of the Assets, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Assets free and clear of Interests or Claims.

54. Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, this Order shall be effective and enforceable immediately upon entry.

55. The requirement set forth in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

56. The Purchase Price (as defined in the APA) will be allocated among the Acquired Assets (as defined in the APA) and the Assumed Liabilities (as defined in the APA) in the amounts set forth on Schedule 2.9. The Purchaser and the Debtors shall make any and all filings with any Taxing (as defined in the APA) authorities consistent with the allocations set forth on Schedule 2.9. Such allocation of the Purchase Price will not be binding in the Bankruptcy Case (as defined in the APA) upon the Debtors' creditors and other parties in interest, and the final sentence of Section 2.9 of the APA shall also govern with respect to any adversary proceeding or contested matter.

Dated: New York, New York
March 24, 2006

/s/ STUART M. BERNSTEIN
Honorable Stuart M. Bernstein
Chief United States Bankruptcy Judge