

**MUSICLAND HOLDING CORP.**  
**BIDDING PROCEDURES**

Set forth below are the bid procedures (the "Bidding Procedures") to be employed with respect to the proposed disposition of substantially all of the assets (as defined below) of Musicland Holding Corp., a Delaware corporation, and its debtor affiliates and their respective chapter 11 estates (the "Company").

**Asset Purchase Agreement/GOB Sales**

On February 17, 2006, the Company entered into an asset purchase agreement (the "APA") with Trans World Entertainment Corporation, a New York corporation ("TWEC"), pursuant to which TWEC proposes to acquire free and clear of all encumbrances, all of the Company's right, title and interest in and to a substantial majority of the assets of the Company including, but not limited to, inventory, furniture, fixtures and equipment located at the Company's corporate headquarters, distribution center, tech center and up to 345 of the Company's retail locations (the "Acquired Assets") (subject to certain exclusions as described in the APA).

Also on [\_\_\_\_\_], 2006, the Company entered into an agency agreement (the "Agency Agreement") with Hilco Merchant Resources, LLP and Gordon Brothers Retail Partners (together, the "Agent"), pursuant to which the Agent proposes to dispose of all inventory, furniture, fixtures and equipment at least fifty-five (55) of the Company's retail locations (the "GOB Assets") through "store closing" or "going out of business" sales ("GOB Sales").

Pursuant to Section 2.2 of the APA, TWEC would provide cash consideration of \$104,160,000 (the "Purchase Price") for the Acquired Assets and for the Agent to have the right to conduct GOB Sales pursuant to the Agency Agreement, plus the assumption of certain liabilities as set forth in the APA. Under the APA, the Company has agreed to a Break-Up Fee (the "Break-Up Fee") to TWEC in an amount equal to 3.0% of the Purchase Price in order to compensate and provide incentives to TWEC for entering into the APA with the knowledge and risk that arises from its participating in the sale and subsequent bidding process absent which TWEC would not have entered into the APA. The Break-Up Fee is payable as set forth in the APA. The transaction contemplated by the APA and Agency Agreement is subject to competitive bidding as set forth herein, and approval by the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code.

**Bidding Procedures Motion**

On February 20, 2006, the Company filed a motion (the "Bidding Procedures Motion") for an order (I) approving the Bidding Procedures to be employed in connection with the proposed sale (the "Sale") of the Acquired Assets and the GOB Sales, (II) scheduling the Auction and hearing (the "Sale Hearing") to consider approval of (a) the Sale, (b) the assumption and assignment of certain executory contracts and unexpired leases, (c) the GOB Sales, and (d)

certain related relief, and (III) approving the notice of the respective dates, times, and places for the Auction and the Sale Hearing, and (IV) granting other relief, filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

These Bidding Procedures were approved and authorized by the Bankruptcy Court order dated March \_\_, 2006 (the "Bidding Procedures Order") in the chapter 11 case of the Company that was commenced on January 12, 2006 (the "Bankruptcy Case").

### **Sale Motion**

The Company has filed [will file] a motion (the "Sale Motion") (I) authorizing and approving the APA and the Agency Agreement, or the documentation between the Company and such other purchaser(s) providing higher or otherwise better offer(s), (II) authorizing the Sale of the Acquired Assets, free and clear of all liens, claims, encumbrances, and other interests, (III) authorizing the assumption and assignment of the Assigned Agreements and the rejection of other executory contracts, (IV) authorizing the GOB Sales, (V) authorizing the Company to consummate all transactions related to the above, and (VI) granting other relief, filed in the Bankruptcy Court.

### **Assets To Be Sold**

The Company is offering for sale substantially all of its Assets, which include all of the property and assets, real, personal or mixed, tangible and intangible (including goodwill), of every kind and description, located at the Company's retail locations, corporate headquarters, distribution center and tech center (subject to certain exclusions as described in the APA) (the "Assets").

### **The Bidding Process**

The Company and its advisors shall (a) determine whether any person is a Qualified Bidder (hereinafter defined), (b) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (c) receive offers from Qualified Bidders, and (d) negotiate any offers made to purchase the Assets (collectively, the "Bidding Process"). Any person that wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Company nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Qualified Bidder.

### **Participation Requirements**

Any person that wishes to participate in the Bidding Process (a "Potential Bidder") must become a Qualified Bidder. Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Company, each Potential Bidder must deliver (unless previously delivered) to the Company, not later than 4:00 p.m., prevailing Eastern Time

on March \_\_, 2006 (provided, however, that it is the responsibility of the Potential Bidder to submit the materials required by this section far enough in advance to accommodate the Potential Bidder's due diligence, because the due diligence period will not be extended):

- (i) An executed confidentiality agreement, customary for transactions of this type, in form and substance acceptable to the Company; and
- (ii) Current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Company) of the Potential Bidder and of those entities that will guarantee the obligations of the Potential Bidder.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs (i) - (ii), and that the Company determines is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing, experience and other considerations deemed relevant by the Company) to submit a bona fide offer and to be able to consummate the proposed transaction if selected as a Winning Bidder (defined below) within the time frame provided by the APA.

As promptly as practicable after a Potential Bidder delivers all of the materials required by subparagraphs (i) and (ii) above, the Company shall determine, in consultation with its prepetition and postpetition secured lenders (the "Senior Secured Lenders"), the informal committee of secured trade creditors (the "Unofficial Committee of Secured Trade Creditors") and the unsecured creditors committee appointed in the Bankruptcy Case (the "Official Committee of Unsecured Creditors"), and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder. At the same time that the Company notifies the Potential Bidder that it is a Qualified Bidder, the Company shall allow the Qualified Bidder to conduct due diligence with respect to the Assets as hereinafter provided.

### **Due Diligence**

The Company may afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence. The Company will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. The Company shall not be obligated to furnish any due diligence information after the Bidding Deadline (as hereinafter defined). Neither the Company nor any of its representatives are obligated to furnish any information to any person other than a Qualified Bidder. The Company is not responsible for, and will bear no liability with respect to, any information obtained by bidders in connection with the sale of the Assets.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of

any documents and/or the Assets in making its bid and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction (as defined herein), except, as to the Winning Bidder(s) (as defined herein), as expressly stated in the definitive agreement with such Winning Bidder(s).

### **“As Is, Where Is”**

The sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Company, TWEC, or the Company’s bankruptcy estate, except, with respect to TWEC, as otherwise provided in the APA and, with respect to a Qualified Bidder (other than TWEC), to the extent set forth in a definitive purchase agreement (including any competing agency agreement, a “Competing Agreement”).

### **Free Of Any And All Interests**

Except, with respect to TWEC, as otherwise provided in the APA and, with respect to a Qualified Bidder (other than TWEC), to the extent set forth in a Competing Agreement, all of Company’s right, title and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the “Interests”) in accordance with section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets.

### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid, by first class or overnight mail, facsimile or e-mail in a PDF format to (i) Musicland Holding Corp., 10400 Yellow Circle Drive, Minnetonka, Minnesota, 55343-9012, Attn: Michael Madden, mike.madden@musicland.com (ii) Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago Illinois, 60601-6636, Attn: James Stempel (jstempel@kirkland.com) Jonathan Friedland (jfriedland@kirkland.com), and Douglas C. Gessner, P.C. (dgessner@kirkland.com), Facsimile: (312) 861-2200, (iii) Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178, Attn: Steven J. Riesman (sreisman@cm-p.com), Facsimile (212) 697-1559, and (iv) counsel for TWEC, Skadden, Arps, Slate, Meagher & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, IL 60606, Attn: Timothy R. Pohl (tpohl@skadden.com), Facsimile (312) 407-8589 not later than 4:00 p.m. on March \_\_, 2006 (“the Bid Deadline”). The Company may extend the Bid Deadline once or successively, but is not obligated to do so. If the Company extends the Bid Deadline, it shall promptly notify all Qualified Bidders of such extension.

### **Bid Requirements**

All bids must include the following documents (the “Required Bid Documents”):

- A letter stating that the bidder's offer is irrevocable until the earlier of (i) two (2) business days after the Assets have been sold pursuant to the closing of a sale approved by the Bankruptcy Court, or (ii) 45 days after the conclusion of the Sale Hearing.
- An executed Competing Agreement (including all schedules, exhibits and annexes thereto), which shall not contain any contingencies or conditions to closing relating to financing or due diligence, marked (where appropriate) to show changes to the APA or the Agency Agreement. The Debtors may waive this requirement with respect to bids for less than substantially all of the Debtors' assets.
- A good faith deposit (the "Good Faith Deposit") in the form of good and immediately available funds in an amount equal to the lesser of (i) 10% of the proposed purchase price or (ii) \$10 million.
- Written evidence of a commitment for financing or other evidence of the ability to consummate the proposed transaction satisfactory to the Company with appropriate contact information for such financing sources.
- Sufficient information to permit the Bankruptcy Court, the Company, and the applicable lessors and contracting parties to determine the proposed assignee's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such assignee's ability to perform in the future (the "Adequate Assurance Package").

A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid."

A Qualified Bid may be for all or some portion of the Assets. The Company reserves the right to determine the value of any Qualified Bid (either by itself or in connection with one or more other Qualified Bids), and which Qualified Bid constitutes the highest, best or otherwise financially superior offer. The Debtors will provide copies of all Qualified Bids to counsel for the Official Committee of Unsecured Creditors, the Unofficial Committee of Secured Trade Creditors, and the Agent.

**TWEC and Agent are Qualified Bidders, and APA and Agency Agreement are Qualified Bids**

TWEC and Agent are Qualified Bidders, and the APA and Agency Agreement are Qualified Bids. TWEC's offer to purchase the Assets, and the Agent's offer to conduct the GOB

Sales in conjunction therewith, as set forth in the APA and Agency Agreement are irrevocable until the earliest of (i) two (2) business days after the Assets have been sold pursuant to the closing of a sale approved by the Bankruptcy Court, (ii) 45 days after the conclusion of the Sale Hearing, and (iii) the date that the APA and Agency Agreement are validly terminated in accordance with their terms.

### **Auction**

If the Company receives at least one Qualified Bid (other than that of TWEC) which the Company determines to be a better Qualified Bid (either by itself or in conjunction with other Qualified Bids) than that of TWEC, then the Company shall conduct an auction (the "Auction") with respect to the Assets and provide TWEC and all other Qualified Bidders the opportunity to participate in the Auction. The Auction shall commence at 11:00 a.m., prevailing Eastern Time on March \_\_, 2006 at the offices of Kirkland & Ellis LLP, Citigroup Center, 153 East 53<sup>rd</sup> Street, New York, New York (or such other place as is announced by the Debtors in advance of the Auction and at such other time as may be established by the Debtors, after consultation with the Official Committee of Unsecured Creditors, the Secured Trade Committee, and the Agent (and to be communicated to all Qualified Bidders no later than three (3) business days prior to the Auction). Only Qualified Bidders may participate in the Auction. The Debtors may, in their sole discretion, hold the Auction if they have received more than one competing Qualified Bid, each for less than all of the Assets. If no Qualified Bid is submitted (other than a Qualified Bid submitted by TWEC), the Auction will not be held.

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. During the Auction, bidding shall begin initially with the highest or otherwise best Qualified Bid as announced by the Company, and (with respect to Qualified Bids for substantially all of the Debtors' assets subsequently continue in minimum increments of at least \$1,000,000). The Debtors reserve the right in their sole discretion to determine at the Auction the appropriate minimum increments for bids for less than substantially all of the Debtors' assets. Other than as otherwise set forth herein, the Company may conduct the Auction in the manner it determines will result in the highest, best or otherwise financially superior offer(s) for the Assets.

Upon conclusion of the bidding, the Auction shall be closed, and the Company shall, in consultation with the Senior Secured Lenders, the Unofficial Committee of Secured Trade Creditors and the Official Committee of Unsecured Creditors immediately review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed transaction, and identify the highest, best or otherwise financially superior offer(s) for the Assets (the "Winning Bid(s)") and the entity or entities submitting such Winning Bid, the "Winning Bidder(s)"), which highest, best or otherwise financially superior offer(s) will provide the greatest amount of net value to the Company, and advise the Qualified Bidders of such determination.

## **Acceptance of Qualified Bids**

The Company shall sell the Assets to the Winning Bidder(s) upon the approval of the Winning Bid(s) by the Bankruptcy Court after the Sale Hearing (defined below). The Company's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Company's acceptance of the bid. The Company will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

## **Supplement**

To the extent that the initial bid embodied in the APA and the Agency Agreement is not the Winning Bid at the Auction, the Company will file with the Bankruptcy Court a supplement (the "Supplement") that will inform the Bankruptcy Court of the results of the Auction and the highest or best bid for the Assets. The Supplement will identify, among other things, (a) the Winning Bidder(s), as the proposed purchaser of the assets, (b) the assets to be acquired, (c) the consideration to be paid by such purchaser for the assets, and (d) any executory contracts and unexpired leases to be assumed and assigned to the purchaser in connection with the Sale (to the extent different from the Assigned Agreements proposed to be assumed and assigned to TWEC under the APA). In addition, the Company will attach to the Supplement, as exhibits, (a) any revised proposed order approving the Sale, (b) copies of the asset purchase agreement to be entered into by the Company and the Winning Bidder(s), and (c) the Winning Bidder's Adequate Assurance Package. The Company will file and serve the Supplement two days after the date of the Auction, or as promptly as is reasonably practicable.

If the Debtors proceed with the Sale of the Assets to a Winning Bidder(s) other than TWEC, then the Debtors propose to give all counterparties to the Debtors' unexpired leases and executory contracts notice (the "Second Notice") of (i) the Cure Amount with respect to the Debtors' unexpired leases and (ii) the identity of the Winning Bidder(s) with contact information for any further inquiries regarding adequate assurance under section 365 of the Bankruptcy Code, one (1) day after the conclusion of the Auction, or as soon thereafter as practicable. As stated above, the Cure Amount for the Debtors' executory contracts will be filed with the Court and posted at <http://www.bmcgroup.com/musicland>, which shall constitute notice of such Cure Amounts.

## **Notice of Proposed Assignments and Cure Amounts**

Within three days following entry of the Bidding Procedures Order (or as soon thereafter as practicable), the Debtors propose to file with the Court and upon all counterparties to the Debtors' unexpired leases and executory contracts a notice (the "Assumption and Cure Notice") that the Debtors may assume and assign that party's unexpired lease or executory

contract to TWEC. The Debtors will include in the Assumption and Cure Notice the cure amount (the "Cure Amount"), if any (which amount may be zero), necessary to assume each unexpired lease of the Debtors.<sup>1</sup> The Cure Amount will include any and all amounts, whether prepetition or postpetition (separately designated), outstanding under the affected unexpired lease. The Assumption and Cure Notice will include the identity of TWEC (with contact information for any further inquiries regarding adequate assurance under section 365 of the Bankruptcy Code)). The Assumption and Cure Notice will also provide that the Debtors, with TWEC's consent, may withdraw the request to assume and assign any unexpired lease or executory contract at any time prior to the completion of the Designation Period.

Nothing contained in the Bidding Procedures Motion, the Bidding Procedures Order, or these Bidding Procedures shall impair the Debtors' right to assume and assign executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code.

### **Objections**

Objections to all relief requested in the Sale Motion must be in writing and filed and served so as to be actually received by 4:00 p.m., prevailing Eastern Time on March \_\_, 2006 by (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York, Attn: Deirdre A. Martini, (ii) counsel for the Company, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601-6636, Attn: James Stempel and Jonathan Friedland (with a copy to Curtis, Mallet-Provost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178, Attn: Steven J. Riesman), (iii) counsel for TWEC, Skadden, Arps, Slate, Meagher & Flom, LLP, 333 West Wacker Drive, Chicago, Illinois 60606-1285, Attn: Timothy R. Pohl, (iv) counsel for the Unofficial Committee of Secured Trade Creditors, Morgan Lewis & Bockius LLP, 1701 Market Street, Philadelphia, Pennsylvania 19103-2921, Attn: Michael A. Bloom and Morgan Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Richard S. Toder, (v) counsel for the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attn: Mark S. Indelicato, and (vi) counsel for the Senior Secured Lenders, Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, Attn: Andrew M. Kramer.

Objections, if any, to the information contained in the Supplement shall be filed and served so as to be received by the above parties by 4:00 p.m., prevailing Eastern Time on the date that is three (3) days before the date of the Alternate Sale Hearing (as defined below).

---

<sup>1</sup> The Debtors' calculation of Cure Amounts for their executory contracts is ongoing. Therefore, the Assumption and Cure Notice may not include the Cure Amount for each individual executory contract. The Debtors propose to file as soon as practicable with the Court, and post at <http://www.bmcgroup.com/musicland> a list of Cure Amounts for executory contracts, to which the Assumption and Cure Notice will direct counterparties.



Counterparties to an unexpired lease or executory contract shall have until 4:00 p.m. prevailing Eastern Time on the date that is five (5) days prior to the Auction to object to the Cure Amount and raise any objections relating to adequate assurance issues (the “Initial Objection”). The Initial Objection shall state with specificity what cure such counterparty believes is required (with appropriate documentation in support thereof) and any adequate assurance issues under section 365 of the Bankruptcy Code, and shall be served on (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York, Attn: Deirdre A. Martini, (ii) counsel for the Company, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601-6636, Attn: James Stempel and Jonathan Friedland, (iii) counsel for TWEC, Skadden, Arps, Slate, Meagher & Flom, LLP, 333 West Wacker Drive, Chicago, Illinois 60606-1285, Attn: Timothy R. Pohl, (iv) counsel for the Unofficial Committee of Secured Trade Creditors, Morgan Lewis & Bockius LLP, 1701 Market Street, Philadelphia, Pennsylvania 19103-2921, Attn: Michael A. Bloom and Morgan Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Richard S. Toder, (v) counsel for the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attn: Mark S. Indelicato, and (vi) counsel for the Senior Secured Lenders, Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, Attn: Andrew M. Kramer (the “Cure Objection Notice Parties”).

Unless an Initial Objection is filed and served by a counterparty to an unexpired lease or executory contract no later than the date that is five (5) days prior to the Auction, all interested parties that have received actual or constructive notice hereof shall be deemed to have waived and released any right to assert an objection to the Cure Amount and to have otherwise consented to the assignment of the unexpired lease or executory contract and shall be forever barred and estopped from asserting or claiming against the Company, TWEC, or any other assignee of the relevant unexpired lease or executory contract that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such unexpired lease or executory contract for the period prior to the Sale Hearing Date.

Any counterparty who receives a Second Notice shall file any objections or supplements to any Initial Objection (the “Supplemental Objections”), and serve such Supplemental Objections on the Cure Objection Notice Parties to be received on or before 4:00 p.m., prevailing Eastern Time on the date that is three (3) days before the date of the Alternate Sale Hearing. Any such Supplemental Objections will be heard at the Alternate Sale Hearing (as defined below). If no Supplemental Objection is timely received, the Cure Amount set forth in the Second Notice shall be controlling notwithstanding anything to the contrary in any executory contract or unexpired lease or other document as of the date of the Second Notice.

### **Sale Hearing**

A hearing on all the remaining relief requested in the Sale Motion and to consider the results of the Auction (the “Sale Hearing”) will be held before the Honorable Stuart M. Bernstein, United States Bankruptcy Court Judge, at the United States Bankruptcy Court for the Southern District of New York, on March \_\_\_ at 10:00, prevailing Eastern Time (the “Sale

Hearing Date”). The Sale will be subject to the entry of an order of the Bankruptcy Court approving same.

At the Sale Hearing, the Company will seek entry of an order, among other things, authorizing and approving (a) the disposition of the Acquired Assets to TWEC pursuant to the terms and conditions set forth in the APA and the conducting of GOB Sales by the Agent at the GOB Stores, if no other Qualified Bid is received and accepted as the Winning Bid, or (b) if a Qualified Bid other than TWEC’s is received and accepted by the Company, disposition of the Assets to be acquired to such Winning Bidder(s) pursuant to the terms and conditions set forth in the Competing Agreement(s) submitted by such Winning Bidder(s). The Sale Hearing may be adjourned or rescheduled by the Company without notice other than by an announcement of the adjourned date at the Sale Hearing.

If the Sale is not to TWEC, a hearing on all the remaining relief requested in the Sale Motion and to consider the results of the Auction will be held before the Honorable Stuart M. Bernstein, United States Bankruptcy Court Judge, at the United States Bankruptcy Court for the Southern District of New York, on March \_\_, 2006 at 10:00 a.m., prevailing Eastern Time (the “Alternate Sale Hearing”). The Sale will be subject to the entry of an order of the Bankruptcy Court approving same.

Following the approval of the sale of the Assets to the Winning Bidder(s) at the Sale Hearing or the Alternate Sale Hearing, if such Winning Bidder(s) fails to consummate an approved sale by [\_\_\_\_\_] 2006, the next highest or otherwise best Qualified Bid (which may be from TWEC), as disclosed at the Sale Hearing or the Alternate Sale Hearing, shall be deemed to be the Winning Bid and the Company shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

### **Return of Good Faith Deposit**

Good Faith Deposits of the Winning Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. Good Faith Deposits shall be held in an interest-bearing escrow account until the earlier of (i) two (2) business days after the Assets have been sold pursuant to the closing of a sale approved by the Bankruptcy Court, or (ii) 45 days after the conclusion of the Sale Hearing. If a Winning Bidder(s) fails to consummate an approved sale because of a breach or failure to perform on the part of such Winning Bidder(s), the Debtors shall be entitled to retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Winning Bidder(s).

### **Modifications**

The Company may (a) determine which Qualified Bid, if any, is the highest, best or otherwise financially superior offer; (b) modify the Bidding Procedures at the Auction if it determines, after consultation with the Senior Secured Lenders, the Secured Trade Committee

and the Unsecured Committee, that such modification is in the best interests of the Company's estates; and (c) reject, at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid (other than the Qualified Bid of TWEC) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Company, its estate and creditors.