

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

In re:

ULTIMATE ESCAPES HOLDINGS,
LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 10- 12915 ()

(Jointly Administered)

**DEBTORS' MOTION, PURSUANT TO SECTIONS 105(a), 363(b) AND 365 OF THE
BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9014, AND
LOCAL RULES 2002-1 AND 6004-1, REQUESTING ENTRY OF ORDER (A)
APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS OUTSIDE THE
ORDINARY COURSE OF BUSINESS; (B) AUTHORIZING THE SALE OF ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES; AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), by and through their undersigned counsel, hereby file this motion (the “**Motion**”) requesting entry of an order (A) approving that certain Asset Purchase Agreement (the “**Purchase Agreement**”) entered into by and between the Debtors and CapitalSource Finance LLC, as administrative, payment and collateral agent (“**CapitalSource Finance**”), CapitalSource Bahamas LLC, as a collateral agent (“**CapitalSource Bahamas**” and together with CapitalSource Finance, collectively, the “**Agents**”), for the benefit of CapitalSource Bank, as lender (“**CapitalSource**,” together with Agents or any of their respective designees, collectively, the “**Stalking Horse Purchaser**”), with respect to the proposed the sale (the “**Sale**”) of substantially all of the Debtors’ assets to be acquired in accordance with the Sale (the “**Acquired Assets**”) outside the ordinary course of business and free and clear of all liens, claims, encumbrances and other

¹ A list of the Debtors in these chapter cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as Schedule “1”.

“interests” within the meaning of 11 U.S.C. § 363(f) (collectively, the “**Encumbrances**”) to the Stalking Horse Purchaser or to any other Successful Bidder(s) (the “**Alternative Purchaser**”), in substantially the form annexed hereto as Exhibit A; (B) approving the Sale of substantially all of the Assets to the Stalking Horse Purchaser outside the ordinary course of business and free and clear of all Encumbrances, and subject to higher or better bids; and (C) granting related relief. In support of this Motion, the Debtors respectfully represent:

Status of the Case and Jurisdiction

1. On September 20, 2010 (the “**Petition Date**”), the Debtors commenced these cases (the “**Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and a creditors’ committee has not yet been appointed in these Cases.

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), and 365 of title 11 of the United States Code §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local 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 Delaware (the “**Local Rules**”).

Background

6. The Debtors are one of the largest operators in the high-end luxury destination club industry. The Debtors provide club members and their families with flexible access to a portfolio of multi-million dollar club residences, exclusive member services and resort amenities. The Debtors operated pre-petition 119 luxury club residences in various global destinations, including throughout the United States, Mexico, Central America, the Caribbean and Europe. The Debtors also provide their members with preferred access to four and five-star hotel properties and resorts. The Debtors derive their revenue from the sale of one-time club membership fees, annual dues and additional use fees or other charges related to upgrades in exchange for access to their portfolio of properties throughout the world. Currently, the Debtors serve approximately 1,200 club members.

7. Prior to the Petition Date, certain loans and other financial accommodations were made available to the Debtors pursuant to that certain Consolidated Amended and Restated Loan and Security Agreement dated as of September 15, 2009 (as amended from time to time, the “**Pre-Petition Loan Agreement**”) among the Debtors (each in their capacity as a Borrower or Guarantor, as applicable) Agents and CapitalSource Bank, as the lender (in such capacity, the “**Original Lender**”) and to certain documents and/or instruments entered into in connection therewith to which Agents, Original Lender, the Debtors and affiliates of Debtors, are parties including, without limitation, the following: (i) Amended and Restated Payment and Performance Guaranty dated as of September 15, 2009; (ii) Guarantor Security Agreement dated as of September 15, 2009; (iii) Consolidated Amended and Restated Collateral Assignment of

Property-Related Contracts dated as of September 15, 2009; (iv) Amended and Restated Trademark Security Agreement dated as of September 15, 2009; (v) each of the Assignments of Ownership Interests dated as of September 15, 2009 and listed on Schedule 22 to the Pre-Petition Loan Agreement; (vi) Control Agreement Concerning Deposit Accounts dated as of October 19, 2009; (vii) each mortgage, deed of trust or other security agreement executed by a Debtor in favor of the applicable Agent for the benefit of the Original Lender in connection with the Pre-Petition Loan Agreement; (viii) Subordination and Intercreditor Agreement dated as of October 29, 2009; (ix) Omnibus Reaffirmation of Loan Documents dated September 15, 2009; (x) Collateral Assignment of Contribution Agreement dated September 15, 2009; and (xi) Consolidated, Amended and Restated Hazardous Materials Indemnity Agreement dated as of September 15, 2009, and all other related documents (each as amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, and all collateral and ancillary documents executed in connection therewith, collectively the “**Pre-Petition Loan Documents**”). Such documents have been filed with the Court and are available upon request. The Debtors initially defaulted under the Pre-Petition Loan Documents on June 5, 2010, and have been in default thereunder at all times since such date. As a result of the Debtors’ defaults, interest is accruing at the Default Rate as of June 5, 2010 in accordance with Section 2.2(f)(iii) of the Pre-Petition Loan Agreement. The total amount of Default Rate interest due and owing as of the Petition Date is \$1,085,022.27.

8. Pursuant to the Pre-Petition Loan Documents, all obligations of the Debtors to Original Lender of any kind or nature under the Pre-Petition Loan Documents (the “**Pre-Petition Obligations**”) are secured by a first priority security interest held by Agents, as applicable, for the benefit of themselves as agents and the Original Lender (the “**Pre-Petition Liens**”) in

substantially all of the Debtors' assets including, without limitation, and by way of general description only, equipment, inventory, goods, fixtures, general liabilities, accounts, accounts receivable, real property, deposit accounts (including without limitation bank accounts and all funds on deposit therein), the Debtors' rights in escrow accounts and to receive proceeds from previous sale transactions, instruments, chattel paper, general intangibles, tax refunds, contracts, letter of credit rights, intellectual property, commercial tort claims, if any, stock, documents of title, tangible and intangible personal and investment property, money, cash and all cash equivalents, and all cash held as cash collateral, books and records, all supporting obligations, and the proceeds and products of all of the foregoing as more particularly included and described in the Pre-Petition Loan Documents (the "**Pre-Petition Collateral**").

The Debtors' Prepetition Marketing Efforts

9. On August 16, 2010, the Debtors engaged CRG Partners Group LLC ("**CRG**") as restructuring advisor. Shortly thereafter, CRG initiated marketing of the Debtors' assets for sale as a going concern and began soliciting potential buyers (including those potentially interested parties with whom the Debtors had been in discussions). CRG engaged a third party firm, Digital Strategies Group Inc., to research commercial databases and public data sources for strategic and financial entities most likely to purchase the assets. The research was supplemented with CRG's proprietary database of potential financial buyers interested in investing in companies in similar industries and/or situations as the Debtors.

10. The Debtors and CRG reviewed the data and prepared a list to target a subset of those companies with the financial wherewithal and/or most compelling strategic rationales to pursue a transaction with the Debtors. CRG worked with the Debtors to create various materials that were used for diligence meetings with potential buyers. These materials included

descriptive information, financial data and other financial and operating detail that enabled the potential buyers to evaluate the Debtors' operating business.

11. To date, CRG has provided approximately 400 potential buyers in connection with a Sale of the Acquired Assets with information detailing the operations and finances of the Debtors. CRG has forwarded thirty-five (35) non-disclosure agreements to interested parties. Twenty-three (23) of those potential buyers executed non-disclosure agreements, all of which then engaged in discussions with CRG and/or the Debtors regarding the general parameters of the Sale of the Acquired Assets. CRG has followed up with all interested buyers, provided due diligence information as requested, answered questions about the Debtors and the Sale process and encouraged all parties to move quickly and efficiently to the extent they wished to proceed. In all cases, CRG representatives encouraged qualified buyers to meet with the Debtors' management to obtain a better understanding of the business, the Acquired Assets and the opportunity.

12. CRG has spent time with potential buyers discussing the Debtors' operations, historical performance and prospects, as well as responding to specific follow up questions and due diligence requests from potential buyers. CRG has conducted discussions and conference calls with a number of buyers. Several potential buyers have expressed an initial indication of interest to acquire substantially all of the Debtors' assets, including four potential buyers who have submitted letters of interest for some or all of the Debtors' assets.

The Purchase Agreement

13. The material terms of the Purchase Agreement are as follows:²

² This summary of the Purchase Agreement is provided for the Court's convenience only. To the extent that the summary differs in any way from the terms of the Purchase Agreement, the terms of the Purchase Agreement shall control. Capitalized terms used but not defined in this summary shall have the meanings given in the Purchase Agreement.

a. Acquired Assets. At the Closing, and upon the terms and conditions contained in the Purchase Agreement, and subject to the approval of this Court and pursuant to the Sale Order, Debtors shall sell, transfer, convey, assign and deliver to Stalking Horse Purchaser, and Stalking Horse Purchaser shall purchase, acquire, assume and accept from Debtors, all right, title and interest of Debtors in, to and under the Acquired Assets, free and clear of all Liens, Claims, Interests and Encumbrances, other than any Permitted Liens and Permitted Exceptions, to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code. The Acquired Assets include all of the Debtors' rights title and interest in, to and under the Properties and Purchased Assets as identified in Exhibits B, C, and D to the Purchase Agreement. **SUBJECT TO THE PROVISIONS OF THE PURCHASE AGREEMENT AND EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH THEREIN, DEBTORS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE CONDITION OF THE ACQUIRED ASSETS AT CLOSING AND STALKING HORSE PURCHASER TAKES SUCH ACQUIRED ASSETS ON AN AS-IS / WHERE-IS BASIS.**

b. Purchase Price. The aggregate consideration for the Acquired Assets (the "**Purchase Price**") shall be \$74,709,715, which such amount shall be paid by Stalking Horse Purchaser by way of a dollar-for-dollar credit against the Pre-Petition Obligations, or \$97,276,905.84, pursuant to section 363(k) of the Bankruptcy Code, and that amount may be allocated among the Acquired Assets in any manner CapitalSource deems appropriate.

c. Assumed Liabilities. Stalking Horse Purchaser is not assuming any liabilities of the Debtors, including any liabilities under any of the Debtors' executory contracts.³

d. Excluded Assets.⁴ The Excluded Assets shall refer to any assets owned by any of the Debtors that are not Properties or Purchased Assets and shall include (i) all of Debtors' rights under any executory contracts including the agreements between Debtors and their club members and (ii) any equity interests held by Debtors that are not listed on Exhibit C to the Purchase Agreement.

e. Conditions to Obligations. The obligation of the Debtors and Stalking Horse Purchaser to consummate the transactions to be performed by them in connection with the Closing (the "**Transactions**") are subject to the satisfaction or waiver or various closing conditions contained in Article 7 of the Purchase Agreement, which include but are not limited to the Bankruptcy Court entering the Bid Procedures Order and Sale Order.

f. Representations and Warranties. The Purchase Agreement is subject to certain representations and warranties by Debtors and Stalking Horse Purchaser, as set forth in Articles 4 and 5, respectively, of the Purchase Agreement.

g. The Closing. The closing of the Sale (the "**Closing**") shall take place at the offices of Greenberg Traurig.

³ Nothing herein shall prohibit any Bidder from submitting a bid that provides for assumption of the Debtors' liability.

⁴ The initial designation of an asset as an Excluded Asset in the Purchase Agreement should not be construed to prevent a bidder from bidding on such asset or submitting a blacklined Purchase Agreement that seeks to include such asset as an Acquired Asset.

The Assumption, Assignment and Sale of Executory Contracts

14. CapitalSource does not intend to seek an assignment of any of the Debtors' executory contracts. Notwithstanding this, CapitalSource has informed the Debtors that it does not oppose certain language that provides for the Debtors' assumption and assignment of executory contracts to one or more Alternative Purchasers so long that it is clear that CapitalSource, as Stalking Horse Purchaser, is not seeking the assumption and assignment of any contracts. Accordingly, the Debtors may seek to assume, assign and sell to one or more Alternative Purchasers the Assigned Contracts. To facilitate the assumption and assignment of the Assigned Contracts to one or more potential Alternative Purchasers who become one or more the Successful Bidders, and in connection with the Bidding Procedures Motion, the Debtors will serve a copy of this Motion and a notice of assumption and assignment (the "**Notice of Assumption and Assignment**"), on all non-Debtor parties to Assigned Contracts ("**Contract Parties**").

15. In the event that an Alternative Purchaser is the Successful Bidder for some or all of the Acquired Assets, such Alternative Purchaser shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment and sale of any Assigned Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to section 365(b) at the hearing on the Sale (the "**Sale Hearing**"). Objections to the Debtors' proposed amounts, if any, that are owed to each Contract Party in order to cure any defaults that exist under such contract (the "**Cure Amounts**") will be resolved by the Court at the Sale Hearing.

Solicitation of Membership Interest

16. The Debtors will use commercially reasonable efforts to accommodate any Potential Bidder who wishes to ascertain, prior to its submission of a bid, the interests of Debtors' members in accepting an offer to become a member (or other equivalent participation) in the business of such bidder by conducting a poll of its members based upon information to be provided by such bidder seeking a non-binding indication of interest from Debtors' members regarding his or her interest in such plan. The Debtors, with the consent of CapitalSource, reserve the right to determine the manner in which any such poll may be conducted by the Debtors, whether one or more polls would be conducted, and whether any Alternative Purchaser that proposed a Bid contingent on an a minimum number of members actually accepting such offer would be required to post an up-front non-refundable fee that would equal the cost of continuing to operate the Debtors for any period beyond the current expected closing pursuant to the Purchase Agreement.

REQUESTED RELIEF

17. By this Motion, the Debtors are requesting that this Court, inter alia, (a) authorize the sale of the Acquired Assets to the Stalking Horse Purchaser pursuant to the terms of the Purchase Agreement, free and clear of all Encumbrances pursuant to sections 105, 363(b), (f) and (m) of the Bankruptcy Code, with such Encumbrances to attach to the sale proceeds of the Acquired Assets with the same validity (or invalidity), priority and perfection as existed immediately prior to such sale; and (b) approve the assumption, assignment and sale of the Assigned Contracts to one or more Alternative Purchasers under sections 363 and 365 of the Bankruptcy Code.

BASIS FOR RELIEF

A. The Sale of the Acquired Assets Pursuant to the Purchase Agreement is Authorized by Bankruptcy Code Section 363(b).

18. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a 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.” 11 U.S.C. § 363(b)(1). Although section 363(b) of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. See *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); see also *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (concluding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (same).

19. The “sound business judgment” test requires a debtor to establish four elements in order to justify the sale of assets outside the ordinary course of business, namely: (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business; (b) that adequate and reasonable notice has been provided to interested persons; (c) that the debtors have obtained a fair and reasonable price; and (d) good faith. See *Abbotts Dairies*, 788 F.2d at 143; *Titusville Country Club v. Penn Bank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989).

20. The *Delaware & Hudson Railway* court rejected the pre-Code “emergency” or “compelling circumstances” standard, finding the “sound business purpose” standard applicable and, discussing the requirements of that test under *McClung* and *Lionel*, observing:

A non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale include: the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the assets; and whether the asset is decreasing or increasing in value.

124 B.R. at 176.

21. The *Delaware & Hudson Railway* court further held that “[o]nce a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.” *Id.*

22. In addition, the relief requested by this Motion is appropriate and within the Court’s equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under title 11. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. See *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor’s

assets. See, e.g., *Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liq. Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws”).

23. A debtor’s showing of a sound business purpose need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reasons.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. *Lionel*, 722 F.2d at 1071; see also *Montgomery Ward*, 242 B.R. at 155.

24. The Debtors submit that more than ample business justification exists to sell the Acquired Assets to the Stalking Horse Purchaser or any other Successful Bidder, as defined in *Debtors’ Motion, Pursuant to Sections 105(a), 363(b) and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and Local Rules 2002-1 AND 6004-1, Requesting Entry of Order: (A) Approving Bid Procedures Relating to Sale of the Debtors’ Assets; (B) Scheduling a Hearing to Consider the Sale; (C) Approving the Form and Manner of Notice of Sale by Auction; (D) Establishing Procedures for Noticing and Determining Cure Amounts; and (E) Granting Related Relief* (the “**Bidding Procedures Motion**”) and the Bid Procedures attached to the Bidding Procedures Motion as Exhibit A, as the case may be, pursuant to the terms of the proposed Bid Procedures. The Debtors have carefully considered and analyzed the

Stalking Horse Purchaser's offer as set forth in the Purchase Agreement, and in light of the circumstances described herein, including limited funding resources, have concluded that a sale of the Debtors' Assets is in the best interests of the estates and will maximize the value of the Debtors' estates. Thus, a sound business purpose justifies the Sale of the Acquired Assets. The Debtors have limited cash and believe that a prompt sale at the outset of these bankruptcy cases is vital to maximizing recovery to creditors and other parties in interest. Thus, the Sale presents the best opportunity to realize value for the Debtors' creditors.

25. The Debtors have proposed the sale of the Acquired Assets after thorough consideration of all viable alternatives, and have concluded that the sale is supported by a number of sound business reasons. The Debtors cannot sustain a stand-alone operational reorganization based on among other things, the level of the Debtors' secured debt. Hence, the Debtors have determined, with the full support of Original Lender and CapitalSource Bank, in its capacity as post-petition secured lender (hereinafter referred to in such capacity as the "**DIP Lender**") that a sale of the Debtors' assets provides the best and most efficient means for the Debtors to maximize the value of their estates.

26. The Debtors submit that this constitutes significant consideration for the Acquired Assets. The proposed Sale is further subject to an open market process through the solicitation of competing bids in a Court-supervised auction (the "**Auction**"). Pursuant to the Bidding Procedures Motion and Bid Procedures, all potentially interested bidders will receive adequate and reasonable notice of the opportunity to submit a competing bid prior to the Auction, and the Bid Procedures will facilitate an open and competitive bidding process in which all parties will participate in good faith.

27. Moreover, the Purchase Agreement was the product of good faith, arm's length negotiations between the Debtors, on the one hand, and the Stalking Horse Purchaser, on the other, and was negotiated with the active involvement of the Debtors' officers and professionals. The Debtors believe and submit that the Sale of the Debtors' assets to the Stalking Horse Purchaser pursuant to the Purchase Agreement is not the product of collusion or bad faith. All the evidence demonstrates that the Purchase Agreement is the product of arm's length negotiations between the Debtors, the Stalking Horse Purchaser, and their respective professional advisors. The Stalking Horse Purchaser does not share common ownership with any of the Debtors, and is independently controlled and operated, and is not otherwise affiliated with the Debtors or their officers and directors. For these reasons, the Sale satisfies the good faith element of the "sound business purpose" test. *Compare In re After Six, Inc.*, 154 B.R. 876, 883 (Bankr. E.D. Pa. 1993) (good faith found where officers, directors and employees of debtor had no apparent connection to purchasers) *with Abbotts Dairies*, 788 F.2d at 147-48 ("Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders."); *In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 22 (Bankr. E.D. Pa. 1987) (evidence of inside dealing fatal to good faith requirement).

28. As explained above, the Debtors, with the assistance of CRG, have extensively marketed the Debtors' assets and will conduct the sale process (including the Auction) in accordance with the Bidding Procedures Motion, Bid Procedures, and once entered, the Bidding Procedures Order, which implements certain procedures designed to maximize the value that will be realized from the sale of the Acquired Assets. As a result of the Debtors' current marketing efforts, the Stalking Horse Purchaser's offer will be fully tested by the market and will constitute

fair and reasonable consideration for the Acquired Assets and that there will be ample time and opportunity for potential Qualified Bidders to submit overbids. The Debtors, in the exercise of their business judgment, and in consultation with their professionals, believe that the proposed Sale to the Stalking Horse Purchaser, or any other Successful Bidder, will constitute the highest and best offer for the Acquired Assets. For these reasons, the Debtors believe the sale of the Acquired Assets is entirely within their sound business judgment, is justified by sound business reasons and is in the best interests of the Debtors and their estates.

B. The Sale of Assets Free and Clear of Liens, Claims and Interests is Authorized Under Bankruptcy Code Section 363(f).

29. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property “free and clear of any interest in such property of an entity other than the estate” if any of the following conditions are satisfied:

- (1) applicable non-bankruptcy 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.

11 U.S.C. § 363(f).

30. The Debtors believe one or more of these tests in section 363(f) of the Bankruptcy Code are easily satisfied with respect to the proposed Sale of the Acquired Assets.

31. Section 363(f)(2) applies not only to parties who affirmatively consent to the sale; it applies also to those parties that have failed to object to or otherwise dispute the sale. As dozens of courts have recognized, where an entity has not objected to a section 363 sale, consent

may be implied for purposes of section 363(f)(2). *See, e.g., FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002) (in context of section 363(f), “lack of objection (provided of course there is notice) counts as consent.”); *In re James*, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997) (section 363(f)(2) satisfied where secured creditor failed to object to proposed sale and thus “implicitly conveyed its consent to the sale”); *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (because of tax lien holder’s failure to object to sale, it “may be deemed to have consented to the sale for purposes of section 363(f)(2)”); *In re Elliot*, 94 B.R. 343, 345-46 (E.D. Pa. 1988) (implied consent sufficient to authorize section 363(f)(2) sale; consent implied from non-debtor that “received notice of the proposed sale and also admits that it did not file any timely objection.”); *In re Gabel*, 61 B.R. 661, 664-65 (Bankr. W.D. La. 1985) (estopping secured creditor that was properly noticed and failed to object from denying its implied consent to sale of property under 363(f)). With respect to many of the Assets, any liens and Encumbrances on such assets are held by the Agents, for the benefit of themselves as agents and the benefit of Original Lender and DIP Lender, and their agreement to the sale and transfers under the Purchase Agreement should be deemed Original Lender’s and DIP Lender’s consent to such sale.

32. As quoted above, section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests.” The term “any interest,” as used in section 363(f), is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000).

33. In *Folger Adam*, the Third Circuit specifically addressed the scope of the term “any interest.” 209 F.3d at 258. The court observed that while some courts have “narrowly interpreted that phrase to mean only *in rem* interests in property,” the trend in modern cases is

towards “a broader interpretation which includes other obligations that may flow from ownership of the property.” *Id.* at 258 (citing 3 COLLIER ON BANKRUPTCY 363.06[1]).

34. As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in *Folger Adam*, the scope of 11 U.S.C. § 363(f) is not limited to *in rem* interests. Thus, the Third Circuit in *Folger Adam* stated that *Leckie* held that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger Adam*, 209 F.3d at 258.

35. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the sale of the Acquired Assets free and clear of all interests within the meaning of section 363(f) of the Bankruptcy Code, including any Encumbrances (together, “Interests”). See *Citicom Homeowners Servs., Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

36. The Debtors submit that each Interest satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such Interest will be adequately protected by either being paid in full at the time of closing, or by having it attach to the net proceeds of the sale, subject to any claims and defenses the Debtors may possess with respect thereto. The Debtors accordingly request authority to convey the Acquired Assets to the Stalking Horse Purchaser, free and clear of all Interests, with such Interests to attach to the proceeds of the Sale, with the same validity (or invalidity), priority and perfection as existed immediately prior to the Sale.

37. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). See, e.g., *In re*

Trans World Airlines, Inc., 2001 WL 1820325 at *3, *6 (Bankr. D. Del. Mar. 27, 2001) (explaining that “courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of §363(f)”; *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (authorizing sale free and clear of tort claims even if such claims are not covered specifically by the provisions of §363(f)). As the *Trans World Airlines* court explained, “[t]he authority to sell free and clear is broad. It reflects a compelling policy to encourage bankruptcy sales subject only to claims of a specific and recognized nature in the subject property.” *Trans World*, 2001 WL 1820325, at *3. Thus, even in the case of general unsecured claimants, including tort claimants, who arguably have no specific interest in a debtor’s property (and, therefore, section 363 of the Bankruptcy Code would not be applicable to such claims), courts have held that the authority to conduct sales free and clear of such claims is still within their equitable powers. *White Motor Credit*, 75 B.R. at 948.

38. The Debtors are informed and believe that the Agents, Original Lender and DIP Lender will consent to the sale of their collateral (which will satisfy 11 U.S.C. § 365(f)(2)). The Debtors have conducted a UCC search to determine possible lienholders of the Debtors’ assets in conjunction with the proposed Sale of the Acquired Assets. The Debtors have served such purported lienholders notice of this Motion, and will serve such parties with notice of any Order approving the relief requested by this Motion.

39. Accordingly, this Court should approve the sale of the Acquired Assets to the Stalking Horse Purchaser, free and clear of Interests under Bankruptcy Code section 363(f) and any potential claimants should be compelled to look exclusively to the proceeds of the sale for satisfaction of their claims.

40. Further, to the extent that some of the Debtors' Assets are not encumbered by the liens and security interests held by the Agents, for the benefit of themselves as agents and for the benefit of Original Lender and DIP Lender, subsection 363(f)(5) would permit the Sale free and clear of any unrecorded "interest" in such assets. The Debtors believe the rights of any unknown claimant could be valued and allowed as a claim against the Debtors' estates, and thus the claimant could be compelled to accept a money satisfaction of its interest in property, and section 363(f)(5) would be satisfied. *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289, 291 (3d Cir. 2003) (the Court of Appeals for the Third Circuit held that section 363(f)(5) was satisfied in respect of successor liability claims because "[h]ad TWA liquidated its assets under Chapter 7 of the Bankruptcy Code, the claims at issue would have been converted to dollar amounts and the claimants would have received the distribution provided to other general unsecured creditors on account of their claims."). In addition, because the Debtors are unaware of the existence of any interest in, or of the right of any third party to assert such an interest in such Assets other than Agents, Original Lender and DIP Lender, the Debtors submit the surprise assertion of an interest will be in bona fide dispute and, therefore, subsection 363(f)(4) would apply.

41. Because the section 363(f) requirements have been met, the Stalking Horse Purchaser or any other Successful Bidder, as the case may be, should not be liable, as a successor to the Acquired Assets or otherwise, for any of the Debtors' pre-petition liabilities. As a matter of logic, bankruptcy estates would be unable to sell assets for fair value if the estates' liabilities followed the assets. The Third Circuit Court of Appeals has held that a buyer of a debtor's assets pursuant to sections 363(b) and 363(f) takes free from successor liability resulting from any pre-existing claims. *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *5 (Bankr. D. Del. Mar. 27, 2001) ("Authorizing the sale [of debtor's assets] free and clear of . . . successor

liability claims achieves the purpose of [Bankruptcy Code] section 363 intended by Congress”), *aff’d*, 332 F.3d 283, 285 (3d Cir. 2003) (“Because section 363(f) of the Bankruptcy Code permits a sale of property ‘free and clear’ of an ‘interest in such property’ and because the claims against TWA here were connected to or arise from the assets sold, we affirm the Bankruptcy Court’s order approving the sale ‘free and clear’ of successor liability.”).

C. The Stalking Horse Purchaser is Entitled to Credit Bid.

42. As set forth in the Bidding Procedures Motion, the Stalking Horse Purchaser shall (i) have the right to credit bid the prepetition and post-petition secured claims in accordance with Bankruptcy Code section 363(k). Moreover, pursuant to the Bid Procedures, the Stalking Horse Purchaser is not required to post any cash deposit in order to be deemed a Qualified Bidder.

43. This Motion seeks to confirm the Stalking Horse Purchaser’s right to credit bid up to the full amount of the Pre-Petition Obligations plus the full amount of the DIP Indebtedness (as those terms are defined in the Interim Order (I) Authorizing (A) Secured Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364(c) and (d); (B) Granting Security Interests, Superpriority Claims and Adequate Protection; and (C) Use of Cash Collateral and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c), and any final order entered thereon), in connection with the bidding on the Acquired Assets. Confirmation of the Stalking Horse Purchaser’s right to credit bid is consistent with Bankruptcy Code section 363(k). That statute provides as follow:

At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. § 363(k).

44. Under section 363(k), a secured creditor is entitled to bid an amount up to its entire claim; the “offset” (*i.e.*, credit) is not limited to the value of the collateral. *See, e.g., In re Submicron Systems Corp.*, 432 F.3d 448, 459 (3d Cir. 2006) (“It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)”); *In re Sunacruz Casinos, LLC*, 298 B.R. 833, 839 (Bankr. S.D. Fla. 2003) (“The plain language of [section 363(k)] makes clear that the secured creditor may credit bid its *entire claim*, including any unsecured deficiency portion thereof.”) (emphasis in original); *In re Morgan House Gen. P’Ship*, 1997 U.S. Dist. LEXIS 1306 at *1 (E.D. Pa. 1997); *In re Realty Invs., Ltd. V*, 72 B.R. 143, 146 (Bankr. C.D. Cal. 1987); *Criimi Mae Servs. Ltd. P’ship v. WDH Howell, LLC (In re WDH Howell, LLC)*, 298 B.R. 527, 532 n.8 (D.N.J. 2003).

45. Thus, the right to credit bid is not affected by any prior valuation of an allowed claim under section 506(a) of the Bankruptcy Code. *In re Submicron Systems Corp.*, 432 F.3d at 461 (“§ 363 speaks to the full face value of a secured creditor’s claim, not to the portion of that claim that is actually collateralized as described in § 506.”); *In re Morgan House Gen. P’ship*, 1997 U.S. Dist. LEXIS 1306 at *5 (holding that creditors may bid “to the extent of their claim” under § 363(k)); *In re Midway Invs., Ltd.*, 187 B.R. 382, 391 n.12 (Bankr. S.D. Fla. 1995) (“[A] secured creditor may bid in the full amount of the creditor’s allowed claim, including the secured portion and any unsecured portion thereof”) (citing legislative history).

46. Nor is a section 506(a) valuation required before a sale pursuant to section 363(b) of the Bankruptcy Code can be approved. *In re Submicron Systems Corp.*, 432 F.3d at 461 (“Section 363 attempts to *avoid* the complexities and inefficiencies of valuing collateral altogether by substituting the theoretically preferable mechanism of a free market sale to set the

price. The provision is premised on the notion that the market's reaction to a sale best reflects the economic realities of assets' worth. Naturally, then, courts are not required first to determine the assets' worth before approving such a market sale.") (emphasis in original).

47. As discussed above, as of the Auction date, the Debtors estimate that the Stalking Horse Purchaser will hold a claim of over \$97 million, secured by substantially all of the assets of the Debtors. Accordingly, the Stalking Horse Purchaser has the right to bid up to the entire amount of its claim for the Acquired Assets.

D. The Stalking Horse Purchaser is a Good Faith Purchaser and is Entitled to the Full Protections of Bankruptcy Code Section 363(m).

48. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

49. While the Bankruptcy Code does not define "good faith," the Third Circuit in *Abbotts Dairies* has stated:

[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted).

50. Moreover, the Second Circuit has indicated that a party would have to show fraud or collusion between the buyer and the debtor-in-possession or trustee or other bidders in order to

demonstrate a lack of good faith. *See In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”).

51. The Debtors intend to make an appropriate showing at the Sale Hearing that the Purchase Agreement with the Stalking Horse Purchaser is the result of a negotiated, arm’s-length transaction, in which such buyer at all times acted in good faith. The Debtors thus request that the Court find that the Stalking Horse Purchaser will be purchasing the Acquired Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code.

52. The Debtors additionally request that the Court find that Stalking Horse Purchaser or any other Successful Bidder, as the case may be, is entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale. Section 363(m) of the Bankruptcy Code provides, in pertinent part: “The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.” 11 U.S.C. § 363(m).

53. Section 363(m) thus protects the purchaser of assets sold pursuant to section 363(b) from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, section 363(m) applies to sales of interests in tangible assets, such as the Acquired Assets at issue here.

54. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit, construing section 363(m) of the Bankruptcy Code, has stated that “the phrase

encompasses one who purchases in 'good faith' and for 'value.'" *Abbotts Dairies*, 788 F.2d at 147. To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to "fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders." *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.I. 1995). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings." *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus.*, 572 F.2d at 1198 (7th Cir. 1978)).

55. As required by Section 363(m) of the Bankruptcy Code, the Debtors, Agents, Original Lender and DIP Lender have acted in good faith in negotiating the Sale of the Acquired Assets. There is no evidence of fraud or collusion in the terms of the Sale. To the contrary, as discussed throughout this Motion, the Sale will be the culmination of a lengthy solicitation and negotiation process in which all parties will be represented by sophisticated counsel and financial advisors. The Stalking Horse Purchaser is not, nor would any other Successful Bidder be, an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code, and all negotiations have been and will continue to be conducted on an arms length, good faith basis. The Bid Procedures are designed to ensure that no party is able to exert undue influence over the process. Furthermore, the Bid Procedures are designed to prevent the Debtors, the Stalking Horse Purchaser or any other Successful Bidder from engaging in any conduct that would cause or permit the Sale to be avoided, or costs or damages to be imposed under, section 363(n) of the Bankruptcy Code. All creditors and parties in interest will receive notice of the Sale and will be

provided an opportunity to be heard. The Debtors submit that such notice is adequate for entry of the Sale Order and satisfies the requisite notice provisions required under section 363(b) of the Bankruptcy Code. Under the circumstances, the Stalking Horse Purchaser or any other Successful Bidder, as the case may be, should be afforded the benefits and protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

E. The Court Should Approve the Assumption, Assignment and Sale of the Assigned Contracts to one or more Alternative Purchasers, if any.

56. While the assets to be purchased as part of the Transaction do not include the Excluded Assets, and do not provide for the assumption by the Stalking Horse Purchaser of any executory contracts of the Debtors, the Debtors request approval of the assumption, assignment and sale of the Assigned Contracts to one or more Alternative Purchasers under sections 363 and 365 of the Bankruptcy Code.

57. The Assigned Contracts are those contracts or leases that are to be assumed by the Debtors and assigned and sold to one or more Alternative Purchasers as part of the sale transaction under the Purchase Agreement. The Debtors further request that the sale order provide that the Assigned Contracts will be assigned to, and remain in full force and effect for the benefit of, one or more Alternative Purchasers, notwithstanding any provisions in the Assigned Contracts, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment.

58. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only 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. 11 U.S.C. § 365(f)(2).

59. Under section 365(a), a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) 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.

11 U.S.C. § 365(b)(1).

60. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession’s decision to assume an executory contract, it is well established that the decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. *See In re Taylor*, 913 F.2d 102 (3d Cir. 1990); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36 (3d Cir. 1989). Accordingly, assumption or rejection of any executory contract is appropriate where the assumption or rejection would benefit the estate. *Sharon Steel*, 872 F.2d at 40.

61. The assumption, assignment and sale of the Assigned Contracts will benefit the Debtors’ estates. Indeed, absent the Debtors’ ability to assume, assign and sell the Assigned

Contracts, it is highly likely that one or more Alternative Purchasers would be unwilling to consummate the transaction.

62. As noted above, the Debtors have served a copy of this Motion and the Notice of Assumption and Assignment (substantially in the form attached to the Bidding Procedures Motion as Exhibit B) on all Contract Parties and in accordance with the following procedures:

a. The Debtors (or their agent) served, concurrently with the filing of the Motion, by overnight courier, electronic mail, or same-day messenger delivery, the Notice of Assumption and Assignment upon all known non-debtor parties to the Assigned Contracts. The Notice of Assumption and Assignment set forth (i) the intent of the Debtors to assume the Assigned Contracts and assign them to one or more Alternative Purchasers, and (ii) the Cure Amounts if any. The Notice of Assumption and Assignment identified the Assigned Contracts and the Cure Amounts the Debtors believe must be paid to cure all defaults under the Assigned Contracts. If no amount was listed on the Notice of Assumption and Assignment, the Debtors believe that there is no Cure Amount due.

b. Bankruptcy Rule 6006(a) provides that “[a] proceeding to assume, reject, or assign an executory contract or unexpired lease other than as part of a plan, is governed by Rule 9014.” Any objections to (i) the assumption and assignment of an Assigned Contract, or (ii) the amount asserted as the Cure Amount (each, an “Assumption and/or Cure Objection”) must be in writing and set forth with specificity the nature of the objection and the cure amount that the objecting party believes should be paid in connection with the assumption of the Assigned Contract (the “**Claimed Cure Amount**”).

c. If an Assumption and/or Cure Objection is timely filed, the Debtors request that a hearing with respect to that objection shall be held before the Court at the hearing on the Sale. If, however, an Assumption and/or Cure Objection is not timely filed and served, the assumption and assignment of the applicable Assigned Contract will proceed without further notice at the Sale Hearing. The Debtors also request that parties failing to file and serve timely Assumption and/or Cure Objections shall be deemed to have waived and released any and all rights to assert Cure Amounts differing from those listed on the exhibit to the Notice of Assumption and Assignment and, subject to payment of the Cure Amount(s) listed on such contract with respect to their Assigned Contract(s), shall be forever barred and estopped from asserting or claiming against the Debtors or one or more Alternative Purchasers that any additional amounts are due or defaults exist, or prohibitions or conditions to assignment exist or must be satisfied, under such Assigned Contract.

d. If no Cure Amounts are due under the Assigned Contract, and the non-debtor party to the Assigned Contract does not otherwise object to the Debtors’ assumption and assignment of the Assigned Contract, no further action need be taken on

the part of that non-debtor party. The Debtors also request that Assumption and/or Cure Objections that object solely to the Cure Amount not prevent or delay the Debtors' assumption and assignment of any Assigned Contracts. If a party objects solely to a Cure Amount, the Debtors may, in their sole discretion, hold the Claimed Cure Amount in reserve pending further order of the Court or mutual agreement of the parties. So long as the Debtors hold the Claimed Cure Amount in reserve, and there are no other unresolved objections to assumption and assignment, the Debtors can, without further delay, assume and assign the Assigned Contract that is the subject of the objection. Under such circumstances, the objecting party's recourse shall be limited to the funds held in reserve.

63. The Debtors submit the aforementioned procedures provided good and sufficient notice to non-debtor parties to the Assigned Contracts and should be approved in all respects. The Notice of Assumption and Assignment is substantially the same as other similar notices that courts in the District of Delaware have approved in chapter 11 cases, including this Court in these cases. In addition, the Debtors believe that each counterparty to an executory contract which will be assumed and assigned in connection with the Sale has consented, or will be deemed to have consented if the counterparty does not object, to such assumption and assignment.

64. As explained above, the Debtors' Notice of Assumption and Assignment, which sets forth all amounts the Debtors believe are owed to each Contract Party to an Assigned Contract in order to cure any defaults that exist under such contract according to Debtors' books and records.

65. To the extent no objection is filed with regard to a particular Cure Amount, such Cure Amount shall be binding on the Contract Party to the applicable contract or lease. The payment of the Cure Amounts specified on the Notice of Assumption and Assignment (or a different amount either agreed to by the Debtors or resolved by the Court as a result of a timely-filed objection filed by a Contract Party) will be in full and final satisfaction of all obligations to cure defaults and compensate the Contract Parties for any pecuniary losses under such contracts

or leases pursuant to section 365(b)(1) of the Bankruptcy Code.⁵ Cure Amounts disputed by any Contract Party will be resolved by the Court at the Sale Hearing.

66. As set forth herein any Alternative Purchaser is responsible for providing evidence of "adequate assurance of future performance" to the extent required in connection with the assumption and assignment of any Assigned Contract. The meaning of "adequate assurance of future performance" for the purpose of the assumption of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). To the extent necessary, any Alternative Purchaser shall provide evidence of its ability to provide adequate assurance to Contract Parties to the Assigned Contracts at the Sale Hearing.

67. The Debtors will demonstrate at the Sale Hearing that all requirements for assumption and/or assignment of such contracts have been satisfied. The Debtors, in their sound business judgment, believe assuming and assigning the Assigned Contracts to one or more Alternative Purchaser is in the best interests of their estates. Moreover, as noted above, each non-debtor party to an Assigned Contract has received notice of the proposed assumption and assignment, and the proposed cure amount, and has had a reasonable opportunity to object thereto. For these reasons, the Debtors' assignment of the Assigned Contracts in furtherance of the Sale should be approved.

⁵ The Debtors reserve the right to argue that a particular lease or contract is not truly executory in nature, that cure is not a precondition to the transfer of an Acquired Asset to one or more Alternative Purchaser, and to reject

F. Relief from the Fourteen (14) Day Waiting Periods Under Bankruptcy Rules 6004(h) is Appropriate

68. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” The Debtors request that the Sale Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rule 6004(h) is waived.

69. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). *Collier on Bankruptcy* suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 *COLLIER ON BANKRUPTCY* 15th Ed. Rev., ¶ 6064.09 (L. King, 15th rev. ed. 1988). Furthermore, *Collier on Bankruptcy* provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

70. All creditors and parties in interest will receive notice of the Sale or a competing transaction and will be provided with an opportunity to be heard. The Debtors submit that such notice is adequate for entry of the order approving this Motion and waiving the fourteen (14) day waiting periods under Bankruptcy Rule 6004(h).

NOTICE

71. Notice of this Motion (and the Purchase Agreement without schedules) has been sent by first-class mail, overnight mail, or hand delivery, as appropriate, to the following parties or, in lieu thereof, to their counsel, if known: (i) all entities that claim any interest in or lien upon

any contract that is not an Assigned Contract.

the Acquired Assets; (ii) all governmental taxing authorities that have, or as a result of the sale of the Acquired Assets may have, claims, contingent or otherwise, against the Debtors; (iii) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (iv) all known creditors (whether liquidated, contingent or unmatured) of the Debtors; (v) all taxing authorities in the jurisdiction in which the Debtors operate (vi) all interested governmental, pension and environmental entities known by the Debtors to assert jurisdiction over the Debtors and to have an interest in the proposed Sale; (vii) the Office of the United States Trustee; (viii) counsel to any official Committee appointed in these cases; (ix) counsel to the Debtors' pre- and post- petition secured lenders; and (x) entities known by the Debtors with an interest in purchasing the Acquired Assets. In light of the nature of the relief requested herein, the Debtors submit that no further notice is necessary.

72. Several sections of the Bankruptcy Code and Bankruptcy Rules dictate the sufficiency of notice and adequacy of service. As discussed below, the content and manner of service of this Motion in accordance with the Bidding Procedures Motion and Order and the notices related thereto satisfies all such requirements:

Section 363 Notice: Section 363 of the Bankruptcy Code provides that a trustee may sell assets other than in the ordinary course of business "after notice and hearing." Under section 102(1) of the Bankruptcy Code, the phrase "after notice and hearing" means "notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). The Debtors submit that creditors have been provided notice of the salient details regarding this Motion and the hearing on the relief requested hereby. Accordingly, notice is sufficient under section 363 of the Bankruptcy Code.

Federal Rule of Bankruptcy Procedure 2002: Bankruptcy Rule 2002 requires twenty days' notice of proposed sales of assets other than in the ordinary course of business, provided that such notice period may be reduced pursuant to Bankruptcy Rule 9006(c). In addition, Bankruptcy Rule 2002 provides that notice of a sale shall "include the time and place of any public sale, the terms and

conditions of any private sale and the time fixed for filing objections.” FED. R. BANKR. P. 2002. Local Rule 2002-1(b) specifies the parties on whom a motion for a sale other than in the ordinary course of business must be served in cases pending in this jurisdiction. In accordance with the Bidding Procedures Motion, the Debtors have provided sufficient notice of the Auction and Sale Hearing to the appropriate parties.

Federal Rules of Bankruptcy Procedure 6004 and 6006: Bankruptcy Rule 6004 requires that notices of sales of assets out of the ordinary course of business comply with Rule 2002. As set forth above, the Debtors have complied with Bankruptcy Rule 2002. Bankruptcy Rule 6006 requires notice of a motion to assume or assign an executory contract or unexpired lease to be served on the counterparty to such contract or lease, as well as on other parties in interest as this Court may direct. The notice of the Motion will be served on counterparties to the Assigned Contracts in satisfaction of this requirement.

Procedural Due Process: The notice of this Motion that is being provided is “reasonably calculated” to apprise interested parties of the pendency of the matter and to afford them an opportunity to object. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Parties in interest have been and should be found to have been afforded adequate notice of this Motion and the hearing on the relief requested hereby.

73. The Debtors submit that the notice that they have provided and intend to provide of this Motion is reasonable and appropriate and should be approved by this Court as adequate and sufficient notice. The Debtors request, pursuant to Bankruptcy Rule 6004(h), that the order approving this Motion become effective immediately upon its entry.

74. No prior motion for the relief requested herein has been made to this or any other court.

CONCLUSION

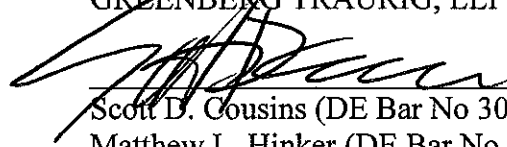
75. The Debtors’ proposed Sale of the Acquired Assets as described in this Motion and the Purchase Agreement, including the assumption, assignment and sale to one or more Alternative Purchaser of the Assigned Contracts, is supported by sound business reasons, as set forth herein. The proposed Sale is proper, necessary and serves the best interests of the Debtors, their estates, and their creditors. The Debtors thus request that the Court approve the proposed Sale of the Acquired

Assets (including the Assigned Contracts to one or more Alternative Purchaser) free and clear of all liens, claims, Encumbrances and Interests, as requested.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit B: (A) approving the sale of the Acquired Assets to the Stalking Horse Purchaser or to any other Successful Bidder, as the case may be, free and clear of all Encumbrances and Interests; (B) authorizing the assumption, assignment and sale to one or more Alternative Purchasers of the Assigned Contracts; (C) authorizing and approving the Purchase Agreement; and (D) granting such other and further relief as is just and proper.

Dated: September 20, 2010

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Proposed Counsel for the Debtors
and Debtors-in-Possession

SCHEDULE "1"

Debtors

SCHEDULE 1**DEBTORS**

DEBTOR	Last Four Digits of Federal Tax I.D. No.¹
Ultimate Escapes Holdings, LLC	4466
Ultimate Resort, LLC	7685
Ultimate Operations, LLC	N/A
Ultimate Resort Holdings, LLC	4489
Ultimate Escapes Inc., (F/K/A Secure America Acquisition Corporation)	8408
P&J Partners, LLC	N/A
UE Holdco, LLC	N/A
UE Member, LLC	N/A
Ultimate Escapes Clubs, LLC	0470
Ultimate Escapes Elite Club, LLC	N/A
Ultimate Escapes Signature Club, LLC	N/A
Ultimate Escapes Premiere Club, LLC	N/A
Ultimate Scottsdale, LLC	N/A
Ultimate Lake Tahoe, LLC	N/A
Ultimate Colorado, LLC	N/A
Ultimate Telluride Mountain Village, LLC	N/A
Ultimate Naples Strada Bella, LLC	N/A
Ultimate Naples Monteverde, LLC	N/A
Ultimate Palm Beach Ocean, LLC	N/A
Ultimate Maui Wailea Beach, LLC	N/A
Ultimate Sun Valley MacKenzie, LLC	N/A
Ultimate Sun Valley Plaza Townhouse, LLC	N/A
Ultimate New York Trp International, LLC	N/A
Ultimate Kiawah Turtle Beach, LLC	N/A
Ultimate Park City Silverlake, LLC	N/A
Ultimate Jackson Hole Snake River, LLC	N/A
Bahamas Investments I, LLC	N/A
Bahamas Investments II, LLC	N/A
Bahamas Investments III, LLC	N/A
Bahamas Investments IV, LLC	N/A
Cabo Casa Tortuga, LLC	N/A

¹ Pursuant to Treasury Regulation section 301.7701-3(b), certain Debtors are disregarded for tax purposes. "N/A" indicates that a separate tax identification number is not required for these Debtors.

SCHEDULE 1**DEBTORS**

DEBTOR	Last Four Digits of Federal Tax I.D. No.¹
Cabo Esperanza #1501, LLC	N/A
Cabo Esperanza #1502, LLC	N/A
Cabo Esperanza #1503, LLC	N/A
Cabo Esperanza #1601, LLC	N/A
Cabo Esperanza #1602, LLC	N/A
Cabo Esperanza #1603, LLC	N/A
Cabo Villa Del Sol, LLC	N/A
Cabo Villa Eternidad, LLC	N/A
Cabo San Lucas Villa Paraiso, LLC	N/A
Ultimate Nevis Investments, LLC	N/A
Snowflake Investments I, LLC	N/A
Sunny Isles Investments I, LLC	N/A
Tahoe Investments I, LLC	N/A
Cabo Investments I, LLC	N/A
Mahogany Run Investments I, LLC	N/A
Candlewood Investments I, LLC	N/A
Ultimate Scottsdale Rocks, LLC	N/A
Ultimate Beaver Creek, LLC	N/A
Ultimate Indian Rocks Beach, LLC	N/A
Ultimate Key West, LLC	N/A
Ultimate Lake Las Vegas, LLC	N/A
Ultimate Newport Americas, LLC	N/A
Private Escapes of La Quinta Platinum, LLC	N/A
Private Escapes La Quinta I, LLC	N/A
Private Escapes La Quinta II, LLC	N/A
Private Escapes Platinum of Copper Mountain, LLC	N/A
Private Escapes Platinum Telluride, LLC	N/A
Private Escapes of Steamboat, LLC	N/A
Private Escapes of Lake Oconee, LLC	N/A
Private Escapes of Waikoloa, LLC	N/A
Private Escapes of Waikoloa II, LLC	N/A
Private Escapes of Chicago, LLC	N/A
Private Escapes of Currituck, LLC	N/A
Private Escapes Platinum Currituck, LLC	N/A

SCHEDULE 1

DEBTORS

DEBTOR	Last Four Digits of Federal Tax I.D. No.
Private Escapes of Tahoe, LLC	N/A
Private Escapes Platinum Lake George, LLC	N/A
Private Escapes of One Central Park West, LLC	N/A
Private Escapes 1600 Broadway, LLC	N/A
Private Escapes Link, LLC	N/A
Private Escapes Platinum One Central Park West, LLC	N/A
Privates Escapes of Kiawah, LLC	N/A
Private Escapes Platinum Kiawah, LLC	N/A
Private Escapes of Jackson Hole, LLC	N/A
Private Escapes Villa 304, LLC	N/A
Private Escapes Platinum Cabo, LLC	N/A
Private Escapes La Playa, LLC	N/A
Private Escapes of Cabo, LLC	N/A
Private Escapes Platinum TCI, LLC	N/A
Private Escapes Platinum Chicago, LLC	N/A
Private Escapes of Fox Acres, LLC	N/A
Private Escapes of Stowe, LLC	N/A
Private Escapes La Costa, LLC	N/A
Private Escapes Platinum La Costa, LLC	N/A
Private Escapes Borgo di Vagli, LLC	N/A

EXHIBIT A

AGREEMENT OF SALE AND PURCHASE

This **AGREEMENT OF SALE AND PURCHASE** (this "Agreement"), dated as of September 13, 2010, is by and among: (i) CapitalSource Finance LLC, as administrative agent and a collateral agent, and CapitalSource Bahamas LLC, as a collateral agent, for the benefit of CapitalSource Bank, as lender, or any of their respective designees (collectively, "Buyer"); (ii) each of the Persons named as sellers on the signature pages hereto (individually, each a "Seller", and collectively, the "Sellers"); and (iii) Ultimate Escapes Holdings, LLC, as agent for the Sellers (in such capacity, the "Agent"). Buyer, Sellers, and Agent are individually referred to as a "Party" and collectively referred to as the "Parties". Defined terms used and not defined elsewhere in this Agreement have the meanings ascribed to them in Article 1.

RECITALS

- A. On September 13, 2010 (the "Petition Date"), the Sellers, the Agent, and certain of their Affiliates filed voluntary petitions initiating cases (the "Cases") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court, District of Delaware (the "Bankruptcy Court").
- B. Buyer desires to purchase, and Sellers desires to sell, certain assets owned by the Sellers pursuant to Section 363 of the Bankruptcy Code in accordance with, and subject to, the terms and conditions of this Agreement.

AGREEMENT

In consideration of the premises and of the mutual representations, warranties, promises, and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, it is hereby agreed by the Sellers, the Buyer, and, to the extent applicable, the Agent, as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Definitions. The Parties agree that the following terms shall have the meanings hereinafter set forth, such definitions to be applicable equally to the singular and plural forms, and to the masculine and feminine forms, of such terms:

1.1.1 "Action" shall have the meaning ascribed in Section 10.13.

1.1.2 "Affiliate" shall mean, with respect to any given Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such given Person. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

1.1.3 “Agreement” shall mean this Agreement, as the same may be amended, modified, or supplemented from time to time in writing by Buyer and the Agent (on behalf of the Sellers).

1.1.4 “Alternative Transaction” shall mean (x) any transaction or series of transactions: (i) involving a third party and any Seller (other than the transactions contemplated by this Agreement) relating to any merger, consolidation, business combination, sale of all or substantially all of any Seller’s or all of the Sellers’ assets, sale of shares of capital stock, or any restructuring, recapitalization, investment, or similar transaction (whether through a plan of reorganization or otherwise) involving any significant portion of the Properties and Purchased Assets; or (ii) pursuant to which the holders of the debt of any Seller obtain a majority of the equity interests of any Seller or all or substantially all of the assets of any Seller in exchange for such debt or (y) a plan of reorganization of any Seller not involving the sale of the Purchased Assets to Buyer or any third party investor.

1.1.5 “Bankruptcy Code” shall have the meaning ascribed in the Recitals.

1.1.6 “Bankruptcy Court” shall have the meaning ascribed in the Recitals.

1.1.7 “Bid Procedures Motion” shall mean a motion, in substantially the form attached as Exhibit A-2 hereto, to be filed by Sellers with the Bankruptcy Court.

1.1.8 “Bid Procedures Order” shall mean an order of the Bankruptcy Court, in substantially the form attached as an exhibit to the Bid Procedures Motion, approving the bid procedures substantially in the form attached to the Bid Procedures Motion.

1.1.9 “Bill of Sale” and “Bills of Sale” shall have the meanings ascribed in Section 10.3.2.

1.1.10 “Books and Records” shall mean all data, books, records, manuals, documents, correspondence, sales and credit reports, literature, brochures, advertising material and the like incidental to or used in the Sellers business or relating to the Properties, including, without limitation, (i) service and warranty records; (ii) sales and credit records, catalogs and brochures relating to the Sellers’ business, sales support and promotion materials, creative materials, art work, photographs, public relations and advertising material, studies, reports, shipping materials, office supplies and materials, sales and marketing files correspondence and other similar documents and records used in the Sellers’ business, whether in electronic form or otherwise; (iii) all client, customer and supplier lists, files, order information, telephone numbers, addresses and electronic mail addresses and the other information with respect to past, present or prospective clients, customers and suppliers incidental to or used in the Sellers’ business; (iv) accounting records; (v) cost and pricing information; and (vi) sales and credit records, purchasing records, records relating to suppliers and other records relating to the Sellers’ business.

1.1.11 “Buyer Indemnified Party” shall have the meaning ascribed in Section 9.2(a).

1.1.12 "Claim" shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.

1.1.13 "Closing" shall have the meaning ascribed in Section 9.2.

1.1.14 "Closing Date" shall have the meaning ascribed in Section 9.2.

1.1.15 "Closing Statement" shall have the meaning ascribed in Section 9.5.1(a).

1.1.16 "Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

1.1.17 "Due Diligence" shall have the meaning ascribed in Section 3.1.

1.1.18 "Environmental Laws" shall mean all federal, state, and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances, and regulations issued by any Governmental Entity with respect to or which otherwise pertain to or affect the Properties or any portion thereof, the use, ownership, occupancy, or operation of the Properties or any portion thereof, or any owner of the Properties, and as same have been amended, modified, or supplemented from time to time, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), comparable state and local laws, and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the aforementioned laws.

1.1.19 "Escrow Agent" shall mean [_____].

1.1.20 "Excluded Assets" shall refer to any assets owned by any of the Sellers that are not Properties or Purchased Assets and shall include (i) all of Sellers' rights under an executory contracts including the agreements between Sellers and their club members and (ii) any equity interests held by Sellers that are not listed on Exhibit C.

1.1.21 "Expense Reimbursement" shall have the meaning ascribed in Section 9.3.

1.1.22 "Final Order" shall refer to an order or judgment of any Governmental Entity as to which the time to file an appeal, a motion for rehearing or reconsideration (excluding any motion under F.R.C.P. 60(b)) or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

1.1.23 "Governmental Entity" shall mean: (i) any federal, state, county, local, municipal or foreign governmental or administrative agency or political subdivision thereof; (ii) any governmental authority, board, bureau, commission, department or instrumentality; and (iii) any court or administrative tribunal.

1.1.24 "Hazardous Materials" shall mean any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any Environmental Laws.

1.1.25 "Individual Property" shall mean: (i) each of the parcels of land and appurtenances thereto more particularly described on Exhibit B hereto (including, without limitation, all rights-of-way, open or proposed streets, alleys, easements, strips, or gores of land adjacent thereto); (ii) the buildings, improvements, and structures located on such parcels of land and fixtures which are located at and affixed to any of such buildings, improvements, and structures; and (iii) all tangible and intangible assets and personal property of any nature relating to any of the foregoing property (including without limitation: (A) the Personal Property associated with such Individual Property; (B) all warranties upon the improvements or the Personal Property associated with such Individual Property; (C) rights to any plans, specifications, engineering studies, reports, drawings, and prints relating to the construction, reconstruction, modification, and alteration of improvements; and (D) the Licenses associated with such Individual Property).

1.1.26 "Individual Property Purchase Price" shall mean, with respect to any given Individual Property, the Individual Property Purchase Price set forth on Exhibit B hereto for such Individual Property.

1.1.27 "Intellectual Property" shall mean all intellectual property that any Seller owns, licenses or uses including, but not limited to, any works of authorship, inventions (whether patentable or not), invention disclosures, industrial models, industrial designs, utility models and certificates of invention, designs (including without limitation graphics, label and artistic designs), all United States and foreign patents and patent applications (including provisional patent applications), including all U.S., foreign and PCT related applications continuations, continuations-in-part, divisionals, RCES, CPAs, reexaminations, reissues and the like), trademarks, trade names, service marks, copyrights, and any applications for such trademarks, trade names, service marks and copyrights, all names, designs, business and product names and logos together in all cases with related intangible value, franchises, franchise rights, domain names, pricing and cost information, business and marketing plans and proposals and other trade secrets, schematics, technical information, technology, manufacturing and engineering information, know-how, and computer software programs or applications, source codes, object codes and tangible or intangible proprietary information or material.

1.1.28 "Knowledge" or "Sellers' Knowledge" shall mean the actual knowledge, after a reasonable and good faith investigation of any specified matter, of Jim Tousignant, Phil Callaghan, and Jeff Sparks.

1.1.29 "Liabilities" shall mean all liabilities and obligations (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including all liabilities for Taxes with respect to periods prior to the Closing Date (including periods prior to the Petition Date).

1.1.30 "Licenses" shall mean, collectively, to the extent assignable, all licenses, permits, approvals, certificates of occupancy, dedications, subdivision maps and entitlements now or hereafter issued, approved or granted by any Governmental Entity (each, a "Permit"), in each case, with respect to the Properties or the Purchased Assets; provided, however, that, to the extent that Sellers have any right, title, or interest in any Permit that is not issued in the name of Sellers then, to the extent assignable, the definition of Licenses will also include such Permits.

1.1.31 "Lien" or "Liens" means any lien (statutory or otherwise), hypothecation, encumbrance, Claim, security interest, interest, mortgage, deed of trust, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, Tax (including foreign, federal, state and local Tax), order of any Governmental Entity, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that Buyer is a successor, transferee or continuation of any Seller and (iv) any leasehold interest, license or other right, in favor of a third party or any Seller, to use the Properties or the Purchased Assets or any portion thereof, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

1.1.32 "Losses" shall have the meaning ascribed in Section 9.2(a).

1.1.33 "Permitted Outside Parties" shall have the meaning ascribed in Section 3.4.

1.1.34 "Person" means any individual, any corporation, limited liability company, partnership, or other entity, and any Governmental Entity.

1.1.35 "Personal Property" shall mean (i) the tangible personal property which is located at and used in connection with any of the Properties, including, but not limited to all furniture, fixtures and equipment located at and used in connection with any of the Properties; (ii) all of Sellers' Books and Records, (iii) any intangible assets owned by the Sellers including any Intellectual Property and all goodwill associated therewith, the right to sue and collect for past infringement of such Intellectual Property, the right to create derivative works for any such Intellectual Property (including the right to exploit any copyrighted works for subsidiary purposes and in different media and by future methods of exploitation) and all causes of action related to such Intellectual Property, (iv) any accounts receivable, (v) all of Sellers' deposits, credits, pre-paid expenses, deferred charges, advance payments, security deposits, bonds, letters of credit, rights to escrows, claims for refunds, and prepaid items, (vi) all computers, computer support equipment and software, telephone and communication systems, security systems, accounting systems, email addresses, source codes and master disks of source codes, other

proprietary information owned or licensed, whether for general business usage (e.g., accounting, word processing, graphics, spreadsheet analysis), or specific, unique-to-the-business usage, including all aspects of the reservation system used by Sellers in connection with the operation of their vacation club, and (vii) any tangible or intangible property and rights of every kind or nature used by the Company assets or property listed on Exhibit C hereto.

1.1.36 “Pre-Petition Indebtedness” shall mean the outstanding principal, interest and fees owed by Seller to the Buyer pursuant to the Pre-Petition Loan Documents, which totaled \$97,276,905.84 as of September 20, 2010.

1.1.37 “Pre-Petition Loan Documents” shall mean (i) that certain Consolidated Amended and Restated Loan and Security Agreement, dated as of September 15, 2009, among Sellers, Buyer (or certain Affiliates of Buyer) and the other parties thereto and (ii) each of the documents executed in connection therewith.

1.1.38 “Properties” shall mean, collectively, the Individual Properties.

1.1.39 “Proration Items” shall have the meaning ascribed in Section 9.4.1.

1.1.40 “Proration Time” shall have the meaning ascribed in Section 9.4.1.

1.1.41 “Purchase Price” shall have the meaning ascribed in Section 2.2.

1.1.42 “Purchased Assets” shall mean: (i) all Personal Property; (ii) any and all rights and remedies of Sellers with respect to the policies of insurance set forth on Exhibit D hereto as they relate to the Properties or the Purchased Assets, and (iii) the equity interests of the entities identified on Exhibit C that are owned by the Sellers identified on such schedule, in each case as identified on Exhibit C (as the same may be amended prior to Closing).

1.1.43 “Qualified Bid” shall have the meaning ascribed to it in the Bid Procedures attached to the Bid Procedures Order.

1.1.44 “Sale Motion” shall mean a motion, in substantially the form attached as Exhibit A-1 hereto, to be filed by Sellers with the Bankruptcy Court, seeking approval of the transactions contemplated by this Agreement.

1.1.45 “Sale Order” shall mean an order entered by the Bankruptcy Court, in substantially the form attached as an exhibit to the Sale Motion, approving the transactions contemplated by this Agreement with the Buyer or, as the context requires, with a third-party.

1.1.46 “Seller Indemnified Party” shall have the meaning ascribed in Section 9.2(b).

1.1.47 “Surviving Provisions” shall mean those provisions of this Agreement that expressly survive the termination of this Agreement or the Closing, as the case may be, including, without limitation, Sections 3.4, 7.5, 9.5.1(a), 9.6, and 10.10.

1.1.48 "Tax" means any tax, charge or assessment by or liability to any Governmental Entity, including, but not limited to, any deficiency, interest or penalty.

1.1.49 "Tax Return" means any return, report or declaration filed with or submitted to any Governmental Entity in connection with the assessment, collection or payment of any Tax.

1.1.50 "Title Company" shall mean Fidelity National Title Insurance Company.

1.1.51 "Title Policy" and "Title Policies" shall have the meanings ascribed in Section 7.1.4.

Section 1.2 Rules of Construction. Article and Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. All references to "Articles" or "Sections" without reference to a document other than this Agreement, are intended to designate articles and sections of this Agreement, and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Article or Section, unless specifically designated otherwise. The use of the term "including" shall mean in all cases "including but not limited to," unless specifically designated otherwise. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

ARTICLE 2

AGREEMENT OF PURCHASE AND SALE; PURCHASE PRICE

Section 2.1 Agreement of Purchase and Sale. Sellers agree to sell, transfer, assign, and convey to Buyer, and Buyer agrees to purchase and accept, subject to the terms and conditions of this Agreement, good and marketable title in and to the Properties and the Purchased Assets, in each case, free and clear of all Liens and Claims.

Section 2.2 Purchase Price. Subject to any adjustment as provided herein or in the Bid Procedures, Buyer shall pay Sellers an aggregate purchase price for the Properties and the Purchased Assets of seventy four million, seven hundred and nine thousand and seven hundred and fifteen (\$74,709,715) (the "Purchase Price")¹ at Closing, which such amount shall be paid by way of a dollar for dollar credit against the Pre-Petition Indebtedness of Sellers to Buyer under the Pre-Petition Loan Documents pursuant to and in accordance with Section 363(k) of the Bankruptcy Code.

Section 2.3 Allocation of Purchase Price. The Parties intend that the transactions contemplated by this Agreement shall be treated for tax purposes as a taxable purchase. Within sixty (60) days after the Closing Date, Buyer will deliver to the Agent a schedule allocating the Purchase Price in accordance with Section 1060 of the Code (the "Allocation Schedule"), which

¹ Total purchase price shall equal aggregate minimum bid amount for Properties plus additional consideration for Purchased Assets to be determined based on value ascribed to such assets on Sellers' schedules.

Allocation Schedule may be amended to the extent, and in a manner consistent with any adjustment to the Proration Items based on actual figures received.

Section 2.4 No Liabilities Assumed. Sellers acknowledge and agree that pursuant to the terms and provisions of this Agreement, Buyer shall not assume, and shall not be deemed to have assumed, any debt, Claim, obligation or other Liability of any Seller whatsoever.

ARTICLE 3

BUYER'S DUE DILIGENCE / CONDITION OF THE PROPERTIES AND THE PURCHASED ASSETS

Section 3.1 Buyer's Inspections and Due Diligence. Sellers acknowledge that Buyer shall have the ability to conduct its examinations, inspections, testing, studies and investigations (collectively, "Due Diligence") of the Properties and the Purchased Assets. Buyer may conduct such Due Diligence as it deems necessary or appropriate, and examine and investigate to its full satisfaction all facts, circumstances, and matters relating to the Properties and Purchased Assets (including the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws, environmental conditions, engineering and structural matters), title and survey matters, and any other matters it deems necessary or appropriate for purposes of consummating this transaction. Buyer may, at any time prior to the Auction (as such term is defined in the Bid Procedures Order) and in its sole discretion amend Exhibits B or C based on the results of its Due Diligence to remove Properties or Purchased Assets or add additional properties or assets.

Section 3.2 Delivery Period. On or before the date which is five (5) business days after the date hereof (or, with respect to item (vii) below, within five (5) business days after Buyer's request), Sellers shall deliver (or make available to Buyer) to Buyer the following items for each Individual Property: (i) an existing as-built ALTA survey (each, a "Survey" and, collectively, the "Surveys"); (ii) copies of all service contracts relating thereto; (iii) copies of existing engineering studies and existing environmental audits prepared by third parties in connection therewith; (iv) the Licenses; (v) an inventory of the Purchased Assets; (vi) a copy of Sellers' existing policies of title insurance; and (vii) such other information as Buyer may reasonably request.

Section 3.3 Site Visits. Buyer and its Permitted Outside Parties shall have reasonable access to the Properties and the Purchased Assets for purposes of conducting Due Diligence. Buyer will conduct its Due Diligence so as to minimize, to the extent reasonably possible to do so, any interference with the operations and occupancy of the Properties. Buyer and all Permitted Outside Parties shall, in performing such Due Diligence, use its best efforts to comply with any and all laws, ordinances, rules, and regulations applicable to the Properties and the Purchased Assets and will not engage in any activities which would violate any License or Environmental Laws or any other applicable laws.

Section 3.4 Confidentiality. Buyer agrees that any information obtained by Buyer or its Affiliates, lenders, investors, attorneys, accounts, and other advisors (collectively, the "Permitted Outside Parties") in the conduct of its Due Diligence shall be treated as confidential

pursuant to Section 11.10 of this Agreement and shall be used only to evaluate the acquisition of the Properties and the Purchased Assets from Sellers.

Section 3.5 Maintenance of Properties. From the date hereof until the Closing Date, and except as otherwise consented to or approved by Buyer in writing, Sellers covenant and agree with Buyer that Sellers will, from the date hereof until the Closing Date or earlier termination of this Agreement: (i) maintain each of the Properties and the Purchased Assets to keep such Properties and Purchased Assets in such condition as they were in as of the Petition Date, subject to ordinary wear and tear; and (ii) maintain, at Sellers' expense, all risk coverage insurance on the Properties and the Purchased Assets in an amount equal to the full replacement value of each of the Properties.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLERS

Section 4.1 Representations and Warranties of Sellers. Each of the Sellers hereby represents and warrants to Buyer as follows:

(a) Status. Each of the Sellers is a limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation. Each of the Sellers is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required.

(b) Authority. Subject to any necessary authorization from and the jurisdiction of the Bankruptcy Court, each of the Sellers has all requisite power and authority to own its properties and assets and to carry on its business as it is now being conducted. After giving effect to the Sale Order, the execution and delivery of this Agreement and the performance of Sellers' obligations hereunder have been or will be duly authorized by all necessary action on the part of Sellers, and this Agreement constitutes the legal, valid and binding obligation of Sellers, subject to equitable principles and principles governing creditors' rights generally.

(c) Non-Contravention. After giving effect to the Sale Order, the execution and delivery of this Agreement by Sellers and the consummation by Sellers of the transactions contemplated hereby will not: (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity; (ii) conflict with, result in a breach of, or constitute a default under the organic documents of Sellers; or (iii) result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any agreement, contract, lease (including, without limitation, the Leases), license, instrument, or other arrangement to which any of the Sellers is a party or by which they are bound or to which any of their respective assets are subject (or result in the imposition of any lien upon any of their respective assets), except where the violation, breach, default, acceleration, termination, modification, cancellation, failure to give notice or lien would not be materially adverse to any Individual Property, or the ability of the Sellers to consummate the transactions contemplated by this Agreement.

(d) Suits and Proceedings. Except as set forth on Schedule 4.1(d), there are no actions, suits, investigations or proceedings pending or, to the Sellers' Knowledge, threatened, against or involving the Sellers, the Properties or the Purchased Assets. Except as set forth on Schedule 4.1(d), there are no outstanding orders, rulings, decrees, judgments, or stipulations to which the Sellers are a party or by which the Sellers, any of the Properties, or any of the Purchased Assets are bound, by or with any court, arbitrator or administrative agency.

(e) Non-Foreign Entity. None of the Sellers is a "foreign person" or "foreign corporation" as those terms are defined in the Code and the regulations promulgated thereunder.

(f) Consents. After giving effect to the Sale Order, no consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Sellers or the performance by Sellers of the transactions contemplated hereby.

(g) Compliance with Laws. Except as set forth on Schedule 4.1(g), to the Sellers' Knowledge, the Sellers have complied in all material respects with all laws, regulations, rules, orders, judgments, decrees and other requirements imposed by federal, state, and local Governmental Entities applicable to them in the operation or ownership of the Properties and the Purchased Assets (the "Applicable Laws").

(h) Environmental Matters. Except as set forth on Schedule 4.1(h): (a) there have been and are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Hazardous Materials on any of the Properties or any other property that could reasonably form the basis of any environmental claim against the Sellers or against any Person whose liability for any environmental claim Sellers have or may have retained or assumed either contractually or by operation of law; or (b) there has been no violation of any Environmental Law in any material respect. Except as set forth on Schedule 4.1(h), the Sellers have not received any actual or threatened order, notice or other written communication from any Governmental Entity with respect to any of the Properties of any actual or potential violation or failure to comply with any Environmental Law.

(i) Properties. Sellers have good and marketable title to and lawful ownership of the Properties and the Purchased Assets, free and clear of all Liens. Sellers have made available to Buyer true and complete copies of all certificates of occupancy for each of the Properties and a copy of any variance granted with respect to such Properties pursuant to applicable zoning laws or ordinances. Except as set forth on Schedule 4.1(i), Sellers have not received any written notice from any Governmental Entity with respect to the ownership or use of each of the Properties or the Purchased Assets that might adversely affect the rights of Buyer in the Properties or the Purchased Assets.

(j) Zoning. To the Sellers' Knowledge: (i) each of the Properties complies in all material respects with all applicable zoning, building, fire and safety codes or regulations. To Sellers' Knowledge, there is no plan, study or effort by any Governmental Entity to alter or change the zoning of any of the Properties; and (ii) Sellers' use of the Properties complies with all applicable homeowners' or condominium association rules, regulations, codes, or declarations

and Sellers' have not received any notices from any homeowners' associations, condominium associations, or similar entities regarding Sellers' use of the Properties in the conduct of their respective businesses.

(k) Rights of Use and Occupancy. Sellers have the exclusive right of use and occupancy of the Properties. There are no contracts or agreements to which any of the Sellers is a party or by which any of the Properties is bound, granting to any person the right of use or occupancy of any portion of any of the Properties. All water, sewer, gas, electric, telephone and drainage facilities and all other utilities and public and quasi-public improvements upon or adjacent to the Properties required by law or for the normal operation of the Properties are available and are or were adequate for Sellers' use of the Properties. The heating, ventilation, air conditioning, sewer, water, plumbing, electrical, gas, and other mechanical systems on the Properties are in good working order and no repairs with respect thereto are required for the operation of the Properties. No material repairs are required to the roof, foundation exterior walls, floors, ceilings or supporting members of the any of the Properties, and, without limiting the generality of the foregoing, there are no defects in any of the Properties which affect use of the Properties.

(l) Purchased Assets. After giving effect to the Sale Order, at Closing, Sellers will transfer and convey to Buyer good and marketable title to the Purchased Assets, free and clear of all Liens other than Permitted Exceptions. The Purchased Assets are in good operating condition and repair, normal wear and tear excepted, and have been maintained in accordance with all applicable specifications and warranties and normal industry practice.

(m) Taxes. Each Seller has filed or caused to be filed, within the times and within the manner prescribed by law, all federal, provincial and local tax returns and tax reports which are required to be filed by such Seller. Such returns and reports reflect accurately all liability for taxes of such Seller for the periods covered thereby. All federal, provincial, state and local income, profits, sales, use, occupancy, excise and other taxes, assessments and reassessments (including interest and penalties) payable by, or due from, such Seller have been fully paid or adequately disclosed and fully provided for on Schedule 4.1(m) and/or the books and records of Sellers. There are no actions, suits or other proceedings or investigations or claims in progress, pending or, to Seller's knowledge threatened against any Seller in respect of any taxes, governmental charges or assessments and, in particular, there are no currently outstanding reassessments or written enquiries which have been issued or raised by any governmental authority relating to any such taxes, governmental charges and assessments that are not otherwise going to be paid. Sellers have withheld and remitted all amounts required to be withheld and remitted by them in respect of any taxes, or will remit such amounts promptly after Closing.

(n) Brokers. Sellers and the Agent hereby represent and warrant to Buyer that they did not employ or use any broker or finder to arrange or bring about this transaction, and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement.

(o) **AS IS, WHERE IS.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT: (I) THE SELLERS EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE, QUALITY OR PROSPECTS OF THE PROPERTIES AND THE PURCHASED ASSETS; AND (II) THE SELLERS SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTIES AND THE PURCHASED ASSETS, IT BEING UNDERSTOOD THAT SUCH SUBJECT ASSETS ARE BEING ACQUIRED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND BUYER SHALL RELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF.

ARTICLE 5

Section 5.1 Buyer's Representations and Warranties. Buyer represents and warrants to Sellers the following:

(a) **Status.** Buyer is a limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation. Buyer is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required.

(b) **Authority.** After giving effect to the Sale Order, the execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been or will be duly authorized by all necessary action on the part of Buyer and this Agreement constitutes the legal, valid and binding obligation of Buyer, subject to equitable principles and principles governing creditors' rights generally.

(c) **Non-Contravention.** After giving effect to the Sale Order, the execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Entity or conflict with, result in a breach of, or constitute a default under the organic documents of Buyer, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Buyer is a party or by which it is bound.

(d) **Consents.** After giving effect to the Sale Order, no consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of the transactions contemplated hereby.

(e) **Brokers.** Buyer hereby represents and warrants to Sellers that it did not employ or use any broker or finder to arrange or bring about this transaction, and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement.

ARTICLE 6

ADDITIONAL COVENANTS

Section 6.1 Bankruptcy Matters. Within one day of the execution of this Agreement, Sellers will file the Bid Procedures Motion and Sale Motion with the Bankruptcy Court. Sellers will use their reasonable best efforts to have the Bankruptcy Court: (i) schedule an expedited hearing on the Bid Procedures Motion; and (ii) enter the Bid Procedures Order (in substantially the form attached to the Bid Procedures Motion) as soon as practicable (iii) schedule an hearing on the Sale Motion in accordance with the time periods required by the Bid Procedures; and (ii) enter the Sale Order (in substantially the form attached to the Sale Motion) as soon as practicable. Buyer shall use its commercially reasonable efforts to assist Sellers in obtaining the Sale Order, including providing testimony as required at any hearing before the Bankruptcy Court.

Section 6.2 Access to Information and Facilities. Sellers shall allow Buyer and its Permitted Outside Parties to make such inspection of the Properties and the Purchased Assets, and to inspect and make copies of Sellers' contracts, books and records and all other documents and information requested by Buyer and related to the Properties and the Purchased Assets.

Section 6.3 Best Efforts; Further Assurances.

(a) Sellers will use its reasonable best efforts to fulfill or obtain the fulfillment of the conditions to Closing of this Agreement and to timely obtain any and all consents required for the consummation of the transactions contemplated by this Agreement as soon as practicable.

(b) Sellers shall execute such documents and use its reasonable best efforts to take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, to put Buyer in actual possession and control of the Properties and the Purchased Assets, to effectuate, record or perfect the transfer of the Properties and the Purchased Assets to Buyer, to confirm the title of the Properties and the Purchased Assets in Buyer, to assist Buyer in exercising rights relating thereto, to obtain all consents, approvals and authorizations of third parties, to make all filings with and give all notices to third parties which may be necessary or required in order to effectuate the transactions contemplated hereby). The obligations of Seller set forth in the first sentence of this Section 6.3(b) shall survive the Closing.

Section 6.4 Continued Effectiveness of Representations and Warranties. From the date hereof through the Closing Date, except as otherwise expressly contemplated by this Agreement, Sellers shall use reasonable best efforts to cause the representations and warranties made in this Agreement to continue to be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date. Sellers shall promptly notify Buyer and Buyer shall promptly notify Sellers of any event, condition or circumstance occurring from the date hereof through the Closing Date that would constitute a material violation or breach of any of the respective representations or warranties made by Sellers contained in this Agreement if made on such date.

ARTICLE 7

CONDITIONS TO CLOSING

Section 7.1 Buyer's Conditions. Buyer's obligation to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or written waiver on or prior to the Closing Date of all of the following conditions, any or all of which may be waived in whole or in part in writing by the Buyer:

7.1.1 Representations, Warranties, and Covenants of the Sellers. The representations and warranties of the Sellers and Agent contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, and the covenants and agreements of the Sellers and Agent to be performed on or before the Closing Date in accordance with this Agreement shall have been duly performed in all material respects. At the Closing, the Sellers and Agent will deliver to Buyer a joint certificate of an officer of each of the Sellers and Agent dated as of the Closing Date, whereby such officer certifies that the conditions set forth in this Section 7.1.1 have been satisfied.

7.1.2 Filings; Consents; Waiting Periods. All consents required for the Sellers to perform this Agreement in accordance with the Bankruptcy Code and any other Applicable Laws shall have been obtained and shall be in full force and effect on the Closing Date, and each approval or consent required under such laws to be obtained before consummation of the transaction shall have been obtained or waived and all waiting and other time periods under such laws shall have expired, lapsed or been terminated. No injunction or restraining order shall have been issued by any court of competent jurisdiction and be in effect which restrains or prohibits any material transaction contemplated hereby and no other legal restraint or prohibition preventing the consummation of any material transaction shall be in effect.

7.1.3 Entry of Orders By Bankruptcy Court. Each of the Sale Order and the Bid Procedures Order, both in forms reasonably acceptable to Buyer, shall have been entered by the Bankruptcy Court and shall not have been vacated, stayed, or reversed, or modified, amended, or supplemented in any manner adverse in any material respect to the Buyer.

7.1.4 Title Commitments. At Closing, the Title Company shall issue to Buyer or be irrevocably committed to issue to Buyer an extended coverage ALTA owner's form title policy (each, a "Title Policy" and, collectively, the "Title Policies"), for each of the Individual Properties in the amount of the Individual Property Purchase Price with respect to each Individual Property (or such other amount as Buyer may reasonably request), insuring that fee simple title to each Individual Property is vested in Buyer free and clear of all Liens. Buyer shall be entitled to request that the Title Company provide such endorsements (or amendments) to the Title Policies as Buyer may reasonably require, provided that: (i) such endorsements (or amendments) shall be at no cost to, and shall impose no additional liability on, Sellers; (ii) the Closing shall not be materially delayed as a result of Buyer's request.

7.1.5 Litigation. No action, suit or other proceedings shall be pending before any Governmental Entity seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain damages in respect thereof, or involving a claim that consummation thereof would result in the material violation of any law, decree or regulation of any Governmental Entity having appropriate jurisdiction.

7.1.6 Material Adverse Change. Since the date of this Agreement, there shall not have been a Material Adverse Change with respect to the Acquired Assets.

7.1.7 Due Diligence. The results of Buyer's due diligence with respect to the Sellers and all aspects of their business, assets, affairs and prospects shall be satisfactory to Buyer in its sole discretion.

7.1.8 Other. The Sellers shall have delivered all items and satisfied all obligations pursuant to Section 8.2.

Section 7.2 Sellers' Conditions. The Sellers' obligation to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or written waiver on or prior to the Closing Date of all of the following conditions, any or all of which may be waived in whole or in part in writing by the Agent (on behalf of the Sellers):

7.2.1 Representations, Warranties, and Covenants of Buyer. The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, and the covenants and agreements of Buyer to be performed on or before the Closing Date in accordance with this Agreement shall have been duly performed in all material respects. At the Closing, Buyer will deliver to Sellers a certificate of an officer of Buyer dated as of the Closing Date whereby such officer certifies that the conditions set forth in this Section 7.2.1 have been satisfied.

7.2.2 Filings; Consents; Waiting Periods. All consents required for Sellers to perform this Agreement in accordance with the Bankruptcy Code shall have been obtained and shall be in full force and effect on the Closing Date, and each approval or consent required under such laws to be obtained before consummation of the transaction shall have been obtained or waived and all waiting and other time periods under such laws shall have expired, lapsed or been terminated. No injunction or restraining order shall have been issued by any court of competent jurisdiction and be in effect which restrains or prohibits any material transaction contemplated hereby and no other legal restraint or prohibition preventing the consummation of any material transaction shall be in effect.

7.2.3 Entry of Orders by Bankruptcy Court. Each of the Sale Order and the Bid Procedures Order, both in forms reasonably acceptable to Buyer, shall have been entered by the Bankruptcy Court and shall not have been vacated, stayed, or reversed, or modified, amended, or supplemented in any manner adverse in any material respect to the Buyer.

7.2.4 Other. Buyer shall have delivered all items and satisfied all obligations pursuant to Section 8.3.

ARTICLE 8

CLOSING

Section 8.1 Closing. The closing hereunder (“Closing”) shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made through escrow at Escrow Agent’s office on the date that is three (3) business days after the Sale Order shall have become a Final Order, or such other date and time as Buyer and the Agent may mutually agree upon in writing (the “Closing Date”).

Section 8.2 Sellers’ Closing Documents and Other Items. At or before Closing, Sellers shall deposit into escrow with the Escrow Agent the following items:

8.2.1 A duly executed and acknowledged “Special Warranty Deed” in favor of Buyer for each Individual Property (or equivalent transfer document applicable in the jurisdiction where such Individual Property is located);²

8.2.2 One (1) duly executed counterparts of the Bill of Sale in the form attached hereto as Exhibit E (the “Bill of Sale”) with respect to the Purchased Assets;

8.2.3 A set of keys to each of the Properties on the Closing Date;

8.2.4 All books and records in Sellers’ possession, custody or control that relate to the Properties or the Purchased Assets;

8.2.5 Such other documents as may be reasonably requested by Buyer to consummate the purchase of the Properties or Purchased Assets as contemplated by this Agreement; and

8.2.6 Two (2) duly executed counterparts of the Closing Statement.

Section 8.3 Buyer’s Closing Documents and Other Items. At or before Closing, Buyer shall deposit into escrow with the Escrow Agent the following items:

8.3.1 One duly executed counterpart of the Bill of Sale;

8.3.2 Such other documents as may be agreed upon by Sellers or the Agent and Buyer to consummate the purchase of each Individual Property as contemplated by this Agreement; and

8.3.3 Two (2) duly executed counterparts of the Closing Statement.

Section 8.4 Prorations and Closing Costs.

² The technical real estate and bankruptcy provisions of this Agreement are subject to such technical changes and modifications as may be necessary after review by legal counsel admitted in the jurisdictions where the non-US properties are located.

8.4.1 Sellers and Buyer agree to adjust, as of 11:59 p.m. on the day immediately preceding the Closing Date (the "Proration Time"), the following (collectively, the "Proration Items"): real estate and personal property taxes and assessments (subject to the terms of 8.4.1(b) below), homeowners association fees or dues, and utility bills (except as hereinafter provided) payable by the owner of each of the Properties. Sellers will be charged or credited for the amounts of all of the Proration Items relating to the period up to and including the Proration Time, and Buyer will be charged or credited for all of the Proration Items relating to the period after the Proration Time. Such preliminary estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Sellers and submitted to Buyer for Buyer's approval prior to the Closing Date (the "Closing Statement"). The Closing Statement, once agreed upon, shall be signed by Buyer and Sellers for purposes of making the preliminary proration adjustment at Closing subject to the final settlement provided for below. The preliminary proration shall be paid at Closing by Buyer to Sellers (if the preliminary prorations result in a net credit to Sellers) or by Sellers to Buyer (if the preliminary prorations result in a net credit to Buyer) by way of increasing or reducing the amount to be paid by Buyer (by credit bid in accordance with Section 363(k) of the Bankruptcy Code) in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Proration Time, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received (not to exceed 120 days after Closing), re-prorations will be made on the basis of the actual figures, and a final settlement will be made between Sellers and Buyer. No prorations will be made in relation to insurance premiums, and Sellers' insurance policies will not be assigned to Buyer. Final readings and final billings for utilities will be made if possible as of the Proration Time, in which event no proration will be made at Closing with respect to utility bills. Buyers will be entitled to all deposits posted by Sellers presently in effect with the utility providers. The provisions of this Section 8.4.1(a) will survive the Closing for twelve (12) months.

8.4.2 Buyer shall pay: (a) the Escrow Agent's escrow fee; (b) all charges and premiums payable with respect to the Title Policies (including the cost of any endorsements and any title examination fees); (c) the recording fees required in connection with the transfer of the Properties to Buyer; (d) all state and local transfer taxes payable as a result of the transfer of the Properties by Sellers to Buyer; and (e) any additional costs and charges customarily charged to buyers in accordance with common escrow practices in the jurisdictions in which each Individual Property is located, other than those costs and charges specifically required to be paid by Sellers hereunder.

ARTICLE 9

TERMINATION

Section 9.1 Termination. In addition to the other rights of termination set forth in this Agreement, prior to the Closing, this Agreement may be terminated:

9.1.1 by Buyer, if the Closing has not occurred by October 13, 2010 (the "Outside Date"); provided that Buyer will not be entitled to so terminate this Agreement if Buyer is then in breach, in any material respect, of this Agreement; or

9.1.2 by Buyer, if Agent or Sellers have materially breached or failed to comply with their representations, warranties, covenants, or obligations under this Agreement such that the conditions precedent set forth in Section 8.1 would not reasonably be expected to be satisfied, such breach or failure to comply shall not have been cured within a period of ten (10) days after Buyer shall have given written notice to Agent of such breach or failure to comply; provided that Buyer will not be entitled to so terminate this Agreement if Buyer is then in breach, in any material respect, of this Agreement; or

9.1.3 by Agent, if Buyer has materially breached or failed to comply with its representations, warranties, covenants, or obligations under this Agreement such that the conditions precedent set forth in Section 8.2 would not reasonably be expected to be satisfied, such breach or failure to comply shall not have been cured within a period of ten (10) days after Agent shall have given written notice to Buyer of such breach or failure to comply; provided that Agent will not be entitled to so terminate this Agreement if Agent or Sellers are then in breach, in any material respect, of this Agreement;

9.1.4 by Buyer, in the event of (i) the failure of any condition to closing set forth in Section 7.1; (ii) the closing of an Alternative Transaction; or (iii) at such time as a Sale Order becomes a Final Order that names any party other than Buyer (or any of its Affiliates) as the "Successful Bidder" for the Properties or the Purchased Assets; or

9.1.5 by Buyer and Sellers, upon mutual written consent.

9.1.6 by Buyer, if the Sale Order is not entered by the Bankruptcy Court on or before October 18, 2010.

Section 9.2 Remedies. In the event of termination of this Agreement pursuant to Section 9.1:

9.2.1 all obligations of the parties hereto under this Agreement shall terminate and there shall be no liability of any party hereto to any other party and, except for Seller's obligation to pay the Expense Reimbursement (as defined in Section 9.3), each party hereto shall bear its own expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement; provided that the foregoing shall not relieve a party of liability for damages actually incurred by the other party as a result of any breach of this Agreement by such party;

9.2.2 if the termination is by Purchaser pursuant to Section 9.1.4 because the Bankruptcy Court has approved the sale of any of the Properties or Purchased Assets to a person(s) other than Buyer, Seller shall pay Purchaser in cash, at the Closing of such higher offer and prior to disbursement of such proceeds to any party, the applicable Expense Reimbursement, which shall constitute an administrative expense of the Seller's bankruptcy estate pursuant to 11 U.S.C. § 503(b).

Section 9.3 Expense Reimbursement. If: (i) this Agreement is terminated pursuant to Section 9.1.4(iii), In the event that a bid for an Individual Property by any party other than Buyer is accepted by Sellers at the Auction, Buyer shall be entitled to a reimbursement of its

costs and expenses (including attorneys' fees) (the "Expense Reimbursement") as set forth herein and in the Bid Procedures Order. The amount of such Expense Reimbursement will be calculated by determining the percentage that the individual successful bid bears to the total amount of the bids for the Debtors' assets inclusive of any remaining portion of Buyer's bid for all of the Properties and Purchased Assets (other than the Individual Property(ies) that are being sold to a party other than Buyer), and applying that percentage to the total amount of the Buyer's costs and expenses. Payment of such Expense Reimbursement shall be made by Sellers by wire transfer in immediately available funds to an account designated by Buyer, directly out of the proceeds received from the sale of the particular Individual Property(ies).

ARTICLE 10

MISCELLANEOUS

Section 10.1 Amendment and Modification. Any modification, amendment or waiver of or with respect to any provision of this Agreement or any other document delivered pursuant hereto shall not be effective unless it shall be in writing and signed by the Agent (on behalf of the Sellers) and the Buyer and shall designate specifically the terms and provisions so modified.

Section 10.2 Indemnification.

(a) **Sellers' Indemnification.** Sellers hereby covenant and agree, from and after the Closing, to indemnify and to hold harmless Buyer and its officers and directors, employees and agents (collectively, the "Buyer Indemnified Party") from and against all claims, losses, liabilities, damages, fines, penalties, taxes, costs and expenses, reasonable fees and disbursements of counsel, including counsel fees incurred to enforce its rights hereunder (collectively, the "Losses"), sustained or incurred by the Buyer Indemnified Party as follows: (i) all Losses sustained or incurred by any Buyer Indemnified Party in respect of Liabilities of Sellers; (ii) all Losses sustained or incurred by any Buyer Indemnified Party resulting from any breach of any representation or warranty on the part of any Seller under this Agreement; (iii) all Losses sustained or incurred by any Buyer Indemnified Party resulting from any breach of Sellers' covenants or agreements contained herein; and (iv) all Liabilities and Losses arising from third party claims in any way connected to the ownership, use or operation of the Properties or Purchased Assets for the period of Sellers' ownership prior to the date on which such Properties or Purchased Assets were transferred to Buyer.

(b) **Buyer's Indemnification.** Buyer hereby covenants and agrees, from and after the Closing, to indemnify and to hold harmless Sellers and its officers, directors, employees and agents (collectively, the "Seller Indemnified Party") from and against all Losses sustained or incurred by the Seller Indemnified Party as follows: (i) all Losses sustained or incurred by any Seller Indemnified Party resulting from any breach by Buyer of any of its representations or warranties; (ii) all Losses sustained or incurred by any Seller Indemnified Party resulting from any breach of any of Buyer's covenants or agreements contained herein; and (iii) all Liabilities and Losses in any way connected to the ownership, use or operation of the Properties and Purchased Assets for the period of Buyer's ownership after the date on which such Properties or Purchased Assets were transferred to Buyer.

Section 10.3 Risk of Loss and Insurance Proceeds.

10.3.1 Minor Loss. Buyer shall be bound to purchase the Properties and the Purchased Assets for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any damage to any Individual Property or destruction of any improvements thereon or condemnation of any portion of any Individual Property, provided that: (a) the cost to repair any such damage or destruction, or the diminution in the value of such Individual Property as a result of a partial condemnation, equals five percent (5%) of the Individual Property Purchase Price or less; and (b) any insurance proceeds or condemnation awards collected or collectible by Sellers as a result of any such damage or destruction or condemnation, less the amount of any insurance deductible, shall be turned over from Sellers to Buyer.

10.3.2 Major Loss. If the amount of the damage or destruction or condemnation as specified above exceeds five percent (5%) of the Individual Property Purchase Price for the damaged Individual Property, then Buyer may at its option, to be exercised by written notice to the Agent within ten (10) business days of the Agent's or Sellers' providing written notice to Buyer of the occurrence of the damage or destruction or the commencement of condemnation proceedings, terminate this Agreement solely with respect to such Individual Property. Buyer's failure to elect to terminate this Agreement with respect to such Individual Property within said ten (10) business day period shall be deemed an election by Buyer to consummate this purchase and sale transaction with respect to such Individual Property. If Buyer elects to terminate this Agreement with respect to such Individual Property within such ten (10) business day period, the Purchase Price shall be reduced by the Individual Property Purchase Price with respect to such Individual Property and neither party shall have any further rights or obligations hereunder with respect to such Individual Property except as provided in the Surviving Provisions. If Buyer elects or is deemed to have elected to proceed with the purchase of such Individual Property, then upon the Closing, any insurance proceeds or condemnation awards collected or collectible by Sellers as a result of any such damage or destruction or condemnation, less the amount of any insurance deductible, shall be turned over from Sellers to Buyer.

Section 10.4 Amendment and Modification. Any modification, amendment or waiver of or with respect to any provision of this Agreement or any other document delivered pursuant hereto shall not be effective unless it shall be in writing and signed by the Agent (on behalf of the Sellers) and the Buyer and shall designate specifically the terms and provisions so modified; provided, however, that Buyer shall be permitted, in its sole discretion, to amend Exhibit C or any other portion of this Agreement to the extent necessary to reflect the assets Buyer ultimately determines it desires to purchase following the conclusion of its due diligence.

Section 10.5 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to Sellers:

Ultimate Escapes Holdings, LLC
3501 West Vine Street, Suite 225
Kissimmee, Florida 34741
Attention: Mr. James Tousignant

Tel: (407) 483-1901
Fax: (407) 483-1935

with copies to:

Greenberg Traurig, LLP
One International Place
Boston, Massachusetts 02110
Attention: Jeffrey M. Wolf, Esq.
Tel: (617) 310-6000
Fax: (617) 310-6001

If to Buyer:

CapitalSource Finance LLC
4445 Willard Avenue, 12th Floor
Chevy Chase, Maryland 20815
Attention: Joanne Fungaroli
Fax: (301) 841-2380

with copies to:

Patton Boggs LLP
1185 Avenue of the Americas, 30th Floor
(between 46th and 47th Streets)
New York, New York 10036
Attention: Michael P. Richman, Esq.
Fax: (646) 557-5101

Any such notices may be sent by: (a) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. mail; (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier; or (c) facsimile transmission, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed, but only if such notice is also sent by certified mail, return receipt requested or by a nationally recognized overnight courier. The above addresses and facsimile numbers may be changed by written notice to the other party; provided that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

Section 10.6 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including any trustee appointed in respect of the Sellers under the Bankruptcy Code). Without limiting any of Buyer's duties and obligations arising under this Agreement the rights and obligations of Buyer under

this Agreement with respect to any Individual Property and the Purchased Assets may be assigned by Buyer, in whole, in part, or in multiple parts, to one or more Affiliates of Buyer upon Buyer delivering written notice thereof to Agent. The Sellers shall not assign their rights or delegate their obligations under this Agreement without the express prior written consent of Buyer.

Section 10.7 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS.

Section 10.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. This Agreement may be executed and delivered by facsimile transmission or by electronic mail in portable document format with the same effect as if a manually signed original were personally delivered.

Section 10.9 Entire Agreement. This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.

Section 10.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

Section 10.11 Attorney Fees. If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, the prevailing party will be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom.

Section 10.12 Confidential Information. The parties acknowledge that the transaction described herein is of a confidential nature and shall not be disclosed except: (i) to Permitted Outside Parties; (ii) as required by law; (iii) as expressly contemplated by this Agreement (including, without limitation, pursuant to the Sale Motion); or (iv) as otherwise required by the Bankruptcy Court in the Cases. In connection with the negotiation of this Agreement and the preparation for the consummation of the transactions contemplated hereby, each party acknowledges that it will have access to confidential information relating to the other party. Each party shall treat such information as confidential, preserve the confidentiality thereof, and not duplicate or use such information, except to Permitted Outside Parties in connection with the transactions contemplated hereby. In the event of the termination of this Agreement for any reason whatsoever, Buyer shall return to the Agent, all documents, work papers, engineering and

environmental studies and reports and all other materials (including all copies thereof obtained from Sellers in connection with the transactions contemplated hereby), if any, and each party shall use its best efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information. Except as required by applicable law or as otherwise contemplated by this Agreement, no party shall issue any press release or make any statement to the media, without the other party's consent, which consent shall not be unreasonably withheld. The provisions of this Section 10.10 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

Section 10.13 No Joint Venture. Nothing set forth in this Agreement shall be construed to create a joint venture between Buyer and Sellers.

Section 10.14 Jurisdiction. For so long as Sellers (or any of their successors or assigns) remain subject to the jurisdiction of the Bankruptcy Court, the Bankruptcy Court shall have jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Agreement. The parties hereto consent to the exclusive jurisdiction of the Bankruptcy Court (and the appropriate appellate courts therefrom) in any such dispute and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Bankruptcy Court or that any such dispute which is brought in the Bankruptcy Court has been brought in an inconvenient forum.

Section 10.15 Waiver of Jury Trial. Each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action (each, an "Action"): (a) arising out of this Agreement, including any present or future amendment thereof; or (b) in any way connected with or related or incidental to the dealings of the parties or any of them with respect to this Agreement (as hereafter amended) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such Action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise and regardless of which party asserts such Action; and each party hereby agrees and consents that any such Action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties to the waiver of any right they might otherwise have to trial by jury.

Section 10.16 Time of Essence. Time is of the essence of this Agreement.

Section 10.17 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the party making the waiver.

Section 10.18 Agent. The Sellers hereby irrevocably authorize and empower the Agent to take the actions, and execute and deliver such documents and instruments, that are provided to be taken, executed, and delivered by the Agent in this Agreement. All such actions taken or to be taken by the Agent are ratified and confirmed.

[Remainder of Page Blank -- Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BUYER:
CAPITALSOURCE FINANCE LLC

AGENT:
ULTIMATE ESCAPES HOLDING, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: P. CALACASHIAN
Title: CFO

CAPITALSOURCE BAHAMAS LLC

By: _____
Name: _____
Title: _____

SELLERS:

P&J PARTNERS, LLC,
a Delaware limited liability company

By: **ULTIMATE ESCAPES HOLDINGS, LLC,**
a Delaware limited liability company

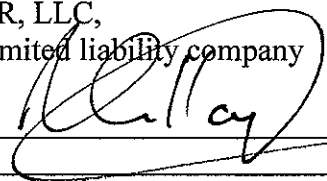
By: _____
Name: P. CALACASHIAN
Title: CFO

SNOWFLAKE INVESTMENTS I, LLC,
a Delaware limited liability company
TAHOE INVESTMENTS I, LLC,
a Delaware limited liability company
CABO INVESTMENTS I, LLC,
a Delaware limited liability company
MAHOGANY RUN INVESTMENTS I, LLC,
a Delaware limited liability company
CANDLEWOOD INVESTMENTS I, LLC,
a Delaware limited liability company
SUNNY ISLES INVESTMENTS I, LLC
A Delaware limited liability company
ULTIMATE SCOTTSDALE ROCKS, LLC,
a Delaware limited liability company
ULTIMATE BEAVER CREEK, LLC,

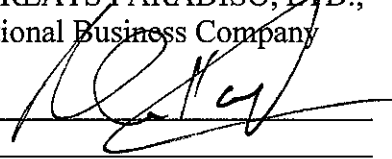
a Delaware limited liability company
ULTIMATE INDIAN ROCKS BEACH, LLC,
a Delaware limited liability company
ULTIMATE KEY WEST, LLC,
a Delaware limited liability company
ULTIMATE LAKE LAS VEGAS, LLC,
a Delaware limited liability company
ULTIMATE SCOTTSDALE, LLC,
a Delaware limited liability company
ULTIMATE LAKE TAHOE, LLC,
a Delaware limited liability company
ULTIMATE COLORADO, LLC,
a Delaware limited liability company
ULTIMATE TELLURIDE MOUNTAIN
VILLAGE, LLC,
a Delaware limited liability company
ULTIMATE NAPLES STRADA BELLA, LLC,
a Delaware limited liability company
ULTIMATE NAPLES MONTEVERDE, LLC,
a Delaware limited liability company
ULTIMATE PALM BEACH OCEAN, LLC,
a Delaware limited liability company
ULTIMATE MAUI WAILEA BEACH, LLC,
a Delaware limited liability company
ULTIMATE SUN VALLEY MACKENZIE, LLC,
a Delaware limited liability company
ULTIMATE SUN VALLEY PLAZA
TOWNHOUSE, LLC,
a Delaware limited liability company
ULTIMATE NEW YORK TRP
INTERNATIONAL, LLC,
a Delaware limited liability company
ULTIMATE KIAWAH TURTLE BEACH, LLC,
a Delaware limited liability company
ULTIMATE PARK CITY SILVERLAKE, LLC,
a Delaware limited liability company
ULTIMATE JACKSON HOLE SNAKE RIVER,
LLC, a Delaware limited liability company
BAHAMAS INVESTMENTS I, LLC,
a Delaware limited liability company
BAHAMAS INVESTMENTS II, LLC,
a Delaware limited liability company
BAHAMAS INVESTMENTS III, LLC,
a Delaware limited liability company
BAHAMAS INVESTMENTS IV, LLC,
a Delaware limited liability company

CABO CASA TORTUGA, LLC,
a Delaware limited liability company
CABO ESPERANZA #1501, LLC,
a Delaware limited liability company
CABO ESPERANZA #1502, LLC,
a Delaware limited liability company
CABO ESPERANZA #1503, LLC,
a Delaware limited liability company
CABO ESPERANZA #1601, LLC,
a Delaware limited liability company
CABO ESPERANZA #1602, LLC,
a Delaware limited liability company
CABO ESPERANZA #1603, LLC,
a Delaware limited liability company
CABO VILLA DEL SOL, LLC,
a Delaware limited liability company
CABO VILLA ETERNIDAD, LLC,
a Delaware limited liability company
CABO SAN LUCAS VILLA PARAISO, LLC,
a Delaware limited liability company
ULTIMATE NEVIS INVESTMENTS, LLC,
a Delaware limited liability company

By: UE MEMBER, LLC,
a Delaware limited liability company

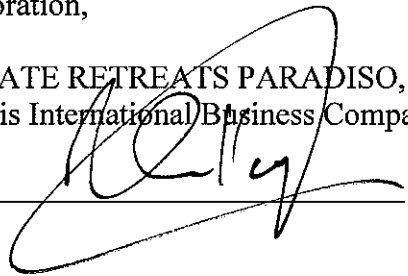
By: 
Name: _____
Title: _____

PRIVATE RETREATS PARADISO, LTD.,
a Nevis International Business Company

By: 
Name: _____
Title: _____

THE CENTURY CORPORATION LIMITED,
a Nevis corporation,

By: PRIVATE RETREATS PARADISO, LTD.,
a Nevis International Business Company

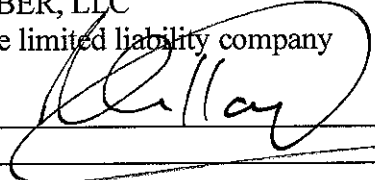
By: 

Name: _____
Title: _____

PRIVATE ESCAPES OF STEAMBOAT, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF TAHOE, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF JACKSON HOLE, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF KIAWAH, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF FOX ACRES, LLC,
a Colorado limited liability company
PRIVATE ESCAPES LA PLAYA, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF LAKE OCONEE, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF WAIKOLOA, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF WAIKOLOA II, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF CURRITUCK, LLC,
a Colorado limited liability company
PRIVATE ESCAPES LA COSTA, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF CABO, LLC,
a Colorado limited liability company
PRIVATE ESCAPES LA QUINTA I, LLC,
a Colorado limited liability company
PRIVATE ESCAPES LA QUINTA II, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF STOWE, LLC,
a Colorado limited liability company
PRIVATE ESCAPES OF ONE CENTRAL PARK
WEST, LLC,
a New York limited liability company
PRIVATE ESCAPES OF CHICAGO, LLC,
a Colorado limited liability company
PRIVATE ESCAPES 1600 BROADWAY, LLC,
a New York limited liability company
PRIVATE ESCAPES VILLA 304, LLC,
a Colorado limited liability company
PRIVATE ESCAPES PLATINUM OF COPPER
MOUNTAIN, LLC,
a Colorado limited liability company

PRIVATE ESCAPES PLATINUM KIAWAH, LLC,
a Colorado limited liability company
PRIVATE ESCAPES PLATINUM CURRITUCK,
LLC, a Colorado limited liability company
PRIVATE ESCAPES PLATINUM LA COSTA,
LLC, a Colorado limited liability company
PRIVATE ESCAPES PLATINUM CABO, LLC,
a Colorado limited liability company
PRIVATE ESCAPES PLATINUM LAKE
GEORGE, LLC,
a New York limited liability company
PRIVATE ESCAPES OF LA QUINTA
PLATINUM, LLC,
a Colorado limited liability company
PRIVATE ESCAPES PLATINUM ONE
CENTRAL PARK WEST, LLC,
a New York limited liability company
PRIVATE ESCAPES PLATINUM TCI, LLC,
a Colorado limited liability company
PRIVATE ESCAPES PLATINUM TELLURIDE,
LLC, a Colorado limited liability company
PRIVATE ESCAPES PLATINUM CHICAGO,
LLC, a Colorado limited liability company
PRIVATE ESCAPES LINK, LLC
a Colorado limited liability company

By: UE MEMBER, LLC
a Delaware limited liability company

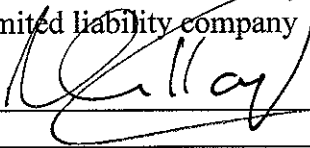
By: 
Name: _____
Title: _____

ULTIMATE RESORT, LLC,
a Florida limited liability company

By: JAMES TOUSIGNANT,
its Sole Class A Member

By: _____
Name: _____
Title: _____

ULTIMATE RESORT HOLDINGS, LLC,
a Delaware limited liability company

By: 
Name: _____
Title: _____

PRIVATE ESCAPES HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

UE HOLDCO, LLC,
a Delaware limited liability company
UE MEMBER, LLC,
a Delaware limited liability company
ULTIMATE ESCAPES CLUBS, LLC,
a Delaware limited liability company

By: ULTIMATE ESCAPES HOLDINGS, LLC,
a Delaware limited liability company

By: 
Name: _____
Title: _____

ULTIMATE ESCAPES ELITE CLUB, LLC,
a Delaware limited liability company
ULTIMATE ESCAPES SIGNATURE CLUB, LLC,
a Delaware limited liability company

ULTIMATE ESCAPES PREMEIRE CLUB, LLC,
a Delaware limited liability company

By: ULTIMATE ESCAPES CLUBS, LLC

By: ULTIMATE ESCAPES HOLDINGS, LLC,
a Delaware limited liability company

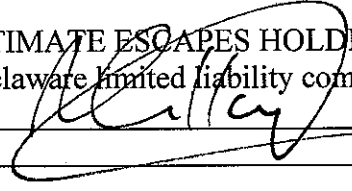
By: 
Name: _____
Title: _____

Exhibit A-1

Form of Sale Motion

Attached

COI-1356039v4

576528.07

DEL 86,340,579v2 9-20-10

Exhibit A-2

Form of Bid Procedures Motion

Attached

Exhibit B

Properties

Attached

Exhibit C

Specified Personal Property

Attached

Exhibit D

List of Insurance Policies

Attached

Exhibit E

Form of Bill of Sale

Attached

EXHIBIT B

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

In re:

ULTIMATE ESCAPES HOLDINGS,
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 10-_____ ()

(Jointly Administered)

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS OUTSIDE
THE ORDINARY COURSE OF BUSINESS; (B) AUTHORIZING THE SALE OF
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES; AND (C) GRANTING RELATED RELIEF**

Upon the motion, dated September 20, 2010 (the "**Sale Motion**"), of above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") pursuant to sections 105(a) and 363(b) of title 11 of the United States Code §§ 101-1532 (the "**Bankruptcy Code**"), Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Local 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 Delaware (the "**Local Rules**") requesting entry of an order (A) approving that certain Asset Purchase Agreement (the "**Purchase Agreement**") entered into by and between the Debtors and CapitalSource Finance LLC, as administrative agent and a collateral agent, and CapitalSource Bahamas LLC, as a collateral agent, for the benefit of CapitalSource Bank, as lender, or any of their respective designee (collectively, the "**Buyer**"); (B) approving the sale (the "**Sale**") of substantially all of the Debtors' assets to be acquired in accordance with the Sale (the "**Acquired Assets**") outside the

¹ A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as **Schedule "1"**.

ordinary course of business and free and clear of all liens, claims, encumbrances and other “interests” within the meaning of 11 U.S.C. § 363(f) of the Bankruptcy Code (collectively, the “**Encumbrances**”), and subject to higher or better bids; and (C) granting related relief; and this Court having entered an order dated [], 2010 [Bid Procedures Order] (the “[**Bid Procedures Motion/Bid Procedures Order**]”) [Docket No.] (A) approving the Bid Procedures² including the Expenses Reimbursement, (ii) scheduling the Sale Hearing, (iii) approving the form and manner of notice of the Auction, and (iv) granting related relief; and the Court having established the date of the Sale Hearing; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Sale Motion, the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in this case, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Motion, Pursuant to Sections 105(a), 363(b) and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of Order: (A) Approving Bid Procedures Relating to Sale of the Debtors’ Assets; (B) Scheduling a Hearing to Consider the Sale; (C) Approving the Form and Manner of Notice of Sale by Auction; (D) Establishing Procedures for Noticing and Determining Cure Amounts; and (E) Granting Related Relief* (the “**Bid Procedures Motion**”) and the *Order: (A) Approving Bid Procedures Relating to Sale of the Debtors’ Assets; (B) Scheduling a Hearing to Consider the Sale; (C) Approving the Form and Manner of Notice of Sale by Auction; (D) Establishing Procedures for Noticing and Determining Cure Amounts; and (E) Granting Related Relief* (the “**Bid Procedures Order**”), as applicable [Docket Nos.].

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:³

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

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

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

D. The statutory predicates for the authorizations herein are (i) sections 105(a) and 363(b) of the Bankruptcy Code, (ii) Rules 2002, 6004 and 9014 of the Bankruptcy Rules, and (iii) Local Rules 2002-1 and 6004-1 of the Local Rules.

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

F. On September 20, 2010 (the "**Petition Date**"), the Debtors filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. The Debtors have

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

continued in possession of their properties and are operating and managing their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

G. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing have been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008 and 9014, the Local Rules of this Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bid Procedures Order. Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Auction, the Sale Hearing or of the entry of this Order is necessary or shall be required. Such notice was good and sufficient and appropriate under these particular circumstances.

H. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation: (i) all entities that claim any interest in or lien upon the Acquired Assets; (ii) all governmental taxing authorities that have, or as a result of the sale of the Acquired Assets may have, claims, contingent or otherwise, against the Debtors; (iii) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (iv) all known creditors (whether liquidated, contingent or unmatured) of the Debtors; (v) all taxing authorities in the jurisdiction in which the Debtors operate (vi) all interested governmental, pension and environmental entities known by the Debtors to assert jurisdiction over the Debtors and to have an interest in the proposed Sale; (vii) the Office of the United States Trustee; (viii) counsel to any statutory committee appointed in these cases; (ix) counsel to the Debtors' pre- and post-petition secured lenders; and (x) entities known by the Debtors with an interest in purchasing the

Acquired Assets. Other parties interested in bidding on the Acquired Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Acquired Assets.

I. The Debtors have demonstrated a sufficient basis and the existence of exigent circumstances for them to enter into the Purchase Agreement and sell the Acquired Assets under section 363 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors.

J. The Bid Procedures set forth in the Bid Procedures Order were non-collusive, substantively and procedurally fair to all parties, and were the result of arms length negotiations between the Debtors and the Buyer.

K. The Debtors and their professionals have complied, in good faith, in all respects, with the Bid Procedures Order. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing through marketing efforts and a competitive sale process conducted in accordance with the Bid Procedures Order, the Debtors (i) afforded interested potential Buyers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Acquired Assets, and (ii) provided potential Buyers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets.

L. The Bid Procedures obtained the highest value for the Acquired Assets for the Debtors and their estates.

M. The offer of the Buyer, upon the terms and conditions set forth in the Purchase Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Purchase Agreement, (i) is the highest and best offer received by the Debtors; (ii) is fair and

reasonable; (iii) is in the best interests of the Debtors' creditors and estates; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Acquired Assets; and (v) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practically available alternative.

N. The Buyer is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code. The Buyer is a Buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of sections 363(m) and (n) of the Bankruptcy Code with respect to all of the Acquired Assets. The Purchase Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of or implicate section 363(n) of the Bankruptcy Code to the Purchase Agreement or to the consummation of the Sale transaction and transfer of the Acquired Assets to the Buyer. The Buyer is entitled to all the protections and immunities of section 363(m) of the Bankruptcy Code.

O. The Debtors have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the sale of the Acquired Assets has been duly and validly authorized by all necessary corporate authority by the Debtors to consummate the transactions contemplated by the Purchase Agreement. No consents or approvals, other than as may be expressly provided for in the Purchase Agreement, are required by the Debtors to consummate such transactions.

P. The Debtors have advanced sound business reasons for seeking to enter into the Purchase Agreement and to sell the Acquired Assets, as more fully set forth in the Sale Motion

and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Acquired Assets and to consummate the transactions contemplated by the Purchase Agreement. Notwithstanding any requirement for approval or consent by any person, the transfer of the Acquired Assets to the Buyer is a legal, valid and effective transfer of the Acquired Assets.

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

R. Except as otherwise provided in the Purchase Agreement, the Acquired Assets shall be sold free and clear of all Encumbrances, with such Encumbrances to attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Buyer would not enter into the Purchase Agreement to purchase the Acquired Assets otherwise.

S. The transfer of the Acquired Assets to the Buyer will be a legal, valid and effective transfer of the Acquired Assets, and, except as may otherwise be provided in the Purchase Agreement, shall vest the Buyer with all right, title and interest of the Debtors to the Acquired Assets free and clear of any and all Encumbrances. Except as specifically provided in the Purchase Agreement or this Order, the Buyer shall not assume or become liable for any Encumbrances relating to the Acquired Assets being sold by the Debtors.

T. The transfer of the Acquired Assets to the Buyer free and clear of all Encumbrances will not result in any undue burden or prejudice to any holders of any Encumbrances as all such Encumbrances of any kind or nature whatsoever shall attach to the net

proceeds of the sale of the Acquired Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Encumbrances of any kind or nature whatsoever against or in any of the Debtors or the Acquired Assets shall be forever barred estopped and permanently enjoined from pursuing, asserting or enforcing such Encumbrances against the Buyer, any of its assets, property, successors or assigns, or the Acquired Assets.

U. The Debtors may sell the Acquired Assets free and clear of all Encumbrances of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Encumbrances and (ii) non-debtor parties who did not object, or who withdrew their objections to the Sale of the Acquired Assets and the Sale Motion, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All objections to the Sale Motion have been resolved. Those holders of Encumbrances who did object fall within one or more of the other subsections of 363(f) of the Bankruptcy Code. Among other things, the real properties to be sold could have been foreclosed under state and other local laws, and under all such applicable laws, junior liens would have been extinguished following the application of any proceeds to senior lienholders. Thus, all objecting lienholders are adequately protected by having their Encumbrances, if any, attach to the proceeds of the sale of the Acquired Assets, ultimately attributable to the property against or in which they claim or may claim any Encumbrances.

V. Not selling the Acquired Assets free and clear of all Encumbrances would adversely impact the Debtors' estates, and the sale of Assets other than one free and clear of all Encumbrances would be of substantially less value to the Debtors' estates.

W. The Buyer will be acting in good faith, pursuant to section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Purchase Agreement at any time on or after the entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rule 6004(h).

X. The transactions contemplated under the Purchase Agreement do not amount to a consolidation, merger or *de facto* merger of the Buyer and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Buyer and the Debtors, there is no continuity of enterprise between the Debtors and the Buyer, the Buyer is not a mere continuation of the Debtors or their estates, there is no common identity of incorporators, directors or stockholders between the Debtors and Buyer, Buyer is not holding itself out to the public as a continuation of the Debtors and the Buyer does not constitute a successor to the Debtors or their estates.

Y. The sale of the Acquired Assets outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The sale does not constitute a *sub rosa* chapter 11 plan.

Z. The total consideration provided by the Buyer for the Acquired Assets is the highest and best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Transfer Act and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Acquired Assets.

AA. Time is of the essence in consummating the Sale. In order to maximize the value of the Acquired Assets, it is essential that the Sale of the Acquired Assets occur within the time constraints set forth in the Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rule 6004.

BB. For purposes of section 363(b)(1) of the Bankruptcy Code, the Debtors have not, in connection with offering a product or service, disclosed to any individual a policy prohibiting the transfer of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) about individuals to persons that are not affiliated with the Debtors.

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

1. The relief requested in the Sale Motion is granted in its entirety, subject to the terms and conditions contained herein.

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

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

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

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

6. The Buyer is hereby granted and is entitled to all of the protections provided to a good faith Buyer under section 363(m) of the Bankruptcy Code.

7. Subject to the terms of the Purchase Agreement, the Debtors be, and hereby are, authorized, to assume, perform under, consummate and implement the terms of the Purchase Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Purchase Agreement, this Order and Sale of the Acquired Assets contemplated thereby including, without limitation, deeds, assignments, stock powers and other instruments of transfer, and to take all further actions as may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession any or all of the Acquired Assets, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Purchase Agreement, without any further corporate action or orders of this Court. The Buyer shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to its obligations to do so have been met, satisfied or waived.

8. The Debtors and each other person or entity having duties or responsibilities under the Purchase Agreement, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered and directed, subject to the terms and conditions contained in the Purchase

Agreement, to carry out all of the provisions of the Purchase Agreement and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Purchase Agreement, and any related agreements; to take any and all actions contemplated by the Purchase Agreement, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and reasonably necessary or appropriate to implement, effectuate, and consummate, the Purchase Agreement, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of the Debtors shall be, and hereby is, authorized and directed to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized, empowered and directed to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Purchase Agreement, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable

governmental units or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

9. Effective as of the Closing, the sale of the Acquired Assets by the Debtors to the Buyer shall constitute a legal, valid and effective transfer of the Acquired Assets notwithstanding any requirement for approval or consent by any person, and shall vest the Buyer with all right, title and interest of the Debtors in and to the Acquired Assets, free and clear of all Encumbrances of any kind, pursuant to section 363(f) of the Bankruptcy Code.

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

11. Except to the extent specifically provided in the Purchase Agreement, upon the Closing, the Debtors shall be, and hereby are, authorized, empowered and directed, pursuant to sections 105 and 363(b) of the Bankruptcy Code, to sell the Acquired Assets to the Buyer. The sale of the Acquired Assets shall vest the Buyer with all right, title and interest of the Debtors to the Acquired Assets free and clear of any and all Encumbrances and other liabilities and claims, whether secured or unsecured, choate or inchoate, filed or unified, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, with all such Encumbrances to attach only to the proceeds of the Sale with the same priority, validity, force, and effect, if any, as they now have in or against the Acquired Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Following the Closing Date, no holder of any Encumbrances in the Acquired Assets shall

interfere with the Buyer's use and enjoyment of the Acquired Assets based on or related to such Encumbrances, or any actions that the Debtors may take in their chapter 11 cases and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Purchase Agreement or this Order.

12. The provisions of this Order authorizing the sale of the Acquired Assets free and clear of Encumbrances, shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. However, subject to the terms of the Purchase Agreement, the Debtors and the Buyer, and each of their respective officers, employees and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Buyer deem reasonably necessary or appropriate to implement and effectuate the terms of the Purchase Agreement and this Sale Order. Moreover, effective as of the Closing, the Buyer, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys with respect to the Acquired Assets, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Buyer, its successors and assigns, to demand and receive any and all of the Acquired Assets and to give receipts and releases for and in respect of the Acquired Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Acquired Assets, and to do all acts and things with respect to the Acquired Assets which the Buyer, its successors and

assigns, shall deem reasonably desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

13. Upon the Closing Date, the Debtors' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Encumbrances of any kind against the Acquired Assets, as such Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Encumbrances in or against the Acquired Assets shall not have delivered to the Debtors prior to the Closing after request therefore, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Encumbrances that the person or entity has with respect to the Acquired Assets, the Debtors are hereby authorized and directed to execute and file such statements, and empowered to perform under, all instruments, releases and other documents on behalf of the person or entity with respect to such Acquired Assets prior to the Closing, and the Buyer is authorized to file such documents after Closing.

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

15. All of the Debtors' interests in the Acquired Assets to be acquired by the Buyer under the Purchase Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Buyer. Upon the occurrence of the Closing, this Order

shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets acquired by the Buyer under the Purchase Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Buyer.

16. To the extent permitted by applicable law, except as expressly provided in the Purchase Agreement, the Buyer is not assuming nor shall it or any affiliate of the Buyer be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Acquired Assets prior to the consummation of the transactions contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations of the Acquired Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Purchase Agreement, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Buyer or any affiliate of the Buyer.

17. Except as otherwise provided in the Purchase Agreement, upon the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Encumbrances against the Acquired Assets, if any, as may have been recorded or may otherwise exist.

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

19. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and this Order.

20. The Buyer has not assumed or is otherwise not obligated for any of the Debtors' liabilities, and the Buyer has not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as defined in sections 101(27) and 101(41)) of the Bankruptcy Code and all holders of Encumbrances based upon or arising out of liabilities retained by the Debtors are hereby enjoined from taking any action against the Buyer or the Acquired Assets to recover any Encumbrances or on account of any liabilities of the Debtors. All persons holding or asserting any Encumbrances in the Excluded Assets are hereby enjoined from asserting or prosecuting such Encumbrances or cause of action against the Buyer or the Acquired Assets for any liability associated with the Excluded Assets.

21. The Buyer is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and the Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability or similar liability except as otherwise expressly provided in the Purchase Agreement. Neither the purchase of the Acquired Assets by the Buyer or its affiliates, nor the fact that the Buyer or its affiliates are using any of the Acquired Assets previously operated by the Debtors, will cause the Buyer or any of its affiliates to be deemed a successor in any respect to the Debtors' business within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the

Debtors' liability under such law, rule or regulation or doctrine, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Buyer and its affiliates shall have no liability or obligation under the WARN Act 929 U.S.C. §§ 210 et seq., or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law by virtue of the Buyer's purchase of the Acquired Assets.

22. Pursuant to sections 105 and 363 of the Bankruptcy Code, all persons and entities, including, but not limited to, the Debtors, all debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, Encumbrance or Interest of any kind or nature whatsoever against, in or with respect to any of the Debtors or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the Closing Date or the transfer of the Acquired Assets to the Buyer, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Lien, Claim, Encumbrance or Interest against the Buyer or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates and representatives (each of the foregoing in its individual capacity), or the Acquired Assets.

23. Subject to the terms of the Purchase Agreement, the Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the

Debtors and the Buyer, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the Purchase Agreement and any related agreements.

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

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

26. To the extent any provisions of this Order conflict with the terms and conditions of the Purchase Agreement, this Order shall govern and control.

27. Nothing in this Order shall alter or amend the Purchase Agreement and the obligations of the Debtors and Buyer thereunder.

28. This Order and Agreement shall be binding upon and govern the acts of all Persons and entities, including without limitation, the Debtors and the Buyer, their respective successors and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates or any trustee appointed in a Chapter 7 case if any of the Debtors' cases are converted from Chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Acquired Assets.

29. The provisions of this Order are non-severable and mutually dependent.

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

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

32. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bidding Procedures Order and the Purchase Agreement in all respects and to decide any disputes concerning this Order, the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Acquired Assets free and clear of all Encumbrances. To the extent there are any

inconsistencies between the terms of this Order and the Purchase Agreement, the terms of this Order shall control.

Dated: _____, 2010
Wilmington, Delaware

United States Bankruptcy Judge