

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

In re:)	Chapter 11
)	
PROPEX INC., <i>et al.</i> , ¹)	Case No. 08-10249 (JCC)
)	(Jointly Administered)
)	
Debtors.)	
)	

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING
THE SALE OF ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF
BUSINESS, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (C) AUTHORIZING THE
ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF**

(this relates to Docket No. 891)

Upon the motion (the “Sale Motion”) of Propex Inc. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors” or “Sellers”) for the entry of an order pursuant to § § 105, 363, and 365 of the Bankruptcy Code, 11 U.S.C. § § 101-1532 (the

¹ The Debtors in these chapter 11 cases are: Propex Inc.; Propex Holdings Inc.; Propex Concrete Systems Corporation; Propex Fabric International Holdings I Inc.; and Propex Fabric International Holdings II Inc.

“Bankruptcy Code”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Debtors to: (a) enter into that certain Asset Purchase Agreement, dated as of February 17, 2009, between Xerxes Operating Company L.L.C. (the “U.S. Purchaser”) and Xerxes Foreign Holding Corp. (the “Foreign Purchaser” and together with the U.S. Purchaser, the “Purchasers”), and the Debtors, attached as Exhibit 1 (as amended or otherwise modified from time to time and including all related instruments, documents, exhibits, schedules, and agreements thereto, collectively, the “Agreement”),² (b) sell substantially all of their assets as set forth in the Agreement, including the Acquired Assets, free and clear of all Liens, Claims, Encumbrances, and Interests (as defined below), with such sale to be in accordance with the terms and conditions of the Agreement; (c) assume and sell and assign certain executory contracts and unexpired leases to the Purchasers; and (d) granting related relief; and this Court having entered an order on March 9, 2009 [Docket No. 924] (the “Bid Procedures Order” and attached as Exhibit A thereto, the “Bid Procedures”) authorizing the Debtors to conduct, and approving the terms and conditions of, the auction as set forth in the Bid Procedures (the “Auction”) to consider higher or otherwise better offers for the Acquired Assets, establishing a date for the Auction, and approving, among other things: (i) the Bid Procedures in connection with the Auction; (ii) the form and manner of notice of the Auction and Bid Procedures; (iii) procedures relating to certain unexpired leases and executory contracts, including notice of proposed cure amounts; and (iv) the Breakup Fee or the Acquisition Proposal Fee; and the Court having established the date of the hearing on the Sale Motion (the “Sale Hearing”); and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. § § 157(b)(2) and 1334; and in consideration of

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

the Sale Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in these chapter 11 cases, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:³

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Acquired Assets to be sold, transferred, or conveyed pursuant to the Agreement, and their respective estates pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly

³ All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith.

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.

E. The statutory bases for the relief requested in the Sale Motion and for the approvals and authorizations herein are (i) Bankruptcy Code § § 102, 105, 363 and 365, and (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014.

F. On January 18, 2008 (the “Petition Date”), the Debtors filed voluntary petitions 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 § § 1107(a) and 1108.

G. As evidenced by the certificates of service and publication filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing have been provided in accordance with Bankruptcy Code § § 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, and 9014, the local rules of the Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bid Procedures Order. The Debtors also gave due and proper notice of the assumption, sale, and assignment of each contract listed on the notice of assumption, sale, and assignment of designated unexpired leases and executory contracts (the “Cure Amount Notice”) filed on [_____] (Docket No. [____]) (the “Assumed Contracts”) to each non-debtor party under each such Assumed Contract. Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assumed Contracts, or of the entry of this Order is necessary or shall be required.

H. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation, (i) all entities that claim any interest in or lien upon the Acquired Assets, (ii) all parties to Assumed Contracts assumed and sold and assigned pursuant to this Order, (iii) all governmental taxing authorities that have, or as a result of the sale of the Acquired Assets may have, claims, contingent or otherwise, against the Debtors, (iv) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002, (v) all creditors (whether their claims are liquidated, contingent, or unmatured) of the Debtors, (vi) all interested governmental, pension and environmental entities, (vii) the Office of the United States Trustee for the Eastern District of Tennessee, and (viii) all entities that heretofore expressed to the Debtors an interest in purchasing the Acquired Assets. Other parties interested in bidding on the Acquired Assets were provided, pursuant to the Bid Procedures Order, sufficient information to make an informed judgment on whether to bid on the Acquired Assets.

I. The Acquired Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

J. The Debtors have demonstrated a sufficient basis and the existence of exigent circumstances requiring them to enter into the Agreement, sell the Acquired Assets, and assume and assign the Assumed Contracts under Bankruptcy § § 363 and 365, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors.

K. The Bid Procedures set forth in the Bid Procedures Order were non-collusive, substantively and procedurally fair to all parties, and were the result of arm's length negotiations between the Debtors and the Purchasers.

L. The Debtors and their professionals have complied, in good faith, in all respects with the Bid Procedures Order. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Bid Procedures Order, the Debtors (a) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Debtors' assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets, and (c) considered any bids submitted on or before the deadline to submit bids as set forth in the Bid Procedures (the "Bid Deadline").

M. [No bids were submitted on or before the Bid Deadline, other than the offer submitted by the Purchasers in the Agreement.] The Purchasers submitted the highest or otherwise best offer and the Purchasers are the successful bidders for the Acquired Assets in accordance with the Bid Procedures Order. The Bid Procedures obtained the highest value for the Acquired Assets for the Debtors and their estates.

N. The offer of the Purchasers, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Agreement, (i) is the highest or best offer received by the Debtors, (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates, (iv) constitutes full and fair consideration and reasonably equivalent value for the Acquired Assets, and (v) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practically available alternative.

O. The Purchasers are not “insiders” or “affiliates” of the Debtors as those terms are defined in the Bankruptcy Code and the decisions thereunder. The Purchasers are purchasers in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and are entitled to the protections of Bankruptcy Code § 363(m) and (n) with respect to all of the Acquired Assets. The Agreement was negotiated and entered into in good faith, based upon arm’s length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Purchasers has engaged in any conduct that would prevent the application of Bankruptcy Code § 363(m) or cause the application of, or implicate, Bankruptcy Code § 363(n) to the Agreement or to the consummation of the sale transaction and transfer of the Acquired Assets and Assumed Contracts to the Purchasers. The Purchasers are purchasing the Acquired Assets and Assumed Contracts in good faith and each is a good faith purchaser within the meaning of Bankruptcy Code § 363(m) and is, therefore, entitled to the protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (i) the Purchasers recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets, (ii) the Purchasers complied with the provisions in the Bid Procedures Order, (iii) all consideration to be paid by the Purchasers and other agreements or arrangements entered into by the Purchasers in connection with the Sale have been disclosed, (iv) the Purchasers have not violated Bankruptcy Code § 363(n) by any action or inaction, and (v) the negotiation and execution of the Agreement and any other agreements or instruments related thereto was in good faith.

P. The Debtors have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Acquired Assets has been duly and validly authorized by all necessary corporate authority by the Debtors to consummate the

transactions contemplated by the Agreement. No consents or approvals, other than as may be expressly provided for in the Agreement, are required by the Debtors to consummate such transactions.

Q. The Debtors have advanced sound business reasons for seeking to enter into the Agreement and to sell and/or assume and sell and assign the Acquired Assets, as more fully set forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Acquired Assets and to consummate the transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any person, the transfer of the Acquired Assets to the Purchasers and the assumption and assignment of the Assumed Contracts is a legal, valid, and effective transfer of the Acquired Assets and any Assumed Contracts.

R. The terms and conditions of the Agreement, including the consideration to be realized by the Debtors pursuant to the Agreement, are fair and reasonable, and the transactions contemplated by the Agreement are in the best interests of the Debtors' estates.

S. The Acquired Assets shall be sold free and clear of any and all liens (statutory or otherwise, including, without limitation, mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), hypothecations, encumbrances, security interests, mortgages, debts, levies, indentures, pledges, leases, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, instruments, preferences, priorities, security agreements, easements, covenants, encroachments, conditional sales agreements, title retention contracts, options, Claims (as that term is defined in § 101(5) of the Bankruptcy Code), judgments, offsets, contracts, recoupment, rights of recovery, rights of pre-emption, rights of first refusal or other Third Party rights, claims for reimbursement, contribution, indemnity,

exoneration, products liability, alter-ego, environmental, or Tax (including Claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic governmental entity, orders of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any Claim based on any theory that the Purchasers are successors or a continuation of the Debtors or the Debtors' Business), reclamation claims, obligations, liabilities, demands, and guaranties, 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 the bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including Claims otherwise arising under doctrines of successor liability (collectively, the "Liens, Claims, Encumbrances, and Interests"), other than the Permitted Acquired Asset Liens (but excluding any Liens that are set forth in the organizational documents of the Foreign Subsidiaries) (collectively, the "Permitted Liens").

T. The Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) shall attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Purchasers would not enter into the Agreement to purchase the Acquired Assets otherwise.

U. The transfer of the Acquired Assets to the Purchasers will be a legal, valid, and effective transfer of the Acquired Assets, and, except as may otherwise be provided in the Agreement, shall vest Buyer with all right, title, and interest of the Debtors to the Acquired

Assets free and clear of any and all Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens). Except as specifically provided in the Agreement or this Order, the Purchasers shall not assume or become liable for any Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) relating to the Acquired Assets being sold by the Debtors.

V. The transfer of the Acquired Assets to the Purchasers free and clear of all Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) will not result in any undue burden or prejudice to any holders of any Liens, Claims, Encumbrances, and Interests as all such Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Acquired Assets received by the Debtors in the order of their priority, with the same validity, force, and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens, Claims, Encumbrances, or Interests of any kind or nature whatsoever against or in any of the Debtors or the Acquired Assets shall be forever barred estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Encumbrances, or Interests (other than the Permitted Liens) against the Buyer, any of its assets, property, successors or assigns, or the Acquired Assets.

W. The Debtors may sell the Acquired Assets free and clear of all Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever (other than the Permitted Liens) because, in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those (i) holders of Liens, Claims, Encumbrances, and Interests and (ii) non-debtor parties, who did not object, or who withdrew their objections, to the sale of the Acquired Assets and the Sale Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2). All objections to the Sale Motion have been overruled or resolved. Those holders

of Liens, Claims, Encumbrances, and Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Liens, Claims, Encumbrances, and Interests, if any, attach to the proceeds of the sale of the Acquired Assets ultimately attributable to the property against or in which they claim or may claim any Claims, Encumbrances, and Interests, with such Claims, Encumbrances, and Interests being subject to treatment as prescribed in the Debtors' chapter 11 plan or by separate order of this Court.

X. Not selling the Acquired Assets free and clear of all Liens, Claims, Interests, and Encumbrances (other than the Permitted Liens) would adversely impact the Debtors' estates, and the sale of Acquired Assets other than one free and clear of all Liens, Claims, Interests, and Encumbrances (other than the Permitted Liens) would be of substantially less value to the Debtors' estates.

Y. The Debtors and the Purchasers have, to the extent necessary, satisfied the requirements of Bankruptcy Code § 365, including Bankruptcy Code § § 365(b)(1)(A), (B) and 365(f), in connection with the sale and the assumption and assignment of the Assumed Contracts. The Purchasers have demonstrated adequate assurance of future performance with respect to the Assumed Contracts pursuant to Bankruptcy Code § 365(b)(1)(C). The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtors, their estates, their creditors and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtors.

Z. The Assumed Contracts are assignable notwithstanding any provisions contained therein to the contrary. The Purchasers shall have sole responsibility for paying all Cure

Amounts required to assume and assign the Assumed Contracts to the Purchasers. For avoidance of doubt, the Debtors shall have the sole responsibility for paying all cure obligations (i) in excess of the amounts set forth on Schedule 2.3(a)(i) of the Agreement or (ii) not set forth on Schedule 2.3(a)(i) of the Agreement. The Purchasers have provided adequate assurance of their future performance under the Assumed Contracts and the proposed assumption and assignment of the Assumed Contracts.

AA. The Purchasers have reserved their right under Section 2.8(a) of the Agreement to, no later than the last day of the sixth calendar month after the Closing Date, pursuant to the Purchasers' written notice to the Debtors and to the counterparties to any of the affected Contracts designated on Schedule 2.8(a) of the Agreement (the "Designated Remaining Executory Contracts"), cause the Debtors to either assume and assign to the Purchasers such Designated Remaining Executory Contract ten (10) days from the date on which the Purchasers give such notice, or to reject such Designated Remaining Executory Contract on the last day of the calendar month during which occurs the thirtieth (30th) day after the date on which the Purchasers give such notice. As soon as practicable after receiving written notice from the Purchasers to assume and assign a Designated Remaining Executory Contract, the Debtors shall take all actions reasonably necessary to assume and assign the Designated Remaining Executory Contract to the Purchasers pursuant to Bankruptcy Code § 365, including by filing of a notice of assumption and assignment of such Designated Remaining Executory Contract and service of such notice upon the relevant contract counterparty with opportunity to object.

BB. In the absence of a stay pending appeal, the Purchasers will be acting in good faith, pursuant to Bankruptcy Code § 363(m), in closing the transactions contemplated by the

Agreement at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(g) and 6006(d).

CC. The transactions contemplated under the Agreement do not amount to a consolidation, merger, or *de facto* merger of the Purchasers and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Purchasers and the Debtors, there is no continuity of enterprise between the Debtors and the Purchasers, the Purchasers are not a mere continuation of the Debtors or their estates, and the Purchasers do not constitute a successor to the Debtors or their estates.

DD. The Purchasers and/or their Affiliates are postpetition secured creditors of the Debtors, holding, among other things, valid liens and claims in and against the Debtors and their estates arising in connection with that certain Superpriority Debtor in Possession Credit Agreement, dated as of January 30, 2009 by and among the Debtors, the financial institutions listed therein and Wayzata Investment Partners LLC (the "DIP Credit Agreement"), to the extent and subject to the terms of the DIP Credit Agreement, those certain interim and final orders entered on January 29, 2009 and February 9, 2009 respectively, authorizing the Debtors to obtain postpetition financing and granting liens, security interests, and superpriority claims to the Purchasers and/or their Affiliates pursuant to the DIP Credit Agreement (collectively the "DIP Orders"), and any other agreements, instruments, and other documents entered into in connection therewith (collectively, the "DIP Facility").

EE. The total consideration provided by the Purchasers for the Acquired Assets was the highest or best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent

value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Acquired Assets.

FF. Time is of the essence in consummating the sale. In order to maximize the value of the Acquired Assets, it is essential that the sale of the Acquired Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

GG. At and effective as of the Closing, the Purchasers shall assume sole responsibility for paying and satisfying the Assumed Obligations. For the avoidance of doubt, nothing in this Order (including, without limitation, any provisions in this Order regarding the sale, transfer or conveyance of the Acquired Assets free and clear of Liens, Claims, Encumbrances, and Interests) nor in the Agreement shall be construed to mean that the Purchasers are not assuming from the Debtors and thereafter becoming solely responsible for the payment, performance and discharge of the Assumed Obligations. After the Closing, the Debtors shall have no liability whatsoever with respect to the Assumed Obligations. The Purchasers shall have no obligations with respect to any liabilities of the Debtors other than the Assumed Obligations.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted in its entirety, subject to the terms and conditions contained herein.
2. All objections, responses, and requests for continuance concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response, or request for continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied.

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004, and 6006.

4. The sale of the Acquired Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), and the transactions contemplated thereby be, and hereby are, authorized and approved in all respects.

5. The sale of the Acquired Assets and the consideration provided by the Purchasers under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Purchasers are hereby granted and are entitled to all of the protections provided to a good faith purchaser under Bankruptcy Code § 363(m), including with respect to the transfer of the Assumed Contracts as part of the sale of the Acquired Assets pursuant to Bankruptcy Code § 365 and this Order.

7. The Debtors be, and hereby are, authorized, and directed to fully assume, perform under, consummate, and implement the terms of the Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Agreement, this Order, and sale of the Acquired Assets contemplated thereby including, without limitation, deeds, assignments, stock powers, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Purchasers for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchasers, or reducing to possession any or all of the Acquired Assets or Assumed Obligations, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement, without any further corporate action or orders of this Court.

Pursuant to the terms of the Agreement, the Purchasers shall have no obligation to proceed with the Closing of the Agreement until all conditions precedent to their obligations to do so have been met, satisfied, or waived.

8. The Debtors and each other person or entity having duties or responsibilities under the Agreement, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the Agreement and this Order, to carry out all of the provisions of the Agreement and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement, and any related agreements; to take any and all actions contemplated by the Agreement, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary, desirable or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements, and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of the Debtors shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to

cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Agreement, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporation laws of the State of Delaware and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the Agreement, any related agreements and this Order, and the transactions contemplated thereby and hereby.

9. Effective as of the Closing, (a) the sale of the Acquired Assets by the Debtors to the Purchasers shall constitute a legal, valid, and effective transfer of the Acquired Assets notwithstanding any requirement for approval or consent by any person and shall vest the Purchasers with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Claims, Liens, Interests, and Encumbrances of any kind (other than the Permitted Liens), pursuant to Bankruptcy Code § 363(f), and (b) the assumption of any Assumed Obligations by the Purchasers shall constitute a legal, valid and effective delegation of any Assumed Obligations to the Purchasers and shall divest the Debtors of all liability with respect to any Assumed Obligations.

10. The sale of the Acquired Assets is not subject to avoidance pursuant to Bankruptcy Code § 363(n).

11. Except to the extent specifically provided in the Agreement, at the Closing, the Debtors shall be, and hereby are, authorized, empowered, and directed, pursuant to Bankruptcy Code § § 105, 363(b), and 365, to sell the Acquired Assets, including the Assumed Contracts, to the Purchasers. Except as otherwise expressly provided in the Agreement, the sale of the Acquired Assets shall vest the Purchasers with all right, title and interest of the Debtors to the Acquired Assets free and clear of any and all Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) with all such Liens, Claims, Encumbrances, and Interests to attach only to the proceeds of the sale (if any) with the same priority, validity, force, and effect, if any, as they now have in or against the Acquired Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Following the Closing Date, no holder of any Liens, Claims, Encumbrances, and Interests in the Acquired Assets (other than the Permitted Liens) shall interfere with the Purchasers' use and enjoyment of the Acquired Assets based on or related to such Liens, Claims, Encumbrances, and Interests, 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 Agreement or this Order.

12. The provisions of this Order authorizing the sale of the Acquired Assets free and clear of Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens), shall be self-executing, and neither the Debtors nor the Purchasers shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and the Purchasers, and each of their respective officers, employees, and agents are hereby

authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Purchasers deem necessary or appropriate to implement and effectuate the terms of the Agreement and this Order. Moreover, effective as of the Closing, the Purchasers, their successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead, on behalf of and for the benefit of the Purchasers, their successors and assigns, for any purpose as provided in the Agreement, including for the following purposes: to demand and receive any and all of the Acquired Assets and to give receipts and releases for and in respect of the Acquired Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Purchasers, their successors and assigns, any and all proceedings at law, in equity or otherwise, which the Purchasers, their successors and assigns, may deem proper for the collection or reduction to possession of any of the Acquired Assets, and to do all acts and things with respect to the Acquired Assets which the Purchasers, their successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

13. On or before the Closing Date, the Debtors' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) of any kind against the Acquired Assets, as such Liens, Claims, Encumbrances, and Interests may have been recorded or may otherwise exist. Except as expressly provided in the Agreement, if any person or entity that has filed financing statements or other documents or agreements evidencing any Liens, Claims, Encumbrances, or Interests in or against the Acquired Assets (other than the Permitted Liens) shall not have delivered to the Debtors prior to the Closing after request therefor, in proper form

for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Encumbrances, or Interests that the person or entity has with respect to the Acquired Assets, the Debtors are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to such Acquired Assets prior to the Closing, and the Purchasers are authorized to file such documents after Closing.

14. To the greatest extent available under applicable law, the Purchasers shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Acquired Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Purchasers as of the Closing Date.

15. All of the Debtors' interests in the Acquired Assets to be acquired by the Purchasers under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchasers. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Acquired Assets acquired by the Purchasers under the Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Purchasers.

16. Except as expressly provided in the Agreement, the Purchasers are not assuming nor shall they or any affiliate of the Purchasers 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 Acquired Assets

prior to the consummation of the transactions contemplated by the Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Acquired Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Agreement, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Purchasers or any affiliate of the Purchasers.

17. Except as otherwise expressly provided in the Agreement, 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 Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) against the Acquired Assets, if any, as may have been recorded or may otherwise exist.

18. Except as otherwise expressly provided in the Agreement, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Acquired Assets are directed to surrender possession of the Acquired Assets to the Purchasers on the Closing Date or at such time thereafter as the Purchasers may request.

19. Subject to the terms of the Agreement and the occurrence of the Closing Date, the assumption by the Debtors of the Assumed Contracts and the sale and assignment of such agreements to the Purchasers, as provided for or contemplated by the Agreement, be, and hereby is, authorized and approved pursuant to Bankruptcy Code § § 363 and 365.

20. The Assumed Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to the Purchasers at the Closing, pursuant to Bankruptcy Code § § 363 and 365, subject only to (a) the payment of the Cure

Amounts (as defined below) and (b) the Purchasers' right to exclude certain Assumed Contracts from the definition of Assumed Contracts, in accordance with the terms of the Agreement.

21. Upon the Closing, in accordance with Bankruptcy Code § § 363 and 365, the Purchasers shall be fully and irrevocably vested in all right, title, and interest of each Assumed Contract. The Debtors shall cooperate with, and take all actions reasonably requested by, the Purchasers to effectuate the foregoing.

22. Pursuant to Bankruptcy Code § § 365(b)(1)(A) and (B), and except as otherwise provided in this Order, the Purchasers shall promptly pay at Closing or cause to be paid at Closing to the parties to any Assumed Contracts the requisite Cure Amounts, if any, set forth on Schedule 2.3(a)(i) of the Agreement and, correspondingly, to the extent equal to the Cure Amounts set forth on Schedule 2.3(a)(i) of the Agreement, the cure amounts set forth in the Cure Amount Notice served by the Debtors on each of the parties to the Assumed Contracts on [DATE], except to the extent that a cure amount was amended on the record of the Sale Hearing (collectively, the "Cure Amounts"), following the assumption and assignment thereof (in which case such amended amount in excess of the Cure Amount set forth on Schedule 2.3(a)(i) of the Agreement shall be the sole obligation of the Debtors). The Cure Amounts are hereby fixed at the amounts set forth on Schedule 2.3(a)(i) of the Agreement, and, to the extent equal to the Cure Amounts set forth on Schedule 2.3(a)(i), the cure amounts set forth in the Cure Amount Notice served by the Debtors, or the amounts set forth on the record of the Sale Hearing, as the case may be, and the non-debtor parties to the Assumed Contracts are forever bound by such Cure Amounts. For avoidance of doubt, the Debtors shall have the sole responsibility for paying all cure obligations (i) in excess of the amounts set forth on Schedule 2.3(a)(i) of the Agreement or (ii) not set forth on Schedule 2.3(a)(i) of the Agreement.

23. All defaults or other obligations under the Assumed Contracts arising prior to the Closing (without giving effect to any acceleration clauses, assignment fees, increases, advertising rates, or any other default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) shall be deemed cured by payment of the Cure Amounts.

24. Any provision in any Assumed Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable, and all Assumed Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Amount, if any. No sections or provisions of any Assumed Contract that purports to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor third party to the Assumed Contracts shall have any force and effect with respect to the sale transaction and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code § 365(f) and/or are otherwise unenforceable under Bankruptcy Code § 365(e) and no assignment of any Assumed Contract pursuant to the terms of the Agreement shall in any respect constitute a default under any Assumed Contract. The non-Debtor party to each Assumed Contract shall be deemed to have consented to such assignment under Bankruptcy Code § 365(c)(1)(B), and the Purchasers shall enjoy all of the Debtors' rights and benefits under each such Assumed Contract as of the applicable date of assumption without the necessity of obtaining such non-Debtor party's written consent to the assumption or assignment thereof.

25. The Purchasers have satisfied all requirements under Bankruptcy Code §§ 365(b)(1) and 365(f)(2) to provide adequate assurance of future performance under the Assumed Contracts.

26. The Debtors and their estates shall be relieved of any liability for any breach of any of the Assumed Contracts occurring from and after Closing, pursuant to and in accordance with Bankruptcy Code § 365(k).

27. Pursuant to Bankruptcy Code § § 105(a), 363, and 365, all parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Purchasers any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts existing as of the Closing or arising by reason of the Closing, except for any amounts that are Assumed Obligations being assumed by the Purchasers under the Agreement.

28. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement and this Order. This Order and the Agreement shall be binding upon and govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, 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 in or to the Acquired Assets.

29. To the extent permitted by Bankruptcy Code § 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets sold, transferred, or conveyed to the Purchasers on account of the filing or pendency of these chapter 11 cases or the consummation of the transaction contemplated by the Agreement.

30. The Purchasers have not assumed or are otherwise not obligated for any of the Debtors' liabilities other than the Assumed Obligations as set forth in the Agreement, and the Purchasers have not purchased any of the Debtors' assets expressly excluded from the Acquired Assets pursuant to the Agreement (the "Excluded Assets"). Consequently, all persons, Governmental Units (as defined in Bankruptcy Code § § 101(27) and 101(41)) and all holders of Liens, Claims, Encumbrances, and Interests (other than the Permitted Liens) based upon or arising out of liabilities retained by the Debtors are hereby enjoined from taking any action against the Purchasers or the Acquired Assets to recover any Liens, Claims, Encumbrances, and Interests or on account of any liabilities of the Debtors other than Assumed Obligations pursuant to the Agreement. All persons holding or asserting any Liens, Claims, Encumbrances, and Interests in the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens, Claims, Encumbrances, and Interests or cause of action against the Purchasers or the Acquired Assets for any liability associated with the Excluded Assets.

31. On the Closing Date, prior to payment or repayment of any other claims, interests, or obligations of the Debtors (other than the Carve Out Cash Amount), all outstanding Obligations (as defined in the DIP Facility) owed by the Debtors under the DIP Facility will be paid in full and in cash from the proceeds of the sale of the Acquired Assets pursuant to the Agreement.

32. The Purchasers are not "successors" to the Debtors or their estates by reason of any theory of law or equity, and the Purchasers shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability, or similar liability except for the assumption of the Assumed Obligations as expressly provided in the Agreement. Except to

the extent the Purchasers assume the Assumed Obligations pursuant to the Agreement, neither the purchase of the Acquired Assets by the Purchasers or their affiliates, nor the fact that the Purchasers or their affiliates are using any of the Acquired Assets previously operated by the Debtors, will cause the Purchasers or any of their affiliates to be deemed a successor in any respect to the Debtors' businesses within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

33. Further, except as provided in the Agreement, transfer of title and possession of the Acquired Assets shall be free and clear of any claims pursuant to any successor or successor-in-interest liability theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust and security interests, (c) any pension or medical benefit plan of the Debtors, compensation or other employee benefit plan of the Debtors, welfare, agreements, practices and programs, (d) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar

state laws, or (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any predecessors, (e) environmental or other claims or Liens arising from existing conditions on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that 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., or other state or federal statute, (f) any bulk sales or similar law, (g) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (h) any and all theories of successor liability, including any theories on successor products liability grounds or otherwise.

34. Except to the extent expressly included in the Assumed Obligations, the Purchasers and its affiliates shall have no liability, obligation, or responsibility under the WARN Act (29 U.S.C. § § 210 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law by virtue of the Purchasers' purchase of the Acquired Assets or assumption of the Assumed Obligations.

35. Except to the extent expressly included in the Assumed Obligations, pursuant to Bankruptcy Code § § 105 and 363, all persons and entities, including, but not limited to, the Debtors, the official committee of unsecured creditors, all debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, Encumbrance, or Interest of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Acquired Assets (other than the Permitted Liens), arising under or out of, in connection with, or in any way relating to the Debtors, the

Acquired Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Acquired Assets to the Purchasers, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Lien, Claim, Encumbrance, or Interest, including assertion of any right of setoff, subrogation, or recoupment, and enforcement, attachment, or collection of any judgment, award, degree, or order, against the Purchasers or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), or the Acquired Assets.

36. Without limiting the generality of the foregoing, except as otherwise specifically set forth in the Agreement, the Purchasers shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations, and liabilities of the Debtors arising pursuant to state law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the relevant Closing Date, including, but not limited to, any and all workers' compensation claims filed or to be filed, or reopenings of those claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability, except as otherwise specifically set forth in the Agreement.

37. Subject to the terms of the Agreement, the Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchasers, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the Agreement and any related agreements and this Order.

38. The failure specifically to include any particular provisions of the Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors, and the Purchasers that the Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

39. Nothing contained in this Order shall affect or impair the claims, rights, and powers of the United States of America; provided, however, that, except as otherwise provided in the Agreement, any such claims, rights or powers of the United States of America shall not be construed in any way as Assumed Obligations under this Order or the Agreement.

40. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Agreement.

41. Nothing in this Order shall alter or amend the Agreement and the obligations of the Debtors and the Purchasers thereunder. To the extent any provisions of this Order conflict with the terms and conditions of the Agreement, this Order shall govern and control.

42. This Order and the Agreement shall be binding upon and govern the acts of all Persons and entities, including without limitation, the Debtors and the Purchasers, their respective successors, and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates or any trustee appointed in a Chapter 7 case

if this case is converted from Chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, 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 in or to the Acquired Assets.

43. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in these 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 Agreement or the terms of this Order.

44. Notwithstanding Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchasers are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any person or entity obtaining a stay pending appeal, if the Debtors and the Purchasers close under the Agreement, the Purchasers shall be deemed to be acting in “good faith” and shall be entitled to the protections of Bankruptcy Code § 363(m) as to all aspects of the transactions under and pursuant to the Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

45. The automatic stay provisions of Bankruptcy Code § 362 are vacated and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order.

46. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bid Procedures Order, and the Agreement in all respects and to decide any

disputes concerning this Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any Assumed Contracts, 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 all Liens, Claims, Encumbrances, and Interests.

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