

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

In re

Northstar Aerospace (USA) Inc., *et al.*¹

Debtors.

Chapter 11

Case No. 12-11817 (MFW)

(Jointly Administered)

Re: Docket Nos 61 and 119

ORDER (A) APPROVING THE SALE OF DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion (the "Motion")² dated June 18, 2012 of the above-captioned debtors and debtors-in-possession (the "Debtors"), *inter alia* for entry of an order (the "Order") (A) approving the sale (the "Sale") of substantially all of the Debtors' assets free and clear of all liens, Claims, Liability, Encumbrances and Interests (the "Encumbrances and Interests"), except to the extent set forth in the Asset Purchase Agreement (hereinafter defined), pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "US Bankruptcy Code"), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); (B) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "US Assumed Contracts") identified by the

¹ The Debtors and the last four digits of their respective tax identification numbers are: Northstar Aerospace (USA) Inc. (XX-XXX4389), Northstar Aerospace (Chicago) Inc. (XX-XXX1441), D-Velco Manufacturing of Arizona, Inc. (XX-XXX5660) and Derlan USA Inc. (XX-XXX6924). The address of Northstar Aerospace (USA) Inc. and Northstar Aerospace (Chicago) Inc. is 6006 West 73rd Street, Bedford Park, Illinois 60638. The address of D-Velco Manufacturing of Arizona, Inc. and Derlan USA Inc. is 401 South 36th Street, Phoenix, Arizona 85034.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Asset Purchase Agreement (hereinafter defined), as applicable.

Debtors and more fully described in that certain Asset Purchase Agreement dated June 13, 2012 (the “Asset Purchase Agreement”) by and between the Debtors and Heligear Acquisition Co. or its designee as the US Purchaser (together with its successors and assigns, the “US Purchaser”) for the purchase of the US Purchased Assets and Heligear Canada Acquisition Corporation for the purchase of the Canadian Purchased Assets; and (C) granting certain related relief, and the Debtors having determined that the highest and otherwise best offer for the sale of the US Purchased Assets was made by the US Purchaser in the form of the Asset Purchase Agreement; and the US Bankruptcy Court having held a hearing on July 24, 2012 (the “Sale Hearing”) to approve the Asset Purchase Agreement; and this Court (the “Court”) having reviewed and considered (i) the Motion, (ii) the objections thereto and resolution of certain of the objections as announced on the record, (iii) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and upon the record of the Sale Hearing and these US Bankruptcy Cases; and after due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. **Jurisdiction and Venue.** The court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(B)(2)(a). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of the US Bankruptcy Code, and Rule 2002, 6004 and 6006 of the Bankruptcy Rules.

C. **Petition Date.** On June 14, 2012 (the "Petition Date"), the Debtors each commenced a case by filing a petition for relief under chapter 11 of the US Bankruptcy Code.

D. **Entry of Bidding Procedures Order.** On June 27, 2012, this Court entered an order (the "US Bidding Procedures Order") (Dkt. No. 119) (A) establishing bidding and auction procedures (the "Bidding Procedures"); (B) approving proposed bid protections (the "Break-Up Fee and Expense Reimbursement") to US Purchaser in accordance with the Asset Purchase Agreement; (C) scheduling an auction (the "Auction") and sale hearing for the Sale of the US Purchased Assets; (D) permitting credit bidding pursuant to US Bankruptcy Code section 363(k) under certain circumstances; (E) establishing procedures for noticing and determining Cure Costs; (F) approving the form and matter of notice of all procedures, protections, schedules and agreements; and (G) granting certain related relief.

E. **Compliance with Bidding Procedures Order.** As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors have marketed the US Purchased Assets and conducted the sale process in compliance with the Bidding Procedures Order and the Auction was duly noticed and conducted in a non-collusive, fair and good faith manner. The Debtors and their professionals have actively marketed the US Purchased Assets, both prior to and after the Petition Date, and

conducted the sale process in compliance with the Bidding Procedures Order, and have afforded potential purchasers a full and fair opportunity to make higher and better offers.

F. **Notice.** As evidenced by the affidavits of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale, the assumption and assignment procedures for the US Assumed Contracts (including the objection deadline with respect to any Cure Costs) and the assumption and assignment of the US Assumed Contracts and the Cure Costs has been provided in accordance with sections 102(l), 363 and 365 of the US Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006 and in compliance with the Bidding Procedures Order, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale, or the assumption and assignment of the US Assumed Contracts or the Cure Costs is or shall be required.

G. **Corporate Authority.** Each of the Debtors (i) has full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby, and the Sale of the US Purchased Assets by the Debtors has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement, (iii) has taken all corporate action necessary to authorize and approve the Asset Purchase Agreement and the consummation by the Debtors of the transactions contemplated thereby, and (iv) no consents or

approvals, other than those expressly provided for in the Asset Purchase Agreement, are required for the Debtors to consummate such transactions.

H. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee; (ii) counsel for the US Purchaser; (iii) all entities known to have expressed an interest in a transaction with respect to the US Purchased Assets during the past two months; (iv) all creditors of the Debtors and entities known to have asserted any Encumbrances and Interests in or upon any of the US Purchased Assets; (v) all federal, state, county and local and foreign regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (vi) all parties to US Assumed Contracts; (vii) the United States Attorney's office; (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; (x) the Pension Benefit Guaranty Corporation; and (xi) all entities filing notices of appearance or requests for notice under Bankruptcy Rule 2002 in these US Bankruptcy Cases. In addition, a Notice of the Sale and Auction was published in the *Chicago Tribune*, *Arizona Republic*, *Chicago Sun-Times* and the *Wall Street Journal* in addition to a press release regarding the Sale and Auction.

I. **Sale in Best Interest.** Consummation of the Sale of the US Purchased Assets at this time is in the best interests of the Debtors, their creditors, their estates and other parties in interest.

J. **Business Justification.** Sound business reasons exist for the Sale. Entry into the Asset Purchase Agreement constitutes each of the Debtors' exercise of sound

business judgment and such acts are in the best interests of each of the Debtors, its estate, and all parties in interest. The Court finds that each Debtor has articulated good and sufficient business reasons justifying the Sale. Such business reasons include, but are not limited to, the following: (i) the Asset Purchase Agreement constitutes the highest and best offer for the US Purchased Assets; (ii) the Asset Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the US Purchased Assets on a going concern basis and avoid decline and devaluation of the US Purchased Assets; and (iii) any plan would not have likely yielded as favorable an economic result and could not be confirmed by the required Closing Date.

K. **Arm's-Length Sale.** The Asset Purchase Agreement was negotiated, proposed and entered into by the Debtors and the US Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the US Purchaser have engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the US Bankruptcy Code.

L. **Good Faith Purchaser.** The US Purchaser is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under section 363(m) of the US Bankruptcy Code and any other applicable or similar bankruptcy and non-bankruptcy law. The US Purchaser will be acting in good faith within the meaning of section 363(m) of the US Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement.

M. **Consideration.** The consideration provided by the US Purchaser for the US Purchased Assets pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the US Purchased Assets, (iii) will provide a greater

recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the US Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

N. **Free and Clear.** The Debtors may sell the US Purchased Assets free and clear of all Encumbrances and Interests (other than US Permitted Encumbrances) because, with respect to each creditor asserting a lien, claim, encumbrance, or interest, one or more of the standards set forth in US Bankruptcy Code § 363(f)(1)-(5) has been satisfied. Those holders of Encumbrances and Interests who did not object or withdrew objections to the Sale are deemed to have consented to the Sale pursuant to section 363(f)(2) of the US Bankruptcy Code. Those holders of Encumbrances and Interests who did object fall within one or more of the other subsections of section 363(f) of the US Bankruptcy Code.

O. **Payment to Secured Lenders.** On the Closing Date and subject to the terms of the Asset Purchase Agreement, the US Purchaser shall pay at Closing to Fifth Third Bank as Agent (the "Agent") all proceeds of the Sale (the "Proceeds") for application to the Aggregate Secured Liabilities in accordance with the *Final Order (I) Authorizing the US Debtors to Use Cash Collateral, (II) Authorizing the US Debtors to Obtain Postpetition Secured Financing, (III) Granting Certain Liens, (IV) Granting Adequate Protection and (V) Modifying the Automatic Stay*, Dkt. No. 160 (the "Final DIP Financing Order") and the financing arrangements described therein including the Intercreditor Agreement, after deducting from such Proceeds only the following amounts (the "**Closing Deductions**") payable to the Debtors for (i) reasonable closing costs, (ii)

Cure Costs under the US Assumed Contracts as determined by the Court, (iii) a reasonable reserve for the reasonable accrued fees for Debtors' professionals, subject to disbursement by further order of this Court, (iv) amounts payable under the Key Employee Incentive Program [Dkt. No. 161], (v) a reasonable reserve for accrued post-petition trade payables to the extent not assumed by the US Purchaser, (vi) the Carveout (as defined in the Final DIP Financing Order) and a reasonable reserve for any other expenses reasonably necessary to winddown the Debtors' estates, and (vii) amounts required to satisfy Prior Permitted Liens (as defined in the Final DIP Financing Order) in the US Purchased Assets unless assumed by the US Purchaser. All payments heretofore made by the Debtors for adequate protection payments or professional fees have been duly applied to the Prepetition Senior Secured Liabilities by the Agent, the Senior DIP Loan by the DIP Agent or the Junior DIP Loan by Boeing Capital Loan Corporation. The Agent, the DIP Agent and the Boeing Capital Loan Corporation shall provide statements of amounts owed for their applicable loan facility as of the Closing Date which the Debtors shall review and acknowledge.

P. **Assumption of Executory Contracts and Unexpired Leases.** The (i) transfer of the US Purchased Assets to the US Purchaser and (ii) assignment to the US Purchaser of the US Assumed Contracts, will not subject the US Purchaser to any liability whatsoever prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable law, including, without limitation, any theory of antitrust, successor or transferee liability. The Debtors have

demonstrated that it is an exercise of their sound business judgment to assume and assign the US Assumed Contracts to the US Purchaser in connection with the consummation of the sale, and the assumption and assignment of the US Assumed Contracts is in the best interests of the Debtors, their estates, and their creditors. The US Assumed Contracts being assigned to the US Purchaser are an integral part of the US Purchased Assets being purchased by the US Purchaser and, accordingly, such assumption and assignment of US Assumed Contracts is reasonable, enhances the value of the Debtors' estates, and does not constitute unfair discrimination.

Q. **Cure/Adequate Assurance.** The Debtors or the US Purchaser, as applicable and in accordance with the Asset Purchase Agreement, have (i) cured, or have provided adequate assurance of cure, of any default existing prior to the date hereof under any of the US Assumed Contracts, within the meaning of section 365(b)(1)(A) of the US Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the US Assumed Contracts within the meaning of section 365(b)(1)(B) of the US Bankruptcy Code. The US Purchaser has provided adequate assurance of future performance of and under the US Assumed Contracts within the meaning of section 365(b)(1)(C) of the US Bankruptcy Code.

R. **Prompt Consummation.** The sale of the US Purchased Assets must be approved and consummated promptly in order to preserve the value of the US Purchased Assets. Therefore, time is of the essence in consummating the Sale, and the Debtors and the US Purchaser intend to close the sale as soon as possible.

S. **No Intentional Fraudulent Transfer.** The Asset Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the US Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

T. **US Purchaser Not an Insider and No Successor Liability.** Immediately prior to the Closing Date, US Purchaser was not an “insider” or “affiliate” of the Debtors, as those terms are defined in the US Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between US Purchaser and the Debtors. Pursuant to the Asset Purchase Agreement, US Purchaser is not purchasing all of the Debtors’ assets because US Purchaser is not purchasing any of the Excluded Assets, and US Purchaser is not holding itself out to the public as a continuation of the Debtors. The sale does not amount to a consolidation, merger or de facto merger of US Purchaser and the Debtors and/or the Debtors’ estates, there is not substantial continuity between US Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and US Purchaser, US Purchaser is not a mere continuation of the Debtors or the Debtors’ estates, and US Purchaser does not constitute a successor to the Debtors or the Debtors’ estates.

U. **Legal, Valid Transfer.** The transfer of the US Purchased Assets to US Purchaser will be a legal, valid, and effective transfer of the US Purchased Assets, and will vest US Purchaser with all right, title, and interest of the Debtors to the US Purchased Assets free and clear of all Encumbrances and Interests, except as set forth in the Asset Purchase Agreement.

V. **Asset Purchase Agreement Not Modified.** The terms of the Asset Purchase Agreement, including any amendments, supplements, and modifications thereto, are fair and reasonable in all respects and the terms of the Order shall not modify the terms of the Asset Purchase Agreement.

W. **Not a Sub Rosa Plan.** The Sale does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates a liquidating plan of reorganization for the Debtors.

X. **No Liability for US Excluded Assets or Excluded Liabilities.** By consummating the Sale and the transactions contemplated by the Asset Purchase Agreement, neither the US Purchaser nor any of the US Purchased Assets will be subject to any claim, liability or obligation arising out of, or relating to, any US Excluded Asset or any Excluded Liability, including, without limitation, under the US Bankruptcy Code, any Environmental Law, or any other laws of the United States, any state, territory, possession or the District of Columbia.

It is therefore **ORDERED, ADJUDGED, AND DECREED EFFECTIVE IMMEDIATELY THAT:**

General Provisions

1. The Motion is GRANTED and APPROVED in all respects.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice. Specifically, the objections are addressed as follows:

SIFCO Industries, Inc. (Dkt. No. 173). Upon further review, Debtors agree with SIFCO's position that there is no current purchase order in place and therefore, nothing to assign to US Purchaser. The SIFCO objection is therefore moot.

BAE Systems (Dkt No. 174). Debtors and US Purchaser have agreed not to seek assignment of this agreement. The BAE objection is therefore moot.

KTR Chicago I LLC (Dkt. No. 182) and Related Responses and Pleadings (Dkt Nos. 206, 213, 216 and 217). Debtors shall make a net cure payment of \$100,000 at Closing to KTR Chicago I LLC and a lease amendment in substantially the form of Exhibit C hereto and any related assumption and assignment agreement shall be entered into as part of the Closing in full resolution of the matters raised in these pleadings.

Boeing Company Limited Objection (Dkt. No. 183). Debtors and the US Purchaser have agreed to removal of the agreements attached as Exhibit B hereto, which are generally expired, superceded or otherwise not applicable and they shall not be considered US Assumed Contracts under the Asset Purchase Agreement or this Order. Boeing has no adequate assurance or other objection to stalking horse US Purchaser as assignee. Boeing's limited objection is therefore resolved.

US Government informal comments. Resolved by language set forth in paragraphs 4 and 17 of this revised Order.

Approval of the Sale of the US Purchased Assets

3. The Asset Purchase Agreement, substantially in the form attached hereto as Exhibit A, including any amendments, supplements and modifications thereto, and all of the terms and conditions therein, is hereby approved in all respects.

4. Pursuant to 11 U.S.C. § 363(b), the Sale of the US Purchased Assets to the US Purchaser free and clear of all Encumbrances and Interests (except those specifically permitted by the Asset Purchase Agreement), and the transactions contemplated thereby are approved in all respects; provided, however, that the US Purchased Assets do not include any Government Property as that term is defined in 48 C.F.R. 52.245.1. Nothing in this Order or the Asset Purchase Agreement shall be interpreted to authorize any transfer or sale of such Government Property without the express written consent of the United States of America.

5. Except as otherwise specifically provided in the Asset Purchase Agreement, the US Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates or any other third party whatsoever, and the US Purchaser shall have no successor or vicarious liabilities of any kind or character (including, without limitation, any products liability Claims with respect to any inventory or other assets sold, shipped or delivered prior to the Closing Date), whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or their Business or any obligations of, or Claims against, the Debtors or any of their predecessors or affiliates or any other third party whatsoever arising at any time, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Assets prior to the Closing Date.

6. The transactions contemplated by the Asset Purchase Agreement are undertaken by the US Purchaser in good faith, as that term is used in section 363(m) of the US Bankruptcy Code, and accordingly, the reversal or modification on appeal of

the authorization provided herein by this Order to consummate the Sale shall not affect the validity of the Sale to the US Purchaser. The US Purchaser is a purchaser in good faith of the US Purchased Assets, and is entitled to all of the protections afforded by section 363(m) of the US Bankruptcy Code.

7. As a good faith purchaser of the US Purchased Assets, the US Purchaser has not entered into an agreement with any other potential bidders at the Sale, and has not colluded with any of the other bidders, potential bidders or any other parties interested in the US Purchased Assets, and therefore neither the Debtors nor any successor in interest to the Debtors' estates shall be entitled to bring an action against the US Purchaser, and the Sale may not be avoided pursuant to section 363(n) of the US Bankruptcy Code.

Sale and Transfer of US Purchased Assets

8. Pursuant to section 363(b) of the US Bankruptcy Code, the Debtors are hereby authorized to sell the US Purchased Assets to the US Purchaser and consummate the Sale in accordance with, and subject to the terms and conditions of, the Asset Purchase Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed in accordance with, and subject to the terms and conditions of, the Asset Purchase Agreement, and are further authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement, including, without limitation, the related documents, exhibits and schedules, and to take all further actions as may be reasonably requested by US Purchaser for the purposes of assigning,

transferring, granting, conveying and conferring to US Purchaser or reducing to possession, the US Purchased Assets, or as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Asset Purchase Agreement.

9. Pursuant to Section 363(b) and 363(f) of the US Bankruptcy Code and upon payment of the amounts due at Closing under the Asset Purchase Agreement in accordance with this Order, the US Purchased Assets shall be transferred to the US Purchaser upon the Closing Date free and clear of all Encumbrances and Interests (except the US Assumed Obligations and US Permitted Encumbrances) of any kind or nature whatsoever including, but not limited to, Encumbrances and Interests in respect of the following: (1) any labor agreements; (2) all mortgages, deeds of trust, liens and security interests; (3) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (4) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or

federal benefits or claims relating to any employment with any of the Debtors or any of their respective affiliates or predecessors; (5) any bulk sales or similar law; (6) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (7) any theories of successor or products liability; and (8) any Environmental Laws. Nothing in this order shall be construed to: (1) release, nullify, or enjoin a Governmental Authority from enforcing any Environmental Laws under which a purchaser of property would otherwise be liable as a current owner or operator after the date of purchase, or (2) permit, in any circumstances, a Governmental Authority to obtain from the US Purchaser penalties arising under Environmental Laws prior to the Closing Date. For purposes of clarification, any employee medical claims which are incurred prior to the Closing (regardless of when such claims are presented for payment) shall be claims against the bankruptcy estates of the Debtors, and not the US Purchaser, and the US Purchaser shall be responsible only for such claims which are incurred after the Closing. All such Encumbrances and Interests of any kind or nature whatsoever (other than US Permitted Encumbrances) shall attach (effective upon the transfer of the US Purchased Assets to the US Purchaser) to the Proceeds with the same force, validity, priority and effect, if any, as the claims, liens, encumbrances, and interests formerly had against the US Purchased Assets, if any, subject to the Debtors' ability to challenge the extent, validity, priority and effect of the Encumbrances and Interests unless foreclosed by the DIP Financing Order and subject to and as otherwise provided in any other order of this Court in these US Bankruptcy Cases. Additionally, for the avoidance of doubt, US Purchaser shall have no liability, obligation, or responsibility whatsoever to any Debtor, Governmental Authority or any other Person with respect to, or in connection

with, any US Excluded Assets or any Excluded Liability of any kind or character, whether known or unknown, as of the Closing Date, whether fixed or contingent, including, without limitation, any liability or other obligation arising under the US Bankruptcy Code, any Environmental Laws, or any other laws of the United States, any state, territory, possession or the District of Columbia.

10. On the Closing Date, this Order will be construed and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the US Purchased Assets or a bill of sale transferring good and marketable title in such US Purchased Assets to the US Purchaser. On the Closing Date, and subject to section 365 of the US Bankruptcy Code, this Order also shall be construed and constitute for any and all purposes a complete and general assignment of all right, title and interest of the Debtors and each bankruptcy estate to the US Purchaser in US Assumed Contracts.

11. All entities who are presently, or on the Closing Date may be, in possession of some or all of the US Purchased Assets are hereby directed to surrender possession of the US Purchased Assets to the US Purchaser on the Closing Date.

12. Except as expressly permitted by the Asset Purchase Agreement or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade, products liability and other creditors, holding Encumbrances and Interests of any kind or nature whatsoever against or in the Debtors or the US Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated now existing or hereinafter arising), arising under or out of, in connection with, or in any way relating to, the Debtors, the US Purchased Assets, or the

transfer of the US Purchased Assets to the US Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the US Purchaser, its successor or assign, its property, or the US Purchased Assets, such persons' or entities' Encumbrances and Interests.

13. On the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Encumbrances and Interests in the US Purchased Assets, if any, as such Encumbrances and Interests may have been recorded or otherwise exist.

14. Subject to the terms and conditions of this Order and the Asset Purchase Agreement, the transfer of the US Purchased Assets to the US Purchaser pursuant to the Asset Purchase Agreement constitutes a legal, valid, and effective transfer of the US Purchased Assets, and shall vest the US Purchaser with all right, title, and interest of the Debtors in and to the US Purchased Assets free and clear of all Encumbrances and Interests of any kind or nature whatsoever.

Assumption and Assignment of US Assumed Contracts

15. Pursuant to Sections 105(a) and 365 of the US Bankruptcy Code, and subject to and conditioned upon the Closing of the Sale, the Debtors' assumption and assignment to the US Purchaser, and the US Purchaser's assumption on the terms set forth in the Asset Purchase Agreement, of the US Assumed Contracts is hereby approved, and the requirements of Section 365(b)(1) of the US Bankruptcy Code with respect thereto are hereby deemed satisfied.

16. The Debtors are hereby authorized and directed in accordance with Sections 105(a), 363 and 365 of the US Bankruptcy Code to (a) assume and assign to the US Purchaser, effective upon the Closing Date of the Sale, the US Assumed Contracts

free and clear of all Encumbrances and Interests of any kind or nature whatsoever (other than US Permitted Encumbrances) and (b) execute and deliver to the US Purchaser such documents or other instruments as may be necessary to assign and transfer the US Assumed Contracts to the US Purchaser.

17. The US Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the US Purchaser in accordance with their respective terms, notwithstanding any provision in any such US Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the US Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer; provided, however, that notwithstanding any other provision of this Order, the United States of America shall retain and hereby reserves its rights pursuant to 41 U.S.C. § 15 and any applicable regulations, regarding assumption, or assumption and assignment, of any executory contract or lease to which it is a party that is subject to its express written consent. Pursuant to section 365(k) of the US Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the US Assumed Contracts after such assignment to and assumption by the US Purchaser, except as provided in the Asset Purchase Agreement.

18. All amounts that must be paid and obligations that must be otherwise satisfied, if any, including pursuant to Sections 365(b)(1)(A) and (B) of the US Bankruptcy Code, in connection with the assignment and assumption of the US Assumed Contracts (other than any amounts that must be paid in respect of the assignment and assumption of any Contract with The Boeing Company that is a US Assumed Contracts to cure any defaults under such Contract that have occurred to the date hereof), including

costs to obtain any Consents or cure any defaults thereunder that are required to be cured pursuant to the US Bankruptcy Code to effect the assignment and obtain this Order (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the US Bankruptcy Code) shall be cured by the Debtors at the Closing Date. All defaults or other obligations of the Debtors under the US Assumed Contracts arising or accruing on or after the Petition Date to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the US Bankruptcy Code) shall be cured by the Debtors at the Closing Date to the extent required by the US Bankruptcy Code. Except as set forth in the Asset Purchase Agreement with respect to the assumed Cure Costs, the US Purchaser shall have no liability or obligation to cure US Assumed Contract defaults accruing prior to the Closing Date. Notwithstanding any language in this paragraph to the contrary, the Debtors shall be responsible for all taxes and tax payments to the extent provided in the Asset Purchase Agreement.

19. Each non-Debtor party or third party beneficiary to any US Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting against the Debtors or the US Purchaser, or the property of either of them, any default existing as of the date of the Closing Date of the Sale.

Additional Provisions

20. The consideration provided by the US Purchaser for the US Purchased Assets under the Asset Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the US Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of

Columbia, and the Sale and the transactions consummated in connection therewith are not, and shall not be, avoidable under the US Bankruptcy Code or any such laws.

21. Subject to the terms of the Asset Purchase Agreement, which is hereby approved, in all respects by this Order, and this Order, the US Purchaser shall pay to Agent at Closing all proceeds of the Sale (after deducting therefrom only the Closing Deductions that have been reasonably approved in writing by the Agent or approved by another order of the Court entered after notice to Agent with an opportunity to be heard). All payments heretofore made by the Debtors for adequate protection payments or professional fees have been duly applied to the Prepetition Senior Secured Liabilities by the Agent, the Senior DIP Loan by the DIP Agent or the Junior DIP Loan by Boeing Capital Loan Corporation and are hereby ratified, confirmed and approved. The Agent, the DIP Agent and the Boeing Capital Loan Corporation shall provide statements of amounts owed for their applicability facility as of the Closing Date which the Debtors shall review and acknowledge.

22. Effective as of the Closing Date, the Debtors and their estates, along with any respective successor or permitted assigns including, without limitation, any chapter 11 trustee herein appointed for any of the Debtor's estates or any trustee appointed in a chapter 7 case if a case is converted from chapter 11 (the "Releasing Parties"), forever and irrevocably release, discharge and acquit the current and any former DIP Agent, Senior DIP Lenders, Prepetition Agent, Prepetition Senior Lenders (as those capitalized terms are defined in the Final Financing Order) and each of their respective former and current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers,

consultants, accountants, attorneys, affiliates and predecessors in interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses or judgments of every type, in favor of all Releasing Parties, and whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, from the beginning of time through the Closing Date, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the Prepetition Senior Financing Agreements, the Prepetition Senior Liens, the Prepetition Senior Secured Liabilities, the Postpetition Senior Financing Agreements, the Postpetition Senior Liens or the Postpetition Secured Liabilities (as those capitalized terms are defined in the Final DIP Financing Order) including, without limitation (i) any avoidance, reduction, set off, offset, recharacterization, subordination (whether equitable, contractual or otherwise), so-called "lender liability", claims, counterclaims, cross-claims, recoupment, defenses, disallowance, impairment, or any other challenges under the US Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity, (ii) any and all claims and causes of action arising under the US Bankruptcy Code, including, without limitation, any avoidance actions arising under 11 U.S.C. §§ 544, 545, 547, 548, 549, 550, 551 and/or 553, and (iii) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the DIP Agent,

the Senior DIP Lenders, the Prepetition Agent and/or the Prepetition Senior Lenders Liabilities (as those capitalized terms are defined in the Final DIP Financing Order).

23. Effective as of the Closing Date, the Releasing Parties hereby release, acquit and forever discharge The Boeing Company and Boeing Capital Loan Corporation and their respective members, officers, directors, employees, agents, consultants, attorneys, successors and assigns (collectively, the “Boeing Parties”) from any and all manner of action and causes of action, suits, claims, obligations, liabilities, judgments, execution, damages, demands, losses, costs and expenses of any kind, character, or nature whatsoever, arising before, on or after the Petition Date, in law or in equity, known or unknown, fixed or contingent, from the beginning of time through the Closing Date, in favor of any of the Releasing Parties based upon or relating to any facts now existing as of the Closing Date, including, without limitation, any avoidance actions arising under 11 U.S.C. §§ 544, 545, 547, 548, 549, 550, 551 and/or 553, provided, however, that nothing herein shall release the “Reserved Claims” as defined in that certain Release and Covenant Not to Sue by and among certain of the Releasing Parties and certain of the Boeing Parties filed at Docket No.212.

24. This Order (a) shall be effective as a determination that upon payment by US Purchaser of the Purchase Price under the Asset Purchase Agreement in accordance herewith, all Encumbrances and Interests of any kind or nature whatsoever existing as to the Debtors or the US Purchased Assets prior to the Closing Date (other than US Permitted Encumbrances) have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all

filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the US Purchased Assets. 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 Asset Purchase Agreement. The US Purchaser and the Debtors shall take such further steps and execute such further documents, assignments, instruments and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph. All Encumbrances and Interests of record as of the date of this Order shall be forthwith removed and stricken as against the US Purchased Assets. All entities described in this paragraph are authorized and specifically directed to strike all such recorded Encumbrances and Interests against the US Purchased Assets from their records, official and otherwise.

25. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances and Interests in any of the US Purchased Assets does not deliver to the Debtors or the US Purchaser prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all interests and other interests

that the person or entity has or may assert with respect to any of the US Purchased Assets, the Debtors and/or the US Purchaser and their respective agents are hereby authorized to execute and file, register, or record such statements, instruments, releases and other documents on behalf of such persons or entity with respect to any of the US Purchased Assets.

26. To the extent provided by Section 525 of the US Bankruptcy Code, no Governmental Authority may deny, revoke, suspend or refuse to renew any permit, license, or similar grant relating to the operation of the US Purchased Assets sold, transferred, or conveyed to the US Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale contemplated by the Asset Purchase Agreement. Notwithstanding the foregoing or any other provisions of this Order, the United States expressly reserves its rights with respect to the applicability and scope of section 525 of the Bankruptcy Code to the US Purchaser.

27. As specifically provided in the Asset Purchase Agreement, the Debtors will cooperate with the US Purchaser and the US Purchaser will cooperate with the Debtors, in a commercially reasonable manner, in each case to ensure that the transaction contemplated in the Asset Purchase Agreement is consummated, and the Debtors will make such modifications or supplements to any bill of sale or other document executed in connection with the closing to facilitate such consummation as contemplated by the Asset Purchase Agreement (including, without limitation, adding such specific assets, to such documents, as may be reasonably requested by the US Purchaser pursuant to the terms of the Asset Purchase Agreement).

28. The US Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors or any third party whatsoever arising under or related to the US Excluded Assets or the US Purchased Assets other than for the US Assumed Obligations and the US Assumed Contracts to the extent provided under the Asset Purchase Agreement. Without limiting the generality of the foregoing, and except as otherwise specifically provided in the Asset Purchase Agreement, the US Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates or any third party whatsoever, and the US Purchaser shall have no successor liabilities (including without limitation product liability with respect to any assets sold, shipped or delivered prior to the Closing Date) of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, or in connection with, or in any way relating to the operation of the business prior to the Closing Date and all parties are hereby forever barred, estopped and permanently enjoined from asserting any such claims against the US Purchaser, its successors and assigns or against the US Purchased Assets.

29. Except for US Assumed Obligations and US Assumed Contracts as set forth in the Asset Purchase Agreement, under no circumstances whatsoever shall the US Purchaser be deemed a successor of or to the Debtors for any Encumbrances or Interests against or in the Debtors or the US Purchased Assets or US Excluded Assets of any kind or nature whatsoever. Except for US Assumed Obligations and US Assumed Contracts as set forth in the Asset Purchase Agreement, the sale, transfer, assignment and

delivery of the US Purchased Assets and the US Assumed Contracts shall not be subject to any Encumbrances and Interests, and Encumbrances and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors or such other applicable Person. All persons holding Encumbrances and Interests against or in the Debtors or the US Purchased Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Encumbrances and Interests of any kind or nature whatsoever against the US Purchaser, its officers, directors, shareholders and professionals, its property, its successors and assigns, or the US Purchased Assets with respect to any Encumbrances and Interests of any kind or nature whatsoever (other than US Permitted Encumbrances) such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the US Purchased Assets. Following the Closing Date, no holder of an Encumbrance and Interest in the Debtors shall interfere with the US Purchaser's title to, or use and enjoyment of, the US Purchased Assets and the US Assumed Contracts based on or related to such Interest, or any actions that the Debtors or any third party may take in the US Bankruptcy Cases.

30. This Court shall retain jurisdiction to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, except as otherwise provided therein, and of each of the agreements executed in connections therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the US Purchased Assets to the US Purchaser free and clear of Encumbrances and Interests (other than US Permitted Encumbrances), or compel the performance of other obligations owed by the Debtors,

(b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the US Purchaser against (i) claims made related to any of the Excluded Liabilities (as defined in the Asset Purchase Agreement), (ii) any claims of successor or products liability related to the US Purchased Assets or US Assumed Contracts or US Excluded Asset, or (iii) any claims of Encumbrances and Interests (other than US Permitted Encumbrances) asserted in the Debtors or the US Purchased Assets, of any kind or nature whatsoever, and (f) to require delivery of any US Purchased Assets or proceeds thereof by Debtors to US Purchaser or of any US Excluded Assets or proceeds thereof by US Purchaser to the Debtors or their designee or successor.

31. The terms and provisions of the Asset Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors and their respective affiliates, successors and assigns, their estates, and their creditors, the US Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting Encumbrances and Interests in the US Purchased Assets to be sold to the US Purchaser pursuant to the Asset Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the US Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

32. The failure specifically to include any particular provisions of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of

such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

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

34. Nothing contained in any order entered in the US Bankruptcy Cases subsequent to entry of this Order, nor in any chapter 11 plans confirmed in these US Bankruptcy Cases, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.

35. This Order shall be effective and enforceable immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h), 6006(d) and any other provision of the US Bankruptcy Code or Bankruptcy Rules shall not apply.

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

37. To the extent applicable, the automatic stay pursuant to section 362 of the US Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court (a) to allow US Purchaser to give the Debtors any notice provided for in the Asset Purchase Agreement, and (b) to allow US Purchaser to take any and all actions permitted by the Asset Purchase Agreement.

38. To the extent a counter party to an US Assumed Contract failed to timely object to Cure Costs, such Cure Costs shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to or denying the validity and finality of the Cure Costs at any time, and such Cure Costs, when paid, shall completely revive any US Assumed Contract to which it relates.

39. Notwithstanding anything to the contrary contained in the Asset Purchase Agreement or this Order, this Order does not approve the sale or transfer of the software (the "Infor Software") of Infor Global Solutions (Michigan), Inc. ("Infor"), or any rights to use the Infor Software, to the US Purchaser and the US Purchaser shall not receive any rights to use or otherwise benefit from the Infor Software from and after the Closing Date as a result of entry of this Order. The Debtors presently do not seek to assume and assign any agreements with Infor (the "Infor Agreements") to the US Purchaser. The US Purchaser and Infor may agree to enter into a license for the US Purchaser's use of the Infor Software, provided that the parties' respective rights are reserved as stated on the record at the Sale Hearing.

40. The Sale shall not be subject to any bulk sales laws.

41. The Debtors and each other person having duties or responsibilities under the Asset Purchase Agreement or this Order, and their respective agents, representatives, and attorneys, are authorized and empowered to carry out all of the provisions of the Asset Purchase Agreement, to issue, execute, deliver, file and record, as appropriate, the Asset Purchase Agreement, and any related agreements, and to take any action contemplated by the Asset Purchase Agreement or this Order, and to issue, execute, deliver, file and record, as appropriate, such other contracts, instruments,

releases, deeds, bills of sale, assignments, or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the Asset Purchase Agreement and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable business corporation, trust and other laws of applicable governmental units with respect to the implementation and consummation of the Asset Purchase Agreement and this Order and the transactions contemplated thereby and hereby.

42. To the extent that any provision of this Order conflicts with the Asset Purchase Agreement, this Order shall control.

Dated: Wilmington, Delaware
July 24, 2012



HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE