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

In re

**STATES INDUSTRIES, INC.,**

Debtor-in-Possession.

Case No. 10-65148-fra11

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

States Industries, Inc. ("States" or "Debtor") files this Motion for Order Approving (A) Sale of Assets Free and Clear of Liens, Claims and Encumbrances, (B) Assumption and Assignment of Executory Contracts, and (C) Bid Procedures (the "Motion").

**Jurisdiction**

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

2. The statutory bases for the relief requested herein are sections 105(a), 363, 365 and, if applicable, 1146(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules

2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Oregon (the "Local Rules") and the Guidelines Regarding Motions for Sale of All or Substantially All Assets and Sale Procedures Motions adopted by the Bankruptcy Court on March 8, 2010 (LBF 363) (the "Guidelines").

### **Introduction**

3. On August 24, 2010, (the "Petition Date"), Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Debtor is operating its business and managing its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for appointment of a trustee or examiner has been made.

### **Relief Requested**

4. Debtor has made the strategic decision to sell its Assets (defined below) as a going concern. Debtor has agreed to sell the Assets to Renwood States Lending, LLC ("Renwood") and, by this Motion, seeks approval of that transaction. To assure that the proposed price is the best and highest offer, however, Debtor requests that the Court first enter an Order approving the Bid Procedures (defined below) so that Debtor may subject the Assets to higher and better offers through an auction process. If the auction yields a higher and better offer, Debtor seeks authority to effect a sale with the winning bidder.

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

- a. Authorizing and approving bid procedures in connection with the receipt and analysis of competing bids, substantially in the form attached hereto as **Exhibit B** (the "Bid Procedures"), including bid protections for Renwood pursuant to the Asset Purchase Agreement between Debtor, as seller, and Renwood or its assignee or designee as buyer, (the "Purchase Agreement"). A summary of the material terms of Purchase Agreement is set forth below. The Debtor shall file the Purchase Agreement with the Court no later than September 15, 2010.
- b. Authorizing and approving procedures for the assumption and assignment of the Assumed Agreements (defined below) in connection

with the sale.

- c. Approving the form and manner of notice of (i) the sale and hearing thereon, substantially in the form attached hereto as **Exhibit C** (the "Sale Notice") and (ii) the assumption, assignment and proposed cure costs of the Assumed Agreements, substantially in the form attached hereto as **Exhibit D** (the "Assumption and Assignment Notice").
- d. Establishing the following dates and deadlines, subject to modification as needed, relating to competitive bidding and approval of the Sale (defined below):
  - Bid Deadline: October 13, 2010 at 5:00 p.m. prevailing Pacific Time, as the deadline by which all binding bids must be actually received by Debtor's counsel pursuant to the Bid Procedures (the "Bid Deadline").
  - Auction: On or about October 18 at 10:00 a.m. prevailing Pacific Time, as the date and time the auction, if one is needed (the "Auction"), will be held at the offices of Ball Janik LLP One Main Place, 101 SW Main St, Suite 1100, Portland, OR 97204.
  - Objection Deadline: October 13, 2010, at 5:00 p.m. prevailing Pacific Time, as the deadline to object to the Sale transactions and/or the assumption and assignment of Assumed Agreements or cure costs related thereto.
  - Assumption Objection Deadline: October 13, 2010, at 5:00 p.m. prevailing Pacific Time as the deadline to object to the cure costs, compensation and adequate assurance of future performance in connection with the assumption and assignment of any executory contract or unexpired lease proposed to be assumed.
  - Sale Hearing: On or about October 20, 2010 (the "Sale Hearing"), which will be held before the Honorable Judge Frank R. Alley, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Oregon, at: 405 E. Eighth Avenue, Courtroom No. 6, Eugene, Oregon.

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

**Background**

7. States manufactures and sells natural wood veneered panels to consumers in the form of residential wall paneling. States also manufactures and sells industrial panels to manufacturers of cabinets, furniture, store fixtures and architectural interiors. States' consumer products are sold through retail home improvement stores. States' industrial panels are supplied through a network of independent wholesale distributors throughout North America. States controls lamination, finishing and component machinery and can therefore engineer products at each stage to deliver high quality and reasonable cost.

8. States is a 44-year-old, privately held company, headquartered in Eugene, Oregon. Prior to business setbacks during the current recession, States had over 400 employees. Currently States has approximately 230 employees.

9. Until recently, States operated plants in Eugene, Oregon, and in Mocksville, North Carolina. The North Carolina operation was shut down in March of 2009, as management took steps to improve profitability and focus its efforts on State's substantially larger and more established West Coast operations. The Eugene plant remains in operation at this time. The Eugene plant is approximately 252,000 square feet spread across ten buildings on 53 acres. The Eugene plant consists of two different facilities. The primary facility is owned by States and is located at 29545 East Enid Road, Eugene, Oregon (the "Enid Road Property"). States' secondary facility is owned by SI Properties, Inc. and is located at 95 Foch Street, Eugene, Oregon (the "Foch Street Property"). SIP is a wholly-owned subsidiary of States. States is not currently conducting operations at the Foch Street Property.

10. States' revenues for its fiscal year ended March 31, 2008 were approximately \$128 million. Revenues declined to approximately \$94 million for fiscal year 2009 and \$61 million for fiscal year 2010. Revenues for fiscal year 2011 through July were approximately \$20 million.

11. States sustained losses of approximately \$6.6 million and \$4.6 million, respectively, in its 2008 and 2009 fiscal years. Based on its preliminary fiscal year ended March 31, 2010 accounting, States' 2010 net income was approximately \$3.0 million before taxes and year-end adjustments. Year-end adjustments for fiscal year 2010 have not yet been determined, and they are anticipated to be substantial. States has been incurring substantial losses and it is projected to continue to incur substantial losses. Even in light of curtailment of expenses by reducing head count, reducing compensation and benefits, eliminating non-essential services, closing its East Coast facility, and other initiatives, States' future improvement will be linked to the recovery of the housing market. The resulting losses have eroded States' capital base, and despite efforts it has been unable to access the capital markets for additional financing (other than the debtor in possession financing from Renwood to bridge to a sale). As a result, this has affected States' liquidity and cash availability and has effectively rendered States unable to sustain operations through a protracted reorganization proceeding.

12. States commenced this chapter 11 case to prevent any interruption in and to protect the value of its business while pursuing a sale to Renwood, subject to higher and better offers. In States' judgment, the sale to Renwood offers the best prospects for protecting the interests of the Debtor's creditors and other parties in interest and providing a recovery to creditors in this case.

13. States' management has been pursuing a sale or a capital infusion since late 2008. States retained Macadam Capital Partners ("Macadam") in November 2008 as advisors to assist and advise in exploring opportunities regarding potential transactions to sell portions or all of States or raise capital for States. Macadam prepared offering materials with the assistance of management and contacted several sources of potential financing.

14. States, with the assistance of Macadam, also identified potentially interested parties, including strategic partners, private equity funds and competitors, which States and its advisors believed would be interested in an acquisition of States or its assets. States and

Macadam contacted each of the potentially interested parties and solicited offers from each one who expressed interest. Interested parties received substantial financial information and diligence materials with which to evaluate States. These efforts failed to generate any offers to purchase States or its assets or to contribute capital to States.

15. However, recently Renwood has emerged as a potential buyer. An affiliate of Renwood executed a confidentiality agreement to receive information concerning States' business in March 2010. In August 2010, Renwood purchased the senior secured debt encumbering States' assets from Bank of America, N.A. (the "Prepetition Debt"). The outstanding amount of the Prepetition Debt as of the Petition Date was approximately \$15.5 million. Renwood claims a first priority lien on all of States' assets to secure the Prepetition Debt. Renwood also holds a trust deed encumbering the Foch Street Property owned by SIP as security for the Prepetition Debt.

16. Following its acquisition of the Prepetition Debt and after extensive negotiations, Renwood proposed to acquire substantially all of States' assets through a bankruptcy sale. States has determined that the Renwood transaction offers potentially the most value to States' stakeholders. Accordingly, States seeks Court approval for the proposed sale to Renwood, subject to higher and better offers, as described below.

### **The Proposed Sale**

17. The Purchase Agreement provides that the offer will be subject to higher and better bids and that an auction will take place if qualified bids are received.

18. The principal terms of the Purchase Agreement are summarized in the following chart:<sup>1</sup>

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<sup>1</sup> This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Purchase Agreement, the latter governs in all respects. Capitalized terms used but not defined in this chart have the meaning ascribed in the Purchase Agreement.

PROVISION	SUMMARY DESCRIPTION
Purchaser	Renwood States Lending, LLC, a Delaware limited liability company. The members of Renwood are: Rosewood Acquisition Corporation, Renovo-States, LLC and Winwood Enterprises, LLC. Winwood Enterprises is an affiliate of Northern Michigan Veneers, Inc., Debtor's largest unsecured creditor.
Consideration	<ol style="list-style-type: none"> <li>1. \$16,920,373 (in the form of a credit bid which is estimated to be the full amount outstanding under the DIP Facility and the Prepetition Debt); plus</li> <li>2. cash amount required to pay Cure Costs; plus</li> <li>3. assumption of Assumed Liabilities; plus</li> <li>4. the agreement by Purchaser to equally split the net proceeds from the sale of the Foch Street Property with Seller; plus</li> <li>5. \$100,000 cash to the estate.</li> </ol> <p>The Debtor has estimated that the Purchase Price (which is comprised of the aggregate estimated amount of the foregoing) is \$18,551,573.</p>
Acquired Assets	As set forth more fully in the Purchase Agreement, the assets to be sold include, without limitation, all inventory, equipment, furniture and fixtures identified by Renwood, accounts receivable, causes of action other than avoidance actions, prepaid expenses and deposits, intellectual property rights, including Debtor's name, certain assumed contracts and leases, the Debtor's stock in SI Properties, Inc., the Enid Property and other assets used or useful in Debtor's business (collectively, the " <u>Assets</u> ").
Excluded Assets	Avoidance actions.
Assumed Liabilities	<p>(a) Liabilities relating to the Business that arise from events, facts or circumstances that occur after the closing;</p> <p>(b) Debtor's obligations under the Assumed Agreements, which are to be performed or which accrue after the Closing Date; and</p> <p>(d) Claims relating to employee benefit plans or relating to employees, including claims by employees for amounts due prior to the closing.</p>
Excluded Liabilities	All liabilities associated with assets, executory contracts and unexpired leases that are not being purchased.
Assumption and Assignment of Executory Contracts and Unexpired Leases	Renwood will assume certain specified executory contracts and unexpired leases.

Payment of Cure Costs	Renwood, within the provisions and limitations set forth in the Purchase Agreement, is responsible for payment of Cure Costs associated with the Assumed Agreements.
Employment Provisions	Renwood shall offer employment to no less than sixty-seven percent (67%) of all employees. The terms of such employment offers will be as determined by Renwood in its sole and absolute discretion. Any benefits accruing under the current employee benefit plans will terminate and all benefits provided to the employees will begin to accrue under Renwood's replacement plans, as determined by Renwood in its sole and absolute discretion, from and after the Closing Date. Any employees hired will be hired on an at-will basis.
Closing Conditions	The Purchase Agreement includes closing conditions typical and customary for transactions of this kind.
Representations, Warranties and Covenants	The Purchase Agreement includes representations, warranties and covenants made or agreed to by the parties typical and customary for transactions of this kind.
Bid Protections	The Purchase Agreement provides a breakup fee of \$465,000, which is approximately two and one-half percent (2.5%) of the Purchase Price.
Other	The Debtor will agree not to pursue any avoidance actions against any parties that will be suppliers to Renwood after the Closing Date.

**Sale Provisions to be Highlighted under the Local Rules**

19. The Purchase Agreement contains the following terms, conditions and provisions that are to be highlighted pursuant to the Guidelines:

- (i) Purchase Price. The purchase price is set forth above.
- (ii) Sale to Insider. Neither Renwood nor any of the members of Renwood is an insider.
- (iii) Agreements with Insiders or Management. Renwood has agreed to enter into a 5-year consulting agreement with Diane Montoya pursuant to which she would be paid \$250,000 per year. No agreements have been reached about the retention of existing management and those discussions are ongoing.
- (iv) Sale Free and Clear. The sale will be free and clear of liens and other interests and the parties with such interests and the nature of those



interests are set forth below.

- (v) Assumption, Assignment and Rejection of Executory Contracts and Unexpired Leases. The sale contemplates the assumption of the Assumed Agreements and the procedures relating to such assumption are set forth below.
- (vi) Releases and Insider Benefits. See the disclosures set forth in (iii) above.
- (vii) Private Sale; No Competitive Bidding. The Motion contemplates an auction and the procedures are set forth in the Bid Procedures. Renwood has met all requirements of the Bid Procedures, except that Renwood has not been required to provide a Sale Deposit. There are no provisions restricting Debtor's ability to solicit competing offers.
- (viii) Closing, Other Deadlines and Contingencies. All deadlines relating to the closing of the proposed sale have been highlighted. There are no other contingencies.
- (ix) Good Faith Deposit. Qualified Bidders will be required to submit a Sale Deposit and the Bid Procedures set forth the terms of when such deposit will be returned to any Qualified Bidder.
- (x) Interim Arrangements with Proposed Buyer. Other than the DIP Financing provided by Renwood, there no interim agreements or arrangements with Renwood.
- (xi) Use of Proceeds. Any cash proceeds from the sale will be used to fund administrative expenses and to the extent available, make distributions to creditors. If the Successful Purchaser is not Renwood, the proceeds of the sale will first be used to repay the amounts borrowed pursuant to the DIP Credit Agreement, second to amounts owed under the Prepetition Loan Agreement, third to pay administrative expenses of the estate, and finally to make distributions to unsecured creditors of the estate.
- (xii) Record Retention. After the sale, Debtor will have reasonable access upon prior request, to access the books and records to enable the Debtor to administer the chapter 11 case.
- (xiii) Sale of Avoidance Actions. The Motion does not provide for the sale of avoidance claims under chapter 5 of the Bankruptcy Code. The Debtor has agreed not to pursue any avoidance actions against any parties that will be suppliers to Renwood after the Closing Date.
- (xiv) Requested Findings as to Successor Liability. The proposed order approving the sale provides that Renwood shall have no liability or

responsibility for any liability or other obligation of States arising under or related to the purchased assets other than as expressly set forth in the Purchase Agreement and that the transfer of the assets from States to Renwood will not subject Renwood or its affiliates, successors or assigns or their respective properties to any liability for claims against States or the assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions.

- (xv) Credit Bid. The Motion does not seek to limit credit bidding under section 363(k) of the Bankruptcy Code. Renwood shall have the sole discretion to determine whether its credit bid is on account of Prepetition Debt or amounts owed under the DIP Facility.
- (xvi) Standard for Approval. The Motion seeks approval of the proposed sale pursuant to the business judgment standard.
- (xvii) Relief from Bankruptcy Rule 6004(h). This Motion requests relief from the 14-day stay imposed by Bankruptcy Rule 6004(h) as set forth below.
- (xviii) Solicitation Process. This Motion identifies to whom notice has been given or will be given and the efforts that have and will be taken to publicize the sale to the Debtor's competitors or other possible bidders.

### Auction and Bid Procedures

20. The Bid Procedures are intended to permit a fair and efficient competitive sale process, consistent with the timeline of this chapter 11 case, to confirm that the Renwood bid is, indeed, the best offer, or promptly identify the alternative bid that is higher or otherwise better. Because the Bid Procedures are attached as **Exhibit B** hereto, they are not restated herein.

Generally speaking however, the Bid Procedures establish, among other things:<sup>2</sup>

- The deadlines and requirements for becoming a Potential Bidder, submitting competing bids and the method and criteria by which such competing bids are to become entitled to be Qualified Bids sufficient to trigger an Auction, including the minimum consideration that must be provided and the terms and conditions that must be satisfied by any Bidder (other than Renwood) to be entitled to be a Potential Bidder and a Qualified Bidder" (See Bid. Proc., at ¶¶ C, E).

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<sup>2</sup> Capitalized terms used but not defined in this Paragraph shall have the meanings set forth in the Bid Procedures.

- The manner in which Qualified Bids will be evaluated by the Debtor to determine the Starting Bid for the Auction (See Bid. Proc., at ¶ G).
- The procedures for conducting the Auction, if any (See Bid. Proc., at ¶ I)
- The criteria by which the "Successful Bidder" will be selected by the Debtor, in consultation with its advisors (See Bid. Proc., at ¶ J).
- Various other matters relating to the sale process generally, including the Sale Hearing, requirements for credit bids, designation of a Back-Up Bidder, payment of the bid protections, return of any Sale Deposits and certain reservations of rights (See Bid. Proc., at ¶¶ K-O).

21. The Bid Procedures recognize the Debtor's fiduciary obligations to maximize sale value, and, as such, do not impair the Debtor's ability to consider all qualified bid proposals, and preserve the Debtor's right to modify the Bid Procedures as necessary or appropriate to maximize value for its estate in consultation with key parties set forth therein.

**Bid Provisions to be Highlighted Under the Local Rules.**

22. The Bid Procedures contain the following provisions that are required to be highlighted pursuant the Guidelines, which are more fully described in the Bid Procedures:

- (i) Provisions Governing Qualification of Bidders. All provisions governing an entity's right to become a qualified bidder are set forth in Paragraphs C and E of the Bid Procedures.
- (ii) Provisions Governing Qualified Bids. All deadlines for submitting a bid, the requirements for submitting a bid, the assets to be included in the bid, the period the bid must remain open, the requirement to provide the Sale Deposit, and all other conditions are set forth in the Bid Procedures at Paragraphs A, C, E and L. Renwood has satisfied all of these conditions except that Renwood has not been required to provide a Sale Deposit.
- (iii) Provisions Providing Bid Protections to "Stalking Horse" Bidder. All bid protections have been fully disclosed in this Motion. As set forth herein, the Purchase Agreement does not include any limitations on the Debtor's (or any committee's) ability to solicit higher or better bids. The Purchase Agreement does provide for the provision of a Break-Up Fee, which shall be paid in the event that the Assets are sold to a party other than Renwood. Additionally, other than a UCC search, Renwood represents that it has not commissioned

any additional professional reports, such as environmental assessments or appraisals, of the type contemplated in Section III.A(iii)(B)(2) of the Guidelines.

- (iv) Bidding Increments. Paragraphs E and I(5) of the Bid Procedures set forth the amount of the initial overbid (\$965,000 over the Purchase Price, which represents \$500,000 in an initial overbid and \$465,000 for the Break-Up Fee) and any successive bidding increments. Additionally, as set forth in Paragraph I(6), Renwood is entitled to a credit equal to the Credit Bid Amount (only up to the full amount of the Prepetition Debt and the DIP Facility) and the Break-Up Fee in each round of the Auction . Renwood shall also be entitled to bid amounts in excess of the Outstanding Debt.
- (v) Due Diligence Period. Interested parties shall have until the Bid Deadline to conduct due diligence. In order to obtain access to confidential information, any interested party must provide preliminary written proof of its financial capacity to close the proposed transaction, including, but not limited to, its ability to satisfy the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under section 365 of the Bankruptcy Code, as set forth more fully in Paragraph C of the Bid Procedures. Thereafter access to the estate's records may be obtained by contacting John Davidson by telephone at (541) 688-7871 or by email at [jdavidson.states@invernessgroupllc.com](mailto:jdavidson.states@invernessgroupllc.com). The Debtor shall be entitled to use its discretion in determining the extent to which a Potential Bidder is entitled to receive confidential competitive information.
- (vi) Modification of Bidding and Auction Procedures. Paragraph O of the Bid Procedures authorizes Debtor, without further order of the Court, to modify the Bid Procedures.
- (vii) Closing with Alternative Backup Bidders. Paragraph L of the Bid Procedures addresses the ability of the Debtor to sell the Assets to the Back-Up Bidder.
- (viii) Provisions Governing the Auction. This Motion specifies the date, time and place at which the Auction will be conducted and the method for providing notice to parties of any changes thereto. Further, Paragraph E(1) of the Bid Procedures requires each bidder to identify whether it is bidding for itself or others and if for others, the identities of such parties and whether the bidder is party to any agreement limiting the bidders at the auction. Finally, Paragraphs I(8) and I(2) of the Bid Procedures provide that the Auction will be transcribed by a court reporter and that the Auction shall be open only to certain specified parties and not all creditors.

**Summary of the Assumption and Assignment Procedures**

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

**Notice of Cure Procedures.** The Debtor will file a cure schedule (the “Cure Schedule”) and serve such schedule and an Assumption and Assignment Notice by first class mail on the parties to those executory contracts and unexpired leases that will be included in any Sale and those other executory contracts and unexpired leases that may be included in the Sale (the “Assumed Agreements”) by September 27, 2010. The Cure Schedule will include the (i) Assumed Agreements; (ii) the name and contact information of the counterparty to each Assumed Agreement; and (iii) the proposed cure amount for each Assumed Agreement.

**Objections.** Any objection to the assumption and assignment of the Assumed Agreements identified on the Cure Schedule, including objections to the cure amount set forth on such schedule and to adequate assurance of future performance must be in writing, filed with the Bankruptcy Court and be actually received by October 13, 2010 by: (a) States Industries, Inc., 29545 Enid Road East, PO Box 7037, Eugene, Oregon 97401, Attn: John R. Davidson; (b) Ball Janik LLP, 101 SW Main St, Suite 1100, Portland, Oregon 97204, Attn: Brad T. Summers, Esq., counsel for the Debtor; (c) the Office of the United States Trustee for the District of Oregon; 405 East Eighth Avenue, Suite 1100, Eugene, Oregon 97401, Attn: Ronald C. Becker, Esq.; (d) Perkins Coie LLP, 1120 NW Couch Street, 10th Floor, Portland, Oregon 97209, Attn: Steven M. Hedberg, Esq., counsel for Renwood; and (e) any counsel that might be retained by an Official Committee of Unsecured Creditors.

**Resolution of Objections.** If no objection is received to the assumption and assignment of an Assumed Agreement, the counterparty to such Assumed Agreement will be barred from objecting thereto and shall be deemed to consent to the assumption and assignment of such Assumed Agreement. If no objection is received to the proposed cure amount with respect to an Assumed Agreement, then the cure amount set forth in the Cure Schedule shall be binding upon the nondebtor party to such Assumed Agreement for all purposes in this chapter 11 case and will constitute a final determination of the total cure amount required to be paid in connection with the assumption and assignment thereof.

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

**Local Bankruptcy Rule 2002-1 Disclosure**

24. The following information is provided to comply with LBR 2002-1(2)(A)-(G):

(a) The assets to be sold consist of substantially all of States' assets, excluding only those assets described above. The assets to be sold also include real property at the following street address: 29545 East Enid Road, Eugene, Oregon.

(b) Renwood is the only other party to the proposed transaction at this time. Renwood has no relationship to the Debtor other than as the holder of the Prepetition Debt and as a party to the DIP Credit Agreement.

(c) A complete property description may be obtained by contacting John Davidson, States' Chief Restructuring Officer, at States Industries, Inc. 29545 East Enid Road, P. O. Box 7037, Eugene, Oregon 97401; Tel: (541) 688-7871; Fax: (541) 689-7490; [jdavidson.states@invernessgroupllc.com](mailto:jdavidson.states@invernessgroupllc.com).

(d) The terms and conditions of submitting bids, conditions imposed on competing bidders, and the time, place and terms and conditions of the Auction, are set forth above and in the attached Bid Procedures Order.

(e) As of July 31, 2010, the book value of States' assets, based on its balance sheet as of such date, was approximately \$27.2 million (including approximately \$6.4 million in deferred income taxes). An orderly liquidation value appraisal from February 2010 valued States' machinery, equipment and certain rolling stock at approximately \$1.8 million. The Enid Road Property was appraised in February 2010 at \$9.1 million. The Foch Street Property was appraised in February 2010 at \$1.8 million.

(f) Based on the appraised value of the Foch Street Property, current estimates are that the sale will result in approximately \$950,000 in proceeds for unsecured creditors, consisting of \$100,000 in cash at closing plus 50% of the estimated net proceeds from the eventual sale of the Foch Street Property. However, the appraisal of the Foch Street Property assumed no environmental issues, and it is unknown if any

environmental issues exist. (According to States' bankruptcy schedules, the total amount of unsecured claims against States, not including any deficiency claim of Renwood, is approximately \$12 million.) The sale will also result in the assumption of States' obligations to employees as well as States' obligations under the Assumed Agreements (including Cure Costs). In addition, the sale is in the best interests of the estate for the following reasons: (i) the sale will preserve States' business enterprise as a going concern; (ii) the sale will result in continued employment for most of the Company's approximately 230 employees; (iii) the sale will preserve business relationships and sales for vendors, customers and other parties who are presently doing business with States; (iv) the sale will result in the assumption and assignment of certain of States' executory contracts and unexpired leases; and (v) the sale will result in a greater overall distribution to creditors in general than a piecemeal liquidation.

(g) States is proposing the sale in advance of approval of a plan because States does not presently have access to debtor in possession financing for a sufficient period of time to confirm a plan. In addition, Renwood has indicated that it prefers to close the sale as quickly as possible to preserve the value of the business as a going concern. It is not feasible for States to wait until a plan has been confirmed before closing the sale of its Assets.

### **Basis for Relief Requested**

#### **A. Sale of the Assets**

25. Section 363(b)(1) of the Bankruptcy Code provides that "the trustee [or debtor-in-possession], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." This provision generally allows a debtor in possession (subject to court approval) to sell property of the estate outside the ordinary course of business where the proposed sale is a sound exercise of debtor's business judgment and when the sale is proposed in good faith and for fair value. Committee of Equity Security Holders v. Lionel

Corporation (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Ernst Home Center, Inc., 209 B.R. 974, 980 (Bankr. W.D. Wash. 1997). When a debtor articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

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

27. The Purchase Agreement was negotiated at arm’s length, in good faith, and Debtor believes its terms are fair and reasonable. Renwood is not an “insider” of Debtor and neither Debtor nor its management has a financial interest in the transaction contemplated by the Purchase Agreement, except that, as set forth above, Renwood contemplates entering into a five-year consulting agreement with Ms. Montoya, Debtor’s current majority shareholder and former President. In addition, Ms. Montoya is a guarantor of the Prepetition Indebtedness held by Renwood, and she is also a guarantor of Debtor’s approximately \$2.8 million indebtedness to Northern Michigan Veneers, Inc., which is an affiliate of a member of Renwood.

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

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



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

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

31. Renwood (and potential bidders in the Auction process) will only buy the Assets if they are “free and clear” of liens. Section 363(f) of the Code provides a mechanism whereby the assets of the estate may be sold unencumbered (thereby increasing the sale price) while, at the same time, protecting the interests of the secured creditors. Section 363(f) states that:

The trustee may sell property [outside the ordinary course of business] free and clear of any interest in such property of an entity other than the estate only if –

1. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
2. such entity consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
4. such interest is in bona fide dispute; or
5. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

32. In addition, the absence of an objection by holders of claims and interests in the Assets constitutes consent to the sale free and clear of such claims and interests. See In re Tabone, Inc., 175 B.R. 855, 858 (Bankr. D.N.J. 1994); Veltman v. Whetzal, 93 F.3d 517 (8<sup>th</sup> Cir. 1996); 3 Lawrence P. King et al., *Collier on Bankruptcy* ¶ 363.06[3] (15<sup>th</sup> Ed. Rev.).

33. Finally, holders of interests in the Assets will be adequately protected because their interests will attach to the proceeds of the sale, subject to any claims and defenses that Debtor may have thereto.

34. The following parties claim a lien or interest in the Assets to be sold, each of

whom will receive notice of the proposed sale free and clear of claims and interests in a manner of service authorized by Bankruptcy Rule 7004:

<b>Name/Service Address</b>	<b>Approximate Lien Amount</b>	<b>Treatment at Closing</b>
Renwood States Lending, LLC c/o Capital Services, Inc. 615 DuPont Hwy Dover, DE 19901	\$17.0 million	Sale free and clear, pursuant to Renwood credit bid or higher bid acceptable to Renwood, and liens released at closing
Renwood States Lending, LLC Attn: Mark Barbeau One Park Plaza, Suite 600 Irvine, CA 92614	Same as above, notice only	
Ford Motor Credit c/o The Corporation Company 30600 Telegraph Road Bingham Farms, MI 48025	\$25,200	Sale subject to liens
Ford Motor Credit Company c/o CT Corporation System 388 State Street, Suite 420 Salem, OR 97301	Same as above, notice only	
Ford Motor Credit Company Attn: Susan J. Thomas, Secretary 1 American Road Dearborn, MI 48126	Same as above, notice only	
Toyota Financial Services c/o The Corporation Trust Company 1209 Orange Street Wilmington, DE 19801	\$19,600	Sale subject to liens
Toyota Motor Credit Corporation dba Toyota Financial Services Attn: David Pelliccioni, Secretary 19001 S. Western Avenue Torrance, CA 90501	Same as above, notice only	
Toyota Motor Credit Corporation c/o CT Corporation System 388 State Street, Suite 420 Salem, OR 97301	Same as above, notice only	
Lane County Department of Assessment & Taxation 125 East 8 <sup>th</sup> Avenue Eugene, OR 97401	\$209,000	Sale subject to liens

The following parties are believed to have true leases with Debtor and are listed as secured parties solely on a precautionary basis:

<b>Name/Service Address</b>	<b>Approximate Lien Amount</b>	<b>Treatment at Closing</b>
Key Equipment Finance 66 South Pearl Street Albany, NY 12207	\$0	Sale subject to liens, if any
Key Corporate Capital Inc. 66 South Pearl Street Albany, NY 12207	Same as above, notice only	
Key Equipment Finance, Inc. c/o Corporation Service Company 285 Liberty Street NE Salem, OR 97301	Same as above, notice only	
Key Equipment Finance, Inc. Attn: Jeanne L. Early, Secretary 1000 South McCaslin Blvd Superior, CO 80027	Same as above, notice only	
Capital Advance Leasing, Inc. 485 East 17 <sup>th</sup> Street, Suite 300 Costa Mesa, CA 92627	\$0	Sale subject to liens, if any
Capital Advance Leasing, Inc. Attn: Managing Agent 620 Newport Center Drive, Suite 1100 Newport Beach, CA 92660	Same as above, notice only	
Capital Advance Leasing, Inc. c/o William Scott McCullum, Registered Agent 620 Newport Center Drive, Suite 1100 Newport Beach, CA 92660	Same as above, notice only	
ICB Leasing Corp. Attn: Managing Agent 551 Fifth Avenue New York, NY 10176	\$16,100	Sale subject to liens, if any

<b>Name/Service Address</b>	<b>Approximate Lien Amount</b>	<b>Treatment at Closing</b>
Sovereign Bank Successor by merger to ICB Leasing Corp. Attn: Managing Agent 3 Huntington Quad, Suite 101N Melville, NY 11747	Same as above, notice only	
Sovereign Bank Attn: Legal Department 1130 Berkshire Blvd Wyomissing, PA 19610	Same as above, notice only	
TCF Equipment Finance, Inc. Attn: Craig R. Dahl, President 11100 Wayzata Blvd, Suite 801 Minnetonka, MN 55305	\$0	Sale subject to liens, if any
TCF Equipment Finance, Inc. c/o CT Corporation System 388 State Street, Suite 420 Salem, OR 97301	Same as above, notice only	
Celtic Leasing Corp. Attn: Managing Agent 4 Park Plaza, Suite 300 Irvine, CA 92614	\$195,000	Sale subject to liens, if any
Celtic Leasing Corp. c/o Conrad F. Hohener III, Registered Agent 4 Park Plaza, Suite 300 Irvine, CA 92614	Same as above, notice only	
IOS Capital, LLC Attn: Russell Slack, Managing Agent 1738 Bass Road Macon, GA 31210	\$0	Sale subject to liens, if any
IOS Capital, LLC c/o CT Corporation System 388 State Street, Suite 420 Salem, OR 97301	Same as above, notice only	
IKON Financial Services 1738 Bass Road Macon, GA 31210	\$8,200	Sale subject to liens, if any

<b>Name/Service Address</b>	<b>Approximate Lien Amount</b>	<b>Treatment at Closing</b>
IKON Financial Services Attn: Steven J. Toeniskoetter, Authorized Representative 10 Riverview Drive Danbury, CT 06810	Same as above, notice only	
GE Capital Information Technology Services, Inc. dba IKON Financial Services Attn: Joseph Cistulli, Secretary 300 East John Carpemter Freeway Irving, TX 75062	Same as above, notice only	
GE Capital Information Technology Services, Inc. dba IKON Financial Services c/o CT Corporation System 388 State Street, Suite 420 Salem, OR 97301	Same as above, notice only	
CIT Technology Financing Services, Inc. Attn: Managing Agent 10201 Centurion Parkway North Jacksonville, FL 32256	\$0	Sale subject to liens, if any
CIT Technology Financing Services, Inc. Attn: Eric S. Mandelbaum, Secretary 1 CIT Drive Livingston, NJ 07039	Same as above, notice only	
CIT Technology Financing Services, Inc. c/o CT Corporation System 388 State Street, Suite 420 Salem, OR 97301	Same as above, notice only	
Industrial Finishes & Systems, Inc. Attn: Managing Agent PO Box 2824 Eugene, OR 97402	\$13,700	Consignment, precautionary notice only
Industrial Finishes & Systems, Inc. Attn: Glenn Duckworth, President 3455 West First Avenue Eugene, OR 97402	Same as above, notice only	

Name/Service Address	Approximate Lien Amount	Treatment at Closing
Industrial Finishes & Systems, Inc. c/o Stuart Barr, Registered Agent 3455 West First Avenue PO Box 2824 Eugene, OR 97202	Same as above, notice only	

**C. Assumption and Assignment of Executory Contracts**

35. As described above, as part of the sale contemplated by the Purchase Agreement, Debtor intends to assume and assign certain executory contracts and unexpired leases to Renwood.

36. The standard to be applied in determining whether an executory contract should be assumed is the “business judgment” test, which is premised upon the debtor’s business judgment that assumption would be beneficial to the estate. See In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993). Absent extraordinary circumstances, Court approval “should be granted as a matter of course.” In re Summit Land Co., 13 B.R. 310, 315 (Bankr. D. Utah 1981). “Only where the debtor’s actions are in bad faith or in gross abuse of its managerial discretion should the decision be disturbed.” Johnson v. Fairco Corp., 61 B.R. 317, 320 (N.D. Ill. 1986).

37. In addition to passing the business judgment test, section 365(b) of the Bankruptcy Code requires that a debtor in possession meet certain additional requirements to assume an executory contract:

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

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

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

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

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

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

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

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

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

#### **D. Bid Protections**

41. Debtor also requests approval of a bid protections in the form of a breakup fee equal to two and one-half percent of the Purchase Price (the "Break-Up Fee"). The Break-Up Fee would be payable to Renwood in the event a Qualified Bidder prevails at the Auction and the alternate sale ultimately is approved.

42. In evaluating breakup and similar fees, courts have applied three basic standards: (a) the business judgment test; (b) the best interests of creditors test; and (c) the "actual and

necessary” or administrative expense test. It appears that the Ninth Circuit has not adopted (or rejected) any of the foregoing tests. No matter which test it chooses to apply, however, it would be appropriate for the Court to approve the Break-Up Fee.

43. Although courts may apply different analytical standards, they generally reach the same conclusion: breakup fees are appropriate when they encourage bidding and are in the best interest of the estate. See, e.g., In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992), app. dismissed on jurisdictional grounds, 3 F.3d 49 (2d Cir. 1993) (applying the business judgment standard to approve breakup fee that helped attract and retain a potentially successful bid and attract other bidders); In re America West Airlines, Inc., 166 B.R. 908, 912 (Bankr.D.Ariz. 1994) (applying the best interest of creditors tests and focusing on “whether the transaction will further the diverse interests of the debtor, creditors and equity holders alike”); In re O’Brien Environmental Energy, Inc., 181 F.3d 527, 535 (3d Cir. 1999) (applying the “actual and necessary” test and stating that the estate benefits if the breakup fee induced “a bid that otherwise would not have been made. . .”); In re 995 Fifth Avenue Associates, L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”).

44. Here, the Break-Up Fee is designed compensate Renwood for the time and expense of negotiation and due diligence in connection with its proposed purchase. The amount of the Break-Up Fee is capped at two and one-half percent (2.5%) of the Purchase Price to be paid by Renwood. This percentage is equivalent to breakup fees approved in other cases. See, e.g., Consumer News & Business Channel Partnership v. Financial News Network, Inc. (In re Financial News Network, Inc.), 980 F.2d 165, 167 (2d Cir. 1992) (noting without discussion \$8.2 million breakup fee on \$149.3 million transaction (5.5% of consideration offered)); In re CXM, Inc., 307 B.R. 94 (Bankr. N.D. Ill. 2004) (approving breakup fee which represented an expense reimbursement of 2.59%); *see also* LTV Aerospace & Defense Co. v. Thomson-CSF, S.A. (In re



Chateaugay Corp.), 1998 B.R. 848, 861 (S.D.N.Y. 1996) (enforcing \$20 million “reverse breakup fee” payable to debtor on \$450 million offer (4.4% of consideration)). Compare In re Twenver, Inc., 149 B.R. 954 (disapproving of proposed topping fee, which exceeded 10% of total bid).

**E. Non-Applicability of Stays**

45. In addition to the other sale-related relief sought herein, Debtor requests that the Court specifically find inapplicable any stays that might otherwise inhibit Debtor’s ability to close the proposed transactions for the sale of the Assets immediately after the Court enters an order approving the transactions, including without limitation those arising under Bankruptcy Rules 6004 or 6006. Any delay in a closing of the sale would mean substantial potential harm to Debtor, its creditors and its estate.

46. The decision to sell the Assets has substantial business justification. Absent a source of funding and repayment of amounts owed to Renwood, Debtor does not have any funding to maintain its business as a going concern. The sale of Debtor's assets is the only possible way to realize value for its estate and creditors.

47. Debtor believes that the minimum bid price represents fair and reasonable consideration for the Assets.

**Notice**

48. In accordance with Bankruptcy Rule 2002, Debtor proposes to give notice of the Auction, this Motion, and the Sale Hearing as follows: (a) serve a copy of this Motion (with all attachments) upon (i) any official committee of unsecured creditors appointed in this case; (ii) all persons or entities required to be served pursuant to orders of this Court; (iii) all parties who have filed requests for notice under Bankruptcy Rule 2002 as of the date of service; (iv) all persons or entities who to the knowledge of the Debtor hold a lien upon or security interest in the Assets; (v) the individuals or entities believed by the Debtor to be potential purchasers; and (vi) the Office of the United States Trustee; (b) serve a copy of the Sale Notice, in the form attached hereto as **Exhibit C**, by first class mail, upon all creditors; and (c) serve a copy of the

Assumption and Assignment Notice, in the form attached hereto as **Exhibit D**, by first class mail, upon all nondebtor parties to the Assumed Agreements.

49. Debtor submits that such notice constitutes good and sufficient notice of the competitive offer procedures, this Motion, and all proceedings to be held thereon and that no other or further notice need be given.

WHEREFORE, Debtor respectfully requests that the Court (a) enter an order approving Bid Procedures in substantially the form proposed herein; and (b) as soon as practicable after completion of the Auction, enter an order (i) approving the sale of the Assets to Renwood or other Successful Purchaser, (ii) approving such sale free and clear of all liens, claims and encumbrances with such interests attaching to the sale proceeds; (iii) approving the assumption and assignment of executory contracts and unexpired leases to Renwood or other Successful Purchaser; (iv) declaring all stays including without limitation those arising under Bankruptcy Rules 6004 or 6006 inapplicable; and (v) such other and further relief as may be just and proper.

DATED August 31, 2010

BALL JANIK LLP

By: /s/ Brad T. Summers

**Brad T. Summers, OSB No. 91111**

tsummers@balljanik.com

**Justin D. Leonard, OSB No. 03373**

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101 SW Main Street, Suite 1100

Portland, OR 97204

Attorneys for States Industries, Inc.

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

In re

**STATES INDUSTRIES, INC.,**

Debtor-in-Possession.

Case No. 10-65148-fra11

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

This matter coming before this Court on the Motion for Order Approving (A) Sale of Assets Free and Clear of Liens, Claims and Encumbrances, (B) Assumption and Assignment of Executory Contracts, and (C) Bid Procedures (the "Motion") filed by States Industries, Inc. (the "Debtor"). The Court having held a hearing on the Motion on September 15, 2010, and having considered the submissions and arguments of counsel and the files and records herein, and being now fully advised of the premises,

THE COURT FINDS as follows:

- 1- ORDER (A) APPROVING BID PROCEDURES; (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER SALE OF DEBTOR'S ASSETS; AND (C) ESTABLISHING OBJECTION DEADLINE

A. This Court has core jurisdiction over Debtor's chapter 11 case (the "Bankruptcy Case"), this Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

C. The Debtor's proposed notices of the Bid Procedures, the Sale, the Sale Hearing, and the Auction, and the Assumption Procedures proposed therein, in the form of the notices attached hereto as Exhibits B and C, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Sale, the Auction and the Assumption Procedures.

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

E. Approval of the Break-Up Fee is a necessary and appropriate inducement to the Purchaser (defined below) to (i) make the initial offer that serves as the "floor" for further bidding, and (ii) negotiate and enter into the Asset Purchase Agreement (defined below).

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

G. On or about September \_\_, 2010, the Debtor entered into an Asset Purchase Agreement (the "Purchase Agreement") with Renwood States Lending, LLC ("Purchaser") providing for the sale of Debtor's assets as a going concern. On September \_\_, 2010, the Debtor

filed a Notice of Filing Asset Purchase Agreement with the Purchase Agreement attached with the Court. The assets to be sold include, without limitation, all of Debtor's inventory, equipment, furniture and fixtures, real property, accounts receivable, causes of action (other than avoidance actions), prepaid expenses and deposits, intellectual property rights, certain assumed contracts and leases and other assets used or useful in Debtor's business except for the Excluded Assets as defined in the Purchase Agreement (the "Assets").

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

NOW THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion is granted to the extent set forth in this Order. The Bid Procedures attached as Exhibit A are hereby approved and shall be used in connection with the proposed sale of the Assets.

2. All responses or objections to the relief requested in the Motion that have not been withdrawn, waived or settled are overruled.

3. Any **objections to the proposed sale shall be filed no later than October 13, 2010 at 5:00 p.m. Pacific time.** Objections must be in writing, be filed with this Court and served so that they are actually received no later than the Objection Deadline on the following parties: (a) States Industries, Inc., 29545 Enid Road East, PO Box 7037, Eugene, Oregon 97401, Attn: John R. Davidson; (b) Ball Janik LLP, 101 SW Main St, Suite 1100, Portland, Oregon 97204, Attn: Brad T. Summers, Esq., counsel for the Debtor; (c) the Office of the United States Trustee for the District of Oregon; 405 East Eighth Avenue, Suite 1100, Eugene, Oregon 97401, Attn: Ronald C. Becker, Esq.; (d) Perkins Coie LLP, 1120 NW Couch Street, 10th Floor, Portland, OR 97209, Attn: Jeanette L. Thomas, Esq., counsel for Renwood; and (e) counsel for any Official Committee of Unsecured Creditors appointed in this case (the "Notice Parties"). Any party filing an objection to the Motion must attend the Sale Hearing and advocate

its objection at such hearing. Any objection not filed, served, and/or advocated in accordance with this paragraph may be deemed waived and may be forever barred.

4. **The Auction for the Assets will be held on October 18, 2010, at 10:00 a.m.**, at the offices of Ball Janik LLP, 101 SW Main St, Suite 1100, Portland, Oregon 97204.

5. **The Sale Approval Hearing will be conducted on October 20, 2010, at \_\_\_ a.m.**, in **United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Oregon, at: 405 E. Eighth Avenue #2600, Courtroom No. 6, Eugene, Oregon**, at which time Debtor will present for approval by this Court the Successful Bid (if there is an Auction) or the Asset Purchase Agreement with the Purchaser (if there is not an Auction), pursuant to the provisions of Sections 105, 363(b), 363(f), 363(m), 365 and 1146(a) of the Bankruptcy Code. Debtor shall be deemed to have accepted a bid only when the bid for the Assets has been approved by the Court at the Sale Approval Hearing.

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

7. The Assumption Procedures are hereby approved asset forth below.

**Notice of Cure Procedures.** The Debtor will file a cure schedule (the "Cure Schedule") and serve such schedule and Assumption and Assignment Notice by first class mail on the parties to those executory contracts and unexpired leases that will be included in any Sale and those other executory contracts and unexpired leases that may be included in the Sale (the "Assumed Agreements") by September 27, 2010. The Cure Schedule will include the (i) Assumed Agreements; (ii) the name and contact information of the counterparty to each Assumed Agreement; and (iii) the proposed cure amount for each Assumed Agreement.

**Objections.** Any objection to the assumption and assignment of the Assumed Agreements identified on the Cure Schedule, including the cure amount set

forth on such schedule and to adequate assurance of future performance must be in writing, filed with the Bankruptcy Court and be actually received by the Objection Deadline by the Notice Parties.

**Resolution of Objections.** If no objection is received to the assumption and assignment of an Assumed Agreement, the counterparty to such Assumed Agreement will be barred from objecting thereto and shall be deemed to consent to the assumption and assignment of such Assumed Agreement. If no objection is received to the proposed cure amount with respect to an Assumed Agreement, then the cure amount set forth in the Cure Schedule shall be binding upon the nondebtor party to such Assumed Agreement for all purposes in this chapter 11 case and will constitute a final determination of the total cure amounts required to be paid in connection with the assumption and assignment thereof.

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

9. The Sale Notice, substantially in the form attached hereto as Exhibit B, is hereby approved. Within 3 business days of the entry of this Order or as soon thereafter as practicable, the Debtor shall cause the Sale Notice to be served on: (a) the U.S. Trustee, (ii) the members of and counsel to the Committee; (c) counsel to the DIP Lender; (d) any other party claiming any lien in the Assets, (e) any taxing authority having jurisdiction over the Debtor, including the Internal Revenue Service, (f) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (g) any party that has expressed a written interest in the Assets; and (h) any governmental agency that is an interested party with respect to the sale and the transactions proposed hereunder.

10. The Assumption and Assignment Notice substantially in the form attached as Exhibit C is approved.

11. Within 5 business days of the entry of this Order, the Debtor shall cause the Assumption and Assignment Notice to be sent to all counterparties to a contract or lease that may be assumed and assigned by the Debtor.

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

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

14. As provided by Bankruptcy Rules 6004(g) and 6006(d), this Order shall not be stayed for 10 days after the entry thereof and shall be effective and enforceable immediately on its entry on the docket.



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

###

BALL JANIK LLP

By: \_\_\_\_\_  
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**Justin D. Leonard, OSB No. 033736**  
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101 SW Main Street, Suite 1100  
Portland, OR 97204

Attorneys for States Industries, Inc.

cc: See attached list of interested parties

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Attorneys for States Industries, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF OREGON**

In re

**STATES INDUSTRIES, INC.,**

Debtor-in-Possession.

Case No. 10-65148-fra11

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

These Bid Procedures have been approved by order of the United States Bankruptcy Court for the District of Oregon (the "Court") in connection with the above-captioned bankruptcy case of States Industries, Inc. (the "Debtor"), which order was entered on September \_\_\_, 2010 [Docket No. \_\_\_] (the "Bid Procedures Order").

These Bid Procedures set forth the process by which Debtor is authorized to conduct the sale (the "Sale") by auction of substantially all of its assets (the "Assets," ) including, without limitation, that portion of the Assets defined as the "Acquired Assets" in the Asset Purchase Agreement dated as of September \_\_\_, 2010 (the "Purchase Agreement"), by and among the Debtor and Renwood States Lending, LLC ("Renwood"), pursuant to the terms and conditions substantially in the form of the Purchase Agreement. Please take notice that all capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

Copies of the Bid Procedures Order, Purchase Agreement or other bankruptcy pleadings related thereto are available upon written request to Justin D. Leonard, Ball Janik LLP, 101 SW Main Street, Suite 1100, Portland, Oregon 97204, Tel: (503) 228-2525, Fax: (503) 295-1058, [jleonard@balljanik.com](mailto:jleonard@balljanik.com).

## A. Assets to be Sold

These Bid Procedures set forth the terms by which prospective bidders may qualify for and participate in the Auction (defined below), thereby competing to make the highest or otherwise best offer for substantially all of the Assets.

Interested parties shall have until the Bid Deadline to conduct due diligence. Access to the estate's records may be obtained by contacting John Davidson, Chief Restructuring Officer, States Industries, Inc., 29545 Enid Road East, PO Box 7037, Eugene, Oregon 97401, Tel: (541) 688-7871; Fax: (541) 689-7490; [jdavidson.states@invernessgroupllc.com](mailto:jdavidson.states@invernessgroupllc.com). Interested parties will be required to execute a confidentiality agreement in order to obtain confidential information from Debtor.

## B. Stalking Horse Bidder

On September \_\_, 2010, the Debtor and Renwood entered into the Purchase Agreement for the acquisition of the Assets pursuant to which, among other things: (i) Renwood agreed to pay (x) sixteen million nine hundred twenty thousand three hundred seventy-three dollars (\$16,920,373) in the form of a credit bid, which amount is estimated to be the full amount outstanding under the DIP Facility and the Prepetition Debt (the "Credit Bid Amount"), plus (a) the Cure Costs, (b) assumption of the Assumed Liabilities, (c) the agreement by Renwood to equally split the estimated net proceeds from the eventual sale of the Foch Street Property with Debtor, and (d) \$100,000 cash to the estate. The Debtor has determined that the estimated aggregate amount of the foregoing is \$18,551,573. (collectively, the "Purchase Price") for the Assets, subject to the outcome of the Auction and the entry of an order of the Court ("Sale Order") approving the sale of the Assets and the transfer of the Assumed Liabilities; and (ii) the Debtor agreed, in the event that the Court approves, and the Debtor consummates, the acquisition of substantially all of the Assets by any Person or combination of Persons other than Renwood (a "Competing Transaction") to pay the bid protections approved by the Bankruptcy Court of \$465,000, which is approximately two and one-half percent (2.5%) of the Purchase Price (the "Break-Up Fee").

## C. Participation Requirements

To participate in the bidding process and to obtain access to any due diligence materials, a person (other than Renwood) interested in purchasing any of the Assets (a "Potential Bidder") must deliver (unless previously delivered) to both (i) John Davidson, States Industries, Inc., 29545 Enid Road East, PO Box 7037, Eugene, OR 97401, [jdavidson.states@invernessgroupllc.com](mailto:jdavidson.states@invernessgroupllc.com); and (ii) Brad T. Summers, Ball Janik LLP, 101 SW Main Street, Suite 1100, Portland, OR 97204, [tsummers@balljanik.com](mailto:tsummers@balljanik.com); (the "Preliminary Bid Documents"):

1. an executed confidentiality agreement (the "Confidentiality Agreement") reasonably acceptable to the Debtor;

2. preliminary written proof by the Potential Bidder of its financial capacity to close the proposed transaction, including, but not limited to, its ability to satisfy the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under section 365 of the Bankruptcy Code, which may include current unaudited or verified financial statements of, or verified financial commitments (i.e. banking or capital references) obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which must be deemed satisfactory to the Debtor.

Within 48 hours after a Potential Bidder delivers the Preliminary Bid Documents, the Debtor shall determine and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents. The Debtor may work with Potential Bidders during the 48-hour period to attempt to correct or cure any deficiencies in any Preliminary Bid Documents. Only those Potential Bidders whose Preliminary Bid Documents have been deemed acceptable by the end of such 48-hour period (as it may be extended by the Debtor) (each, an "Acceptable Bidder") may conduct a due diligence review with respect to the Debtor or submit bids to acquire substantially all of the Assets and assume all of the Assumed Liabilities. Renwood is deemed an Acceptable Bidder.

#### **D. Obtaining Due Diligence Access**

After receipt of an executed confidentiality agreement and notification of Acceptable Bidder status, the Debtor shall provide each Acceptable Bidder reasonable due diligence information, as requested, including access to an electronic data room, as soon as reasonably practicable after such request. To the extent the Debtor gives any information to any Acceptable Bidder that it had not previously provided to Renwood, the Debtor shall make such information available to Renwood. The due diligence period will end on the Bid Deadline (as defined herein). The Debtor shall be entitled to use its discretion in determining the extent to which a Potential Bidder is entitled to receive confidential competitive information.

#### **E. Bid Requirements**

Any Acceptable Bidder that is interested in being a participant in the Auction and acquiring all or substantially all of the Assets (each a "Bidder") must submit a "Bid" as provided herein prior to 5:00 p.m. Pacific time on October 13, 2010 (the "Bid Deadline"). Any such Bid must:

- (1) Identify the bidder, i.e. including any party for whom it may be bidding with or on behalf and whether the bidder is a party to any agreement limiting the bidders at the Auction and any relation of such parties to the Debtor.

- (2) Contain a signed definitive asset purchase agreement in substantially the form of the Purchase Agreement (marked to show changes from the Purchase Agreement) with, at a minimum, the following requirements:
  - (i) Designating the Assets or other assets of Debtor to be acquired and having similar terms and conditions as the Purchase Agreement.
  - (ii) Provide for a purchase price with respect to the Assets in the sum of at least \$19,516,573, which is comprised of the Purchase Price, plus the Break-Up Fee and an initial overbid of \$500,000;
  - (iii) Provide that the Bidder will forfeit the Sale Deposit (defined below), as liquidated damages if such purchaser defaults under such purchase agreement;
  - (iv) The bid shall not be subject to any (a) financing contingency, (b) contingency relating to the completion of unperformed due diligence, (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or consents, or (d) any conditions precedent to the Bidder's obligation to purchase the Assets other than those included in the Purchase Agreement; and
  - (v) No Bid shall provide for the payment to the Bidder of any breakup fee, topping fee, expense reimbursement or other similar arrangement.
- (3) Include a deposit (the "Sale Deposit") in the form of either a wire transfer to an account specified by Debtor or a certified check in the amount of ten percent (10%) of the aggregate purchase price payable to the order of Debtor. The Sale Deposit shall be held in escrow in a segregated account of Debtor pending the closing of the asset sale. The full amount shall be forfeited as liquidated damages if such Bidder is the Successful Purchaser (defined below) and fails to close the transaction because of a breach or failure to perform on the part of the Successful Purchaser.
- (4) To the extent not previously provided to Debtor, be accompanied by evidence satisfactory to Debtor in its commercially reasonable discretion that Bidder: is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under its proposed asset purchase agreement in the event that it submits the Successful Bid (as hereinafter defined) at the Auction, including its ability to provide adequate assurances under the Bankruptcy Code.
- (5) Be submitted to counsel for the Debtor so as to be received not later than the Bid Deadline. Counsel shall, as soon as practicable, send a copy of each Bid received, if any, to the following parties: (i) Renwood, (ii) counsel to Renwood, (iii) counsel to any official committee that may be appointed; and (iv) either counsel

to each Bidder submitting a bid, or if a Bidder does not have counsel, to any other Bidder.

#### **F. Credit Bidding**

Renwood shall have the right to make a credit bid for all of the collateral securing its claims to the full extent permitted by section 363(k) of the Bankruptcy Code. Renwood shall be entitled to bid amounts in excess of the Outstanding Debt. At the Sale Hearing (defined below), to the extent that Renwood is the Successful Purchaser, it must produce evidence at the Sale Hearing of its ability to provide adequate assurances under the Bankruptcy Code.

#### **G. Evaluation of Qualified Bids**

Prior to the Auction, the Debtor shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtor's judgment, the highest or otherwise best bid (the "Starting Bid"). No later than 5:00 p.m. Pacific time on October 15, 2010 the Debtor shall notify Renwood and all parties who have submitted Qualified Bids as to whether there will be an Auction, and if so, which Qualified Bid is the Starting Bid.

#### **H. No Qualified Bids**

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

#### **I. Auction**

In the event that Debtor determines, in its reasonable discretion, that one or more Bids have been received that meet the requirements set forth above has been received from a Bidder (a "Qualified Bidder"), then Debtor will conduct the Auction on October 18, 2010 at 10:00 a.m. (the "Auction") with respect to the sale of the Assets at the offices of Ball Janik LLP, 101 SW Main Street, Suite 1100, Portland, OR 97204 or at such other location as may be designated by Debtor. All bids must be for cash. Debtor shall determine the highest and best bid in its sole discretion.

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

- (1) The Qualified Bidders, including Renwood, shall appear in person or through duly-authorized representatives at the Auction.
- (2) Only such authorized representatives of each of the Qualified Bidders, Renwood, the Debtor, any official committee that has been appointed, and their respective advisors shall be permitted to attend the Auction.

- (3) Only Qualified Bidders and their duly authorized representative, including Renwood, shall be entitled to bid at the Auction.
- (4) Bidding at the Auction shall begin at the Starting Bid.
- (5) Subsequent bids at the Auction, including any bids by Renwood, shall be made in minimum increments of \$100,000.00.
- (6) Renwood, to the extent it participates in the Auction, shall receive a credit equal to the Credit Bid Amount and the Break-Up Fee in each round of bidding when bidding at the Auction.
- (7) Each Qualified Bidder will be informed of the terms of the previous bids.
- (8) The bidding will be transcribed to ensure an accurate recording of the bidding at the Auction.
- (9) Each Qualified Bidder will be required to confirm on the record of the Auction that it has not colluded with any other person with respect to the bidding or the Sale.
- (10) Absent irregularities in the conduct of the Auction, the Court will not consider bids made after the Auction is closed.
- (11) The Auction shall be governed by such other procedures as may be announced by the Debtor, after consultation with its advisors, from time to time on the record at the Auction; provided, that any such other procedures shall not be inconsistent with the Bid Procedures Order or any other order in Debtor's chapter 11 case.

#### **J. Acceptance of the Successful Bid**

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

The Debtor will present the results of the Auction to the Court at the Sale Hearing, at which certain findings will be sought from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted, and the Successful Purchaser was selected, in accordance with these Bid Procedures, (ii) the Auction was fair in substance and procedure, (iii) the Successful Bid was a Qualified Bid, and (iv) consummation of the Sale contemplated by the Successful Bid will provide the highest or otherwise best value for substantially all of the Assets and is in the best interests of the Debtor.

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

#### **K. Bankruptcy Court Approval of Sale**

A hearing to consider approval of the Sale of substantially all of the Assets and the transfer of all of the Assumed Liabilities to the Successful Purchaser (or to approve the Purchase Agreement if no Auction is held) (the "Sale Hearing") and seek entry of a Sale Order is presently scheduled to take place on October \_\_ 2010 at \_\_.m. (prevailing Pacific Time), or as soon thereafter as counsel may be heard, before the Honorable Judge Frank R. Alley, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Oregon, at: 405 E. Eighth Avenue, Courtroom No. 6, Eugene, Oregon. Debtor and the Successful Purchaser, once the Successful Purchaser has been determined, shall each use their commercially reasonable efforts, and shall cooperate, assist and consult with each other, to secure the entry of the Sale Order, which is reasonably acceptable to Debtor and the Successful Purchaser, of the Court in the Bankruptcy Case (i) approving the Purchase Agreement, (ii) authorizing the sale of the Assets pursuant to section 363 of the Bankruptcy Code, free and clear of all liens, claims, interests and encumbrances, and (iii) authorizing the assumption and/or assignment of the executory contracts pursuant to section 365 of the Bankruptcy Code.

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

#### **L. Designation of Back-Up Bidder**

Upon the conclusion of the Auction and the selection of the Successful Purchaser, the Debtor shall select the next highest or otherwise best Qualified Bid (the "Back-Up Bidder"). The bid of the Back-Up Bidder shall remain open until the first business day following the closing of a sale of the Assets to the Successful Purchaser. If for any reason the Successful Purchaser is unable or unwilling to consummate an approved sale because of breach or failure to perform on the part of the Successful Purchaser, (a) it will forfeit its Sale Deposit to Debtor as liquidated damages in lieu of any other damages with respect to such breach, and (b) the Back-Up Bidder shall be deemed to be the Successful Purchaser, the purchase price shall be the amount of such Back-Up Bidder's last bid, and Debtor shall be authorized to effectuate the sale to the Back-Up Bidder without further order of the Bankruptcy Court. If, for any reason, the Back-Up Bidder fails to perform, Renwood agrees that if Debtor tenders full performance of all of its obligations under this Agreement to Renwood on or before November 3, 2010, and this Agreement is not otherwise materially breached by Debtor, Renwood shall purchase the Purchased Assets under the terms of the Purchas Agreement.



**M. Break-Up Fee**

At the closing of the sale to the Successful Purchaser, if the Successful Purchaser is not Renwood, the Debtor shall pay to Renwood, by wire transfer in immediately available funds to an account designated by Renwood, all amounts due to Renwood, including the Break-Up Fee in accordance with the applicable provisions of the Purchase Agreement.

**N. Return of Sale Deposit**

The Sale Deposit of the Successful Purchaser shall, upon consummation of the purchase of substantially all of the Assets, be credited to the purchase price paid for the Assets. If the Successful Purchaser fails to consummate the purchase of substantially all of the Assets, then the Sale Deposit shall be forfeited to, and be retained irrevocably by, the Debtor to the extent provided in the applicable asset purchase agreement.

The Sale Deposit of any unsuccessful Qualified Bidders will be returned within fifteen (15) days after consummation of the Sale.

**O. Reservation of Rights to Modify Bid Procedures**

The Debtor reserves the right, following consultation with its advisors to modify these Bid Procedures in any manner that is not inconsistent with the Purchase Agreement or the Bid Procedures Order and that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional customary terms and conditions on the Sale of substantially all of the Assets and the transfer of all of the Assumed Liabilities, including, without limitation, modifying the requirements for a Qualified Bid, extending the deadlines set forth in these Bid Procedures, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Debtor to (A) accept any Qualified Bid that (x) does not require a bid deposit of at least the amount of the Sale Deposit be placed in a protected, segregated account, or (y) does not equal or exceed the Overbid Amount, or (B) impose any terms and conditions upon Renwood that are contradictory to or in breach of the terms of the Purchase Agreement or the DIP Credit Agreement other than any such terms or conditions set forth in these Bid Procedures or the Bid Procedures Order.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

**STATES INDUSTRIES, INC.,**

Debtor-in-Possession.

Case No. 10-65148-fra11

**NOTICE OF (1) AUCTION AND BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES; (2) MOTION TO APPROVE SALE TO RENWOOD STATES LENDING, LLC OR HIGHER AND BETTER BIDDER AT AUCTION; AND (3) HEARING RE SALE APPROVAL**

PLEASE TAKE NOTICE that on September 15, 2010, the Bankruptcy Court in the above case entered an order authorizing an auction to sell substantially all of the assets of States Industries, Inc. ("States" or the "Debtor") free and clear of liens, claims and encumbrances. The auction is scheduled for October 18, 2010 at 10:00 a.m. Pacific time. The Court also established bidding procedures in connection with the sale and the auction.

Additional information regarding the auction and bidding procedures is available on the Debtor's website at [www.statesind.com/xxxxx](http://www.statesind.com/xxxxx) or may be obtained by contacting Justin D. Leonard at (503) 228-2525.

PLEASE TAKE FURTHER NOTICE that competing bidders are required to submit competing bids and otherwise qualify as bidders in accordance with the approved bidding procedures prior to 5:00 p.m. Pacific time on October 13, 2010.

PLEASE TAKE FURTHER NOTICE that the Debtor has moved for approval of a sale free and clear to Renwood States Lending, LLC ("Renwood") if there are no higher and better offers from qualified bidders at the auction. Renwood will purchase substantially all of the assets used in the Debtor's business. The transferred assets include assigned contracts, intellectual property and physical assets. The transferred assets will also include real property owned by the Debtor located at 29545 East Enid Road, Eugene, Oregon, as well as the Debtor's interest in its wholly-owned subsidiary, SI Properties, Inc., which owns real property located at 95 Foch Street, Eugene, Oregon (the "Foch Street Property"). Renwood will assume accrued compensation and related employee benefit obligations, certain leases for equipment, and other executory contracts (the "Operating Liabilities").

The proposed purchase price is the sum of (a) a credit bid which is estimated to be \$16,920,373, representing the full amount outstanding under the senior indebtedness held by

**Page 1 - NOTICE OF (1) AUCTION AND BIDDING PROCEDURES; (2) MOTION TO APPROVE SALE FREE AND CLEAR; AND (3) HEARING RE SALE APPROVAL**

Renwood, which indebtedness is secured by liens against substantially all of the Debtor's assets (the "Senior Debt"), and the full amount that will be outstanding at closing under the debtor in possession financing that Renwood has committed to the Debtor (the "DIP Financing"), plus (b) the assumption of the Operating Liabilities and the payment of the amounts necessary to cure any defaults under leases and contracts to be assumed and assigned to Renwood, (c) the agreement by Renwood to equally split the estimated net proceeds from the eventual sale of the Foch Street Property with the Debtor, and (d) \$100,000 cash to the estate. The Debtor has determined that the purchase price has an aggregate estimated value of \$18,551,573. The sale will be free and clear of all liens, claims and encumbrances of the Senior Debt and the DIP Financing, but it will be subject to certain other liens.

A complete property description may be obtained by contacting John Davidson, States' Chief Restructuring Officer, at States Industries, Inc., 29545 East Enid Road, P.O. Box 7037, Eugene, Oregon 97401, Tel: (541) 688-7871, Fax: (541) 689-7490, [jdavidson.states@invernessgrouppllc.com](mailto:jdavidson.states@invernessgrouppllc.com).

The estimated value of the Foch Street Property, based on a February 2010 appraisal, is \$1.8 million. However, the appraisal of the Foch Street Property assumed no environmental issues, and it is unknown if any environmental issues exist. Based on the appraised value of the Foch Street Property, current estimates are that the sale will result in approximately \$950,000 in proceeds for unsecured creditors, consisting of the \$100,000 in cash at closing, plus 50% of the estimated net proceeds from the eventual sale of the Foch Street Property.

According to States' bankruptcy schedules, the total amount of unsecured claims against States, not including any deficiency claim of Renwood, is approximately \$12 million.

States believes that the sale is in the best interests of the estate for the following reasons: (a) the sale will preserve States' business enterprise as a going concern; (b) the sale will result in continued employment for most of States' approximately 230 employees; (c) the sale will preserve business relationships and sales for vendors, customers and other parties who are presently doing business with States; (d) the sale will result in the assumption and assignment of certain of States' executory contracts and unexpired leases; and (e) the sale will result in a greater overall distribution to creditors in general than a piecemeal liquidation.

States is proposing the sale in advance of approval of a plan of reorganization because Renwood has indicated that it is unwilling to wait to close the sale until such time as a plan of reorganization has been confirmed. In addition, States does not presently have access to debtor in possession financing for a sufficient period of time to confirm a plan. States does not believe that it is feasible for States to wait until a plan has been confirmed before closing the sale of its assets.

**The proposed order approving the sale provides that Renwood shall have no liability or responsibility for any liability or other obligation of States arising under or related to the purchased assets other than as expressly set forth in the Purchase Agreement and that the**

**transfer of the assets from States to Renwood will not subject Renwood or its affiliates, successors or assigns or their respective properties to any liability for claims against States or the assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions.**

IF YOU WISH TO OBJECT, you must attend the hearing described below and, on or before October 13, 2010, at 5:00 p.m. Pacific time you must file a written response stating the specific facts upon which the objection is based, with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, #2600, 405 East Eighth Avenue, Eugene, Oregon 97401, and serve a copy of the objection such that it is actually received by the objection deadline, upon (a) Ball Janik LLP, Attn: Brad T. Summers, 101 SW Main Street, Suite 1100, Portland, Oregon 97204, (b) Office of the United States Trustee for the District of Oregon, Attn: Ronald C. Becker, 405 East Eighth Avenue, Suite 1100, Eugene, Oregon 97401, (c) Perkins Coie LLP, Attn: Steven C. Hedberg, 1120 NW Couch Street, 10<sup>th</sup> Floor, Portland, Oregon 97209, and (d) any counsel that might be retained by an Official Committee of Unsecured Creditors in this case.

PLEASE TAKE FURTHER NOTICE that the hearing on the proposed sale to Renwood or any higher and better bidder will be held on \_\_\_\_\_, 2010 at \_\_\_\_\_.m. at the U.S. Bankruptcy Court for the District of Oregon, Courtroom 6, 405 East Eighth Avenue, Eugene, Oregon.

DATED \_\_\_\_\_, 2010

BALL JANIK LLP

By: Brad T. Summers, OSB No. 911116  
101 SW Main Street, Suite 1100  
Portland, OR 97204

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

**STATES INDUSTRIES, INC.,**

Debtor-in-Possession.

Case No. 10-65148-fra11

**NOTICE OF ORDER ESTABLISHING  
DEADLINE BY WHICH PARTIES TO  
ASSUMED CONTRACTS AND LEASES  
MAY ASSERT CLAIMS FOR  
PAYMENT OF CURE AMOUNTS  
AND/OR OBJECTIONS TO  
PROPOSED ASSUMPTION OR  
ASSIGNMENT**

PLEASE TAKE NOTICE that on September 15, 2010, the Bankruptcy Court in the above case entered an order setting October 13, 2010 at 5:00 p.m. Pacific time (the "Deadline") as the deadline for any party to a contract or lease (the "Assumed Agreements") that States Industries, Inc. ("States" or "Debtor") proposes to assume and assign to Renwood States Lending, LLC ("Renwood"), to object to the amount that the Debtor asserts must be paid to cure any existing defaults under the Assumed Agreements (the "Cure Amounts"). The Cure Amounts proposed by the Debtor are set forth in the attached **Schedule A**.

Any party to an Assumed Agreement who seeks to assert a claim for a different Cure Amount in connection with the Debtor's proposed assumption and assignment, must, on or before the Deadline, file with the Court and serve upon the parties identified below a pleading indicating any disagreement with the Cure Amount scheduled by the Debtor.

PLEASE TAKE FURTHER NOTICE that any party to an Assumed Agreement who objects to the assumption of its Assumed Agreement or to the assignment of its Assumed Agreement to Renwood, must, on or before the Deadline, file with the Court and serve on the parties identified below a written response stating the specific facts upon which the objection is based.

If you wish to object, you must attend the hearing described below and, on or before the Deadline, you must file your objection with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, #2600, 405 East Eighth Avenue, Eugene, Oregon 97401, and serve a copy of your objection, such that it is actually received by the Deadline, upon (a) States Industries, Inc. Attn: John Davidson, 29454 East Enid Road, P.O. Box 7037, Eugene, Oregon 97401, (b) Ball Janik LLP, Attn: Brad T. Summers, 101 SW Main Street, Suite 1100, Portland, Oregon 97204, (c) Office of the United States Trustee for the District of Oregon, Attn: Ronald C. Becker, 405 East Eighth Avenue, Suite 1100, Eugene, Oregon 97401, (d) Perkins Coie LLP, Attn: Steven C. Hedberg, 1120 NW Couch Street, 10<sup>th</sup> Floor, Portland, Oregon 97209, and (e) any counsel that might be retained by an Official Committee of Unsecured Creditors in this case.

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

PLEASE TAKE FURTHER NOTICE that the hearing on the Cure Amounts and the Debtor's proposed assumption and assignment of the Assumed Agreements will be held on \_\_\_\_\_, 2010 at \_\_\_\_\_.m. at the U.S. Bankruptcy Court for the District of Oregon, Courtroom 6, 405 East Eighth Avenue, Eugene, Oregon.

Additional information regarding the proposed assumption and assignment of the Assumed Agreements and the related sale of the Debtor's assets to Renwood is available on the Debtor's website at [www.statesind.com/xxxxx] or may be obtained by contacting Justin D. Leonard at (503) 228-2525.

DATED \_\_\_\_\_, 2010

BALL JANIK LLP

By: Brad T. Summers, OSB No. 911116  
101 SW Main Street, Suite 1100  
Portland, OR 97204

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

In re

**STATES INDUSTRIES, INC.,**

Debtor-in-Possession.

Case No. 10-65148-fra11

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

This matter coming before this Court on the Motion for Order Approving (A) Sale of Assets Free and Clear of Liens, Claims and Encumbrances, (B) Assumption and Assignment of Executory Contracts, and (C) Bid Procedures (the "Motion") filed by States Industries, Inc. (the "Debtor"). Pursuant to that certain Order (A) Approving Bid Procedures; (B) Scheduling an Auction and Hearing to Consider Sale of Debtor's Assets; and (C) Establishing Objection

- 1- ORDER (I) APPROVING PURCHASE AGREEMENT, (II) AUTHORIZING SALE FREE AND CLEAR, (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CONTRACTS, (IV) ESTABLISHING CURE AMOUNTS, AND (V) APPROVING RELATED RELIEF

Deadlines (the "Bid Procedures Order"), entered September \_\_, 2010, this Court established Bid Procedures regarding the sale of Debtor's Assets, scheduled the Auction, set a deadline for the filing of objections regarding the Motion, and scheduled the Sale Hearing. The Court having held a hearing on the Motion on October \_\_, 2010, the submissions and arguments of counsel and the files and records herein, and being now fully advised of the premises,

THE COURT FINDS as follows:

A. Debtor filed its petition under Chapter 11 of the Bankruptcy Code on August 24, 2010. On \_\_\_\_\_, 2010, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in this Chapter 11 case.

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

C. The Court entered the Order (A) Approving Bid Procedures; (B) Scheduling an Auction and Hearing to Consider Sale of Debtor's Assets; and (C) Establishing Objection Deadline (the "Bid Procedures Order") on September \_\_, 2010 [Doc. No. \_\_].

D. As evidenced by the affidavits of service filed with this Court, and based on representations of counsel at the Sale Hearing (a) due and adequate notice of the filing of the Motion and the hearing thereon in compliance with the various applicable requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the procedural due process requirements of the United States Constitution was given by service of the Motion, that certain Notice of Filing Asset Purchase Agreement (the "Purchase Agreement") by and between States Industries, Inc., as Seller and Renwood States Lending, LLC as Purchaser (the "Notice"), filed September \_\_, 2010, and the Bid Procedures Order, and (b) such notice was good, sufficient and appropriate under the circumstances; and (c) no other or further notice of the Motion, the Sale Approval Hearing, the sale or the transactions contemplated thereby (including, without



limitation, the assumption and assignments of the Contracts (defined below)), is or shall be required.

E. A reasonable opportunity to bid, to object and to be heard regarding the relief requested in the Motion has been afforded to all creditors, parties in interest and other entities, including, but not limited to (a) all creditors, (b) all parties who claim interests in or liens upon the Assets, (c) all parties to the Assumed Contracts, (d) the Office of the United States Trustee, and (e) counsel to the Committee.

F. As detailed in the Motion, Debtor, as seller, and Renwood States Lending, LLC, as purchaser ("Purchaser"), entered into the Purchase Agreement, pursuant to which Purchaser agreed to purchase the Assets of Debtor, plus the assumption of certain liabilities related to or arising out of the Assets, defined in the Purchase Agreement as the "Assumed Liabilities." The Assets include certain executory contracts and unexpired leases of Debtor that are listed on Schedule 2.1(b) to the Purchase Agreement (the "Contracts") and set forth in the cure schedule filed with the Bankruptcy Court on September \_\_, 2010 (the "Cure Schedule"). The Contracts are to be assumed and assigned to Purchaser as part of the transaction. The Assumed Liabilities include all obligations pursuant to the Contracts, including the Cure Amounts related thereto. Excluded Assets, as defined in the Purchase Agreement, are not being sold, conveyed, or otherwise transferred to Purchaser. Causes of action of Debtor's estate under federal and state avoidable transfer law are among the Excluded Assets, as Debtor is retaining all Avoidance Actions as defined in the Purchase Agreement. In order to maximize the value of Debtor's estate for the benefit of creditors, Debtor required that the sale to Purchaser, described in the Purchase Agreement remain subject to higher or otherwise better offers.

G. In connection with the sale of the Assets, Debtor requested in the Motion that the Court establish the Bid Procedures in order to fairly and expeditiously maximize the return to the estate. This Court's Bid Procedures Order established Bid Procedures for the Assets, including the Auction which was held on October 18, 2010. The solicitation by Debtor with respect to the

Auction for the Assets, was adequate and reasonable to obtain the highest and best price therefor. The Motion and the Bid Procedures Order provided timely and adequate disclosure to all parties in interest required to receive notice thereof (including parties to the Contracts) regarding the Auction and the proposed assumption and assignment of the Contracts and the procedures in connection therewith.

H. At the Sale Approval Hearing, Debtor sought Court approval of the Purchase Agreement and the assumption and assignment of the Contracts.

I. In order to effectuate the sale of the Assets to Purchaser, Debtor must transfer to Purchaser its interest in the Contracts that are listed on the Cure Schedule and Schedule 2.1(b) to the Purchase Agreement and assign them to Purchaser. Accordingly, Debtor sought authority in the Motion to assume the Contracts and assign them to Purchaser.

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

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

L. Approval of the Purchase Agreement and consummation of the sale of the Assets at this time are in the best interests of Debtor, its creditors, and its estate. Debtor has established that there are sufficient and exigent business justifications to authorize the sale of the Assets prior to confirmation of a Chapter 11 plan in that, inter alia, an expeditious sale of the Assets pursuant to the procedures employed by Debtor has resulted in the highest and best price for the Assets, and absent a prompt sale, the value of the Assets will likely decline because of market conditions. Furthermore, claims against Debtor's estate will be minimized as a result of prompt consummation of a sale of the Assets and the assumption by Purchaser of the Assumed Liabilities pursuant to the Purchase Agreement and the assumption and assignment of the Contracts to Purchaser effective on Closing. The sale of the Assets and assignment of unexpired leases and executory contracts does not constitute a sub rosa plan of reorganization under Pension Benefit Guaranty Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.), 700 F.2d 935 (5th Cir. 1983) or otherwise under any applicable law. The disposition of the Assets approved hereby will not elevate the interests of one group of creditors over other creditors. Nothing herein mandates any particular vote by any particular creditor or group of creditors on any plan of liquidation.

M. The sale of the Assets was conducted in a fair and reasonable manner. The terms of the Purchase Agreement for the Assets are fair and reasonable and the transactions contemplated thereunder reflect Debtor's prudent business judgment under all of the relevant circumstances. The proposed transactions contemplated in the Purchase Agreement are in the best interests of Debtor, its creditors and its estate. Debtor has good title in and to the Assets.

N. The transfer of the Assets to Purchaser pursuant to the Purchase Agreement represents an arm's length transaction between Debtor and Purchaser for a fair and reasonable

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

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

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

Q. The Debtor may sell the Assets free and clear of all liens, encumbrances, and interests that encumber or relate to or purport to encumber or relate to the Assets (except as otherwise provided in the Purchase Agreement as to Permitted Liens and Assumed Liabilities) (the foregoing being collectively referred to hereinafter as the "Liens") because either each entity with a security interest in any Assets to be transferred on the Closing Date, including the Assumed Contracts: (a) has consented to the Sale (including the assumption and assignment of the Assumed Contracts) or is deemed to have consented to the sale; (b) could be compelled in a

legal or equitable proceeding to accept money satisfaction of such Interest; or (c) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens who have been properly noticed and who did not object to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

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

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

1. The Motion is **GRANTED**.
2. All objections to the Motion that have not been withdrawn, waived, settled, or expressly reserved pursuant to the terms of this Order are overruled.
3. The Purchase Agreement between Debtor and Purchaser and all transactions contemplated thereby are approved. Pursuant to section 363(b) of the Bankruptcy Code, Debtor is authorized and empowered to sell all of the estate's and Debtor's right, title and interest in and to the Assets to Purchaser in accordance with the terms and conditions of the Purchase

Agreement, the terms and provisions of which are hereby approved as if fully set forth and incorporated herein. Pursuant to section 363 of the Bankruptcy Code, the sale shall be free and clear of any and all Liens, with any and all such Liens, attaching to the proceeds of the sale to the same extent, validity and in the same order of priority as in the underlying Assets. The Liens, if any, asserted by any person or entity in or to any of the Purchase Price cash proceeds shall be in the same priority and subject to the same infirmities and defenses as existed with respect to the Liens in the property prior to the sale of the Assets.

4. Entry of this Order constitutes an assignment of all Debtor's interest in and to the Assets, including all contracts, agreements, intellectual property and rights or interests in any other licenses, permits or agreements.

5. Debtor is authorized to perform and consummate the transactions contemplated by the Purchase Agreement, and to execute and deliver all documents and instruments thereby required, and to transfer to Purchaser all right, title, and interest of Debtor in and to the Assets.

6. All Liens asserted against the Assets shall be deemed released, terminated, and satisfied, and this Order is and shall be binding on and govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. All such Liens of record as of the date of this Order shall be forthwith removed and stricken as against the Assets. All such Liens shall attach to the proceeds of the Assets in the same extent, validity and order of priority as in the underlying Assets. All such persons and entities described above are authorized to strike all such recorded Liens against the Assets from their records, official and otherwise.

7. Notwithstanding anything to the contrary contained herein, in the event the

8- ORDER (I) APPROVING PURCHASE AGREEMENT, (II) AUTHORIZING SALE FREE AND CLEAR, (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CONTRACTS, (IV) ESTABLISHING CURE AMOUNTS, AND (V) APPROVING RELATED RELIEF

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closing of the sale of the Assets does not occur, the Liens shall not be deemed released, terminated, and satisfied.

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

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

10. Debtor is authorized to assume the Contracts listed on Schedule 2.1(b) to the Purchase Agreement and assign said Contracts to Purchaser, in accordance with section 365 of the Bankruptcy Code. The amounts required to cure defaults, if any, in order to assume the Contracts, as required by section 365(b) of the Bankruptcy Code, are as listed in the "Cure Amount" column of Cure Schedule, and payment of the Cure Amounts will cure said defaults, and Debtor and the non-debtor parties under the Contracts will be bound by said Cure Amounts, unless the parties otherwise determine or agree that the Cure Amounts are overstated. Pursuant to the Purchase Agreement, Purchaser shall pay all Cure Amounts to the applicable non-debtor party to the Contract at the time of the Closing of the Purchase Agreement.

11. In the event the Closing of the Assets does not occur, Debtor shall not have any obligation to assume any Contract or pay any Cure Amounts and the Contracts shall not be considered to have been assumed by Debtor pursuant to section 365 of the Bankruptcy Code.

12. With respect to the Contracts: (a) the Contracts shall be transferred and assigned to, and following the closing shall remain in full force and effect for the benefit of, Purchaser in accordance with their respective terms, notwithstanding any provision in any such Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer; (b) Debtor may assign each Contract in accordance with sections 363 and 365 of the Bankruptcy Code and any provisions in

any Contract that prohibit or condition the assignment of such Contract or allow the party to such Contract to terminate, recapture, impose any penalty, condition, renewal, or extension, or modify any term or condition on the assignment of such Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect; and (c) on Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title and interest of each Contract.

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

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

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

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

17. The Court has jurisdiction under 28 U.S.C. §§ 157 and 1334 and sections 105, 363, 365, and 506 of the Bankruptcy Code to determine the matters addressed herein as core



proceedings under 28 U.S.C. § 157(b). This Court shall retain jurisdiction over any issues relating to the Purchase Agreement and to enforce this Order pursuant to section 105 of the Bankruptcy Code.

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

19. Nothing contained in any order of any type or kind entered in this Chapter 11 case or any related proceeding subsequent to entry of this Order, nor in any Chapter 11 plan confirmed in this Chapter 11 case, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of an order which may be entered confirming any plan of liquidation for Debtor or the conversion of Debtor's case from Chapter 11 to a case under Chapter 7 of the Bankruptcy Code.

20. As to all persons and entities who received actual notice of the Motion, Purchaser shall have no liability or responsibility for any liability or other obligation of Debtor arising under or related to the Assets other than as expressly set forth in the Purchase Agreement. Without limiting the effect or scope of the foregoing, the transfer of the Assets from Debtor to Purchaser does not and will not subject Purchaser or its affiliates, successors or assigns or their respective properties (including the Assets) to any liability for claims (as that term is defined in section 101(5) of the Bankruptcy Code) against Debtor or the Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions.

21. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its

entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent. In the event of any direct conflict between the terms of the Purchase Agreement and this Order, this Order shall be controlling.

22. This is a final order and is enforceable on entry by the Clerk of the Court. To the extent necessary under Federal Rules of Bankruptcy Procedure 5003, 9021, and 9002, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein, and the stay of Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) is hereby modified and shall not apply to the sale of the Assets and the assumption and assignment of the Contracts in accordance with the Purchase Agreement, and Debtor is authorized to take all actions and enter into all transactions authorized by this Order immediately. Time is of the essence in closing the transactions referenced herein and Debtor and Purchaser intends to close the sale as soon as practicable.

23. This Order and the Purchase Agreement shall be binding in all respects on all creditors and interest holders (whether known or unknown) of Debtor, all non-debtor parties to the Contracts, all successors and assigns of Purchaser, Debtor, and any trustee appointed in Debtor's Chapter 11 case or on a conversion to Chapter 7 under the Bankruptcy Code, and shall not be subject to rejection under section 365 of the Bankruptcy Code.

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