

ORIGINAL

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

-----X		
In re	:	Chapter 11
	:	
SEMCRUDE, L.P., <i>et al.</i> ,	:	Case No. 08-11525 (BLS)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Re: Docket No. 3763
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**ORDER APPROVING THE AUCTION AND
SALE OF CERTAIN ASSETS OF SEMMATERIALS, L.P.**

Upon the motion, dated April 22, 2009 (the "Sale Motion")¹ of the above-captioned debtors and debtors-in-possession (the "Debtors") seeking entry of (a) the Bidding Procedures Order (i) scheduling the Auction, (ii) approving the Bidding Procedures, (iii) scheduling the Sale Hearing, and (iv) approving the notice of the Sale Hearing and the Auction; and (b) an order authorizing the sale of the Purchased Assets (defined in the Asset Purchase Agreement (as defined below) as the "Transferred Assets") to the Purchaser (the "Sale Order"), pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Rule 6004-1 of the Local Rules; and the Bankruptcy 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 each constituting a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and it appearing that the relief requested in the Sale Motion and the sale of the Purchased Assets to Rhone Midstream Holdings,

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Asset Purchase Agreement, as applicable.



LLC (the "Purchaser"),² pursuant to the terms of the Asset Purchase and Sale Asset Purchase Agreement, dated April 17, 2009, a copy of which is attached hereto as Exhibit A, as amended by the Amendment to the Asset Purchase Agreement dated April 29, 2009, a copy of which is attached hereto as Exhibit B, and the Second Amendment to Asset Purchase Agreement dated May 10, 2009, a copy of which is attached hereto as Exhibit C, (collectively, the "Asset Purchase Agreement") is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:

A. The findings and conclusions set forth herein constitute the Bankruptcy 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 Bankruptcy Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Purchased Assets, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Purchased Assets constitute property of SemMaterials' estate within the meaning of section 541(a) of the Bankruptcy Code.

² Pursuant to Section 12.15 of the Asset Purchase Agreement (as defined below), Rhone Cleantech Fund I, L.P. (the "Parent") agreed to guarantee the Purchaser's obligations to pay the Purchase Price (as defined in the Asset Purchase Agreement) pursuant to Section 3.1 thereof and any payment required to be paid by the Purchaser pursuant to Section 3.3 thereof.

E. The statutory predicates for the relief sought in the Sale Motion and the basis for the approvals and authorizations herein are (i) sections 102, 105, 363, and 365 of the Bankruptcy Code and (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014.

F. Adequate and sufficient notice of the Sale Motion, the Auction, the Sale Hearing, the Asset Purchase Agreement, the identity of the Purchaser, and the proposed entry of this Order have been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, the Local Rules, and Bankruptcy Rules 2002, 6004, and 6006, including adequate and sufficient notice of the assumption and assignment of the Assumed Contracts (as defined in the Asset Purchase Agreement) and the Tulsa Lease (as amended) which was provided to the counterparties thereto. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, the Asset Purchase Agreement, or of the entry of this Order is necessary or shall be required. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities. Except Oracle USA, Inc. and Flint Hills Resources, L.P., no party objected to the relief sought in the Sale Motion, including the assumption and assignment of the Assumed Contracts and the Tulsa Lease (as amended).

G. The conditions of section 363(m) of the Bankruptcy Code have been satisfied.

H. The Debtors have demonstrated a sufficient basis and compelling circumstances requiring SemMaterials to enter into the Asset Purchase Agreement, sell the Purchased Assets under section 363 of the Bankruptcy Code, and such action is an appropriate exercise of SemMaterials' business judgment and in the best interests of SemMaterials, the Debtors, their estates, and their creditors. Such business reasons include, but are not limited to, the facts that (i) there is substantial risk of deterioration of the value of the Purchased Assets if the sale is not consummated expeditiously; (ii) the Asset Purchase Agreement constitutes the highest and best

offer for the Purchased Assets; (iii) the Asset Purchase Agreement and the Closing (as defined in the Asset Purchase Agreement) will present the best opportunity to realize the value of SemMaterials on a going concern basis and avoid decline and devaluation of SemMaterials' business; and (iv) unless the sale is concluded expeditiously as provided for in the Sale Motion, and pursuant to the Asset Purchase Agreement, creditors' recoveries may be diminished.

I. As demonstrated by (i) any testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, SemMaterials (a) the Debtors have conducted the sale process fairly and openly in a manner reasonably calculated to produce the highest and best offer for the Purchased Assets and in compliance with the Bidding Procedures Order, (b) afforded interested potential purchasers a full, fair, and reasonable opportunity to become Qualified Bidders and submit their highest or otherwise best offer to purchase all of the Purchased Assets; (c) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Purchased Assets; (d) considered any bids submitted on or before the Bid Deadline; and (e) the Asset Purchase Agreement was negotiated, proposed and entered into by the Debtors in good faith and without any collusion or fraud and results from arm's length bargaining positions.

J. The Purchaser is the Successful Bidder for the Purchased Assets. The offer of the Purchaser, upon the terms and conditions set forth in the Asset Purchase Agreement, including the form and total consideration to be realized by SemMaterials pursuant to the Asset Purchase Agreement, (i) is the highest and best offer received by SemMaterials; (ii) is fair and reasonable; (iii) is in the best interests of SemMaterials' estate and creditors; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets; and (v) will

provide a greater recovery for SemMaterials' creditors and other interested parties than would be provided by any other practically available alternative, including without limitation, in a liquidation sale.

K. The Purchaser 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) of the Bankruptcy Code with respect to all of the Purchased Assets, and neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Asset Purchase Agreement or any or all of the transactions contemplated thereunder to be avoided or for the imposition of costs or damages pursuant to section 363(n) of the Bankruptcy Code.

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

M. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assigned Contracts and Tulsa Lease (as amended) to the Purchaser, and the assumption and assignment thereof is in the best interest of the Debtors, their estate and creditors. The Assigned Contracts and Tulsa Lease (as amended) are an integral part of the Purchased Assets without which the Purchaser would refuse to consummate the Closing under the Asset Purchase Agreement, and accordingly such assumption and assignment is reasonable and enhances the value of the Debtors' estates. The Debtors have cured or provided adequate assurance of cure of any defaults existing or occurring on or prior to the Closing Date

under all of the Assumed Contracts within in the meaning of sections 365(b)(1) of the Bankruptcy Code and provided compensation or adequate assurance of compensation or to any party for pecuniary lose resulting to a counterparty under any of the Assumed Contracts within the meaning of section 365(b)(1) of the Bankruptcy Code.

N. The Debtors inadvertently failed to give notice to the non-Debtor counterparties to the software licenses listed on Exhibit 2.1(a)-4 of the Asset Purchase Agreement (the "Software Licenses") with respect to the relief requested in the Sale Motion. Accordingly, such counterparties to the Software Licenses shall not be affected by the relief requested in this Order unless and until they are served with notice and granted an opportunity to respond as more specifically provided for in this Order.

O. Except as otherwise provided in the Asset Purchase Agreement, the Purchased Assets shall be sold free and clear of all Liens, other than the Permitted Liens, with such Liens to attach to the consideration to be received by SemMaterials from the sale of the Purchased Assets in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Purchaser would not enter into the Asset Purchase Agreement to purchase the Purchased Assets otherwise.

P. SemMaterials may sell the Purchased Assets free and clear of all Liens, 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 have been satisfied. All persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens against the Purchaser, any of their assets, property, successors or assigns, or the Purchased Assets.

Q. The transfer of the Purchased Assets to the Purchaser is a legal, valid, and effective transfer of the Purchased Assets, and, except as may otherwise be provided in the Asset Purchase Agreement, shall vest the Purchaser with all right, title, and interest of SemMaterials to the Purchased Assets free and clear of any and all Liens (as defined in the Asset Purchase Agreement).

R. Cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

S. The transactions contemplated under the Asset Purchase Agreement do not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors, there is no common identity between the Debtors and the Purchaser, there is no continuity of enterprise between the Debtors and the Purchaser, the Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser does not constitute a successor to the Debtors or their estates. Other than the Assumed Liabilities (as defined in the Asset Purchase Agreement), the Purchaser shall have no obligations with respect to any liabilities of the Debtors.

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

U. The total consideration provided by the Purchaser for the Purchased Assets is the highest and best offer received by SemMaterials, and the Purchase Price constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) 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 Purchased Assets.

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.
2. All objections to 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 Motion, the Auction, the Sale Hearing, the Asset Purchase Agreement, the identity of the Purchaser, and the proposed entry of this Order was fair and equitable under the circumstances and complied with sections 102(1) and 363(b) of the Bankruptcy Code, the Local Rules, and Bankruptcy Rules 2002, 6004, and 6006.

Approval of Sale

4. The sale of the Purchased Assets, the terms and conditions of the Asset Purchase Agreement, as amended (including all schedules and exhibits affixed thereto), and the transactions contemplated thereby are AUTHORIZED and APPROVED.
5. The sale of the Purchased Assets and the consideration provided by the Purchaser under the Asset 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 Purchaser 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. SemMaterials is hereby authorized to fully perform, consummate, and implement the terms of the Asset 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 Asset Purchase Agreement, this Order, and sale of the Purchased Assets and may take all further actions as may be requested by the Purchaser for purposes of consummating the transactions set forth in the Asset Purchase Agreement.

8. Each of SemMaterials and the Purchaser is further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Asset Purchase Agreement, any related agreements and this Order. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by all applicable business corporations, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the Asset Purchase Agreement, any related agreements, and this Order.

9. Effective as of the Closing, (a) the sale of the Purchased Assets by SemMaterials to the Purchaser shall constitute a legal, valid, and effective transfer of the Purchased Assets, notwithstanding any requirement for approval or consent by any person, and (b) the assumption of any Assumed Liabilities by the Purchaser constitutes a legal, valid and effective delegation of any Assumed Liabilities to the Purchaser and divests the Debtors of all liability with respect to any Assumed Liabilities.

Transfer of Assets to the Purchaser

10. SemGroup is authorized to transfer (without warranty) to SemMaterials any physical assets located on the premises subject to the Tulsa Lease (as amended) that are used solely in connection with the SemMaterials' business and constitute Purchased Assets contemplated to be transferred pursuant to the Asset Purchase Agreement.

11. Notwithstanding any other provision of this Order, pursuant to section 363(f) of the Bankruptcy Code, the sale of the Purchased Assets vests the Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Liens, claims, or encumbrances, if any, with any and all such valid and perfected Liens, claims, or encumbrances to attach to the proceeds therefrom with the same validity, priority, force, and effect such liens, claims, or encumbrances had on the property immediately prior to the transfers of such assets, and subject to the rights, claims, defenses, and objections, if any, of the Debtors. Following the Closing Date, no holder of any Liens in the Purchased Assets may interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Liens, take any action to enforce any Liens against the Purchaser or the Purchased Asset, or interfere with any actions that the Debtors may take in their chapter 11 cases. No person may take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Asset Purchase Agreement or this Order.

12. Bank of America, N.A., agent for certain of the Debtors' prepetition secured lenders and debtor-in-possession lenders (the "Agent"), shall, at the Debtors' expense, take all reasonable action necessary to confirm the removal of any and all claims and Liens on the Purchased Assets securing the prepetition credit agreement and the debtor in possession credit agreement. If any person or entity that has filed a statement or other document evidencing a Lien, claim, encumbrance in, to or against the Purchased Assets shall not have delivered to the Debtors, in

proper form for filing, appropriate termination statements, releases and documents in accordance with this paragraph, then the Purchaser is authorized to file, register or otherwise record a certified copy of this Order (and the subject filing or recording officer is authorized and directed to file or record such certified copy of this Order), which, once filed, registered or otherwise recorded, shall constitute evidence of the release of all Liens, claims or encumbrances in, to or against the Purchased Assets.

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

14. On or before the Closing Date, SemMaterials' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Liens of any kind against the Purchased Assets, as such Liens 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 Liens in or against the Purchased Assets shall not have delivered to the Debtors prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens that the person or entity has with respect to the Purchased Assets, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets prior to the Closing, and the Purchaser is authorized to file such documents after Closing.

15. To the greatest extent available under applicable law, the Purchaser 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 Purchased 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 Purchaser as of the Closing Date.

16. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer good and marketable, indefeasible title and possession of the Purchased Assets acquired by the Purchaser under the Asset Purchase Agreement and/or under a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

17. Except as expressly provided in the Asset Purchase Agreement, the Purchaser is not assuming nor shall it or any affiliate of the Purchaser 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 Purchased Assets prior to the consummation of the transactions contemplated by the Asset Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Asset Purchase Agreement, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Purchaser or any affiliate of the Purchaser.

Assumed Contracts

18. SemMaterials is authorized to assume and assign the Assumed Contracts. Each counterparty to an Assumed Contract is deemed to have consented to the assumption and assignment of such Assumed Contract if such counterparty failed to object to the assumption and assignment thereof.

19. SemGroup is authorized to assume and assign the Tulsa Lease (as amended). SemGroup is further authorized to enter into the Assignment Agreement dated April 17, 2009, attached as Exhibit D hereto, as amended by the Amendment to Assignment Agreement dated April 29, 2009, attached hereto as Exhibit E, and the Amendment to Assignment Agreement dated May 10, 2009, attached hereto as Exhibit F, in accordance with section 365 of the Bankruptcy Code, as assumption and assignment of the Tulsa Lease (as amended) benefits the Debtors' estates.

20. The counterparty to the Tulsa Lease (as amended) is deemed to have consented to the assumption and assignment of the Tulsa Lease (as amended) because the counterparty failed to object to the assumption and assignment thereof.

21. The cure amounts (the "Cure Amounts") for the Assumed Contracts and the Tulsa Lease (as amended) are listed on Schedule 1 attached hereto and are APPROVED in all respects.

22. The counterparties to the Assumed Contracts are hereby barred and permanently enjoined from asserting against the Debtors any default, claim, or liability existing, accrued, arising, or relating to the Assumed Contracts for the period prior to the entry of this Order.

23. The counterparty to the Tulsa Lease (as amended) is hereby barred and permanently enjoined from asserting against the Debtors any default, claim, or liability existing, accrued, arising, or relating to the Tulsa Lease (as amended) for the period prior to the entry of this Order.

24. Notwithstanding anything in this Order to the contrary, the adequate assurance of future performance and/or deposit or security with respect to the assumption and assignment of the Tulsa Lease (as amended) between The William K. Warren Medical Research Center, Inc. as Landlord, and SemGroup, L.P. as Tenant pertaining to that certain Premises as described and

defined in the Tulsa Lease and having a street address of 6502 South Yale Avenue, Tulsa, Oklahoma, 74136, shall include the performance of the obligations of the Purchaser, Rhone Midstream Holdings, L.L.C. pursuant to that certain Agreement and Amendment to Lease ~~to dated contemporaneously with the~~ dated May 8, 2009, by and between the Landlord and the Purchaser (as Proposed Assignee thereunder).

25. Within one (1) day following the entry of this Order, the Debtors are directed to serve copies of the Sale Motion, this Order, and a copy of a schedule (the "Software Cure Schedule") of proposed cure amounts (the "Software Cure Amounts") for the Software Licenses upon the counterparties to the Software Licenses. Any response or objection to the Software Cure Amounts and/or the Debtors' proposed assumption and assignment of the Software Licenses by counterparties to the Software Licenses must be (a) in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801; and (d) be served upon and served upon (i) co-counsel to the Debtors, Martin A. Sosland and Michael A. Saslaw, Weil, Gotshal & Manges LLP, 200 Crescent Court, Suite 300, Dallas, Texas 75201; (ii) co-counsel to the Debtors, John H. Knight, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801; (iii) counsel to the Creditors' Committee, Susheel Kirpalani, Daniel S. Holzman, and Joseph Minias, Quinn Emanuel Urquhart Oliver & Hedges, 51 Madison Avenue, 22nd Floor, New York, New York 10010; (iv) counsel for the Agent, Margot B. Schonholtz and Marc Rosenberg, Kaye Scholer, LLP, 425 Park Avenue, New York, New York, 10022; and (v) the Office of the United States Trustee, 844 King Street, Room 2313, Wilmington, Delaware 19801 (Attn.: William K.

24a.

Notwithstanding anything to the contrary in this Order, the Asset Purchase Agreement, or the Transition Services Agreement ("TSA"), (i) none of the agreements between Oracle USA, Inc. and one or more of the Debtors (collectively, the "Oracle Agreements") will be assumed and/or assigned to the Purchaser pursuant to this Order and (ii) none of the Oracle Agreements and/or licenses will be included in the TSA between the Debtors and the Purchaser.

Harrington, Esq.) so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on or before May 20, 2009 (the "Software Objection Deadline").

26. If no objections are filed by the Software Objection Deadline or the Debtors receive consent to assume and assign the Software Licenses, the Debtors may assume and assign the Software Licenses absent further order of this Court.

Additional Provisions

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

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

29. The Purchaser is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and the Purchaser 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, liability or responsibility for any claim against the Debtors or against an insider of the Debtors, or similar liability except as otherwise expressly provided in the Asset Purchase Agreement, and the Sale Motion contains sufficient notice of such limitation in accordance with Local Rule 6004-1.

30. Other than the Assumed Liabilities or as otherwise provided for in the Asset Purchase Agreement, the Purchaser shall have no obligations with respect to any liabilities of the Debtors, including, without limitation, the Excluded Liabilities.

31. Subject to the terms of the Asset Purchase Agreement, the Asset Purchase Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Bankruptcy Court; provided, however, that any such waiver, modification, amendment, or supplement is neither material nor changes the economic substance of the transactions contemplated hereby and substantially conforms to, and effectuates, the Asset Purchase Agreement and any related agreements.

32. The failure specifically to include any particular provisions of the Asset 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 Bankruptcy Court, the Debtors, and the Purchaser that the Asset 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.

33. Any stay, modification, reversal or vacatur of this Order will not affect the validity of any obligation of the Debtors to the Purchaser incurred under this Order or the Asset Purchase Agreement. Notwithstanding any such stay, modification, reversal or vacatur, all obligations incurred by the Debtors under this Order or the Asset Purchase Agreement prior to the effective date of such stay, modification, reversal or vacatur will be governed in all respects by the original provisions of this Order and the Purchaser is entitled to the rights, privileges and benefits granted in this Order with respect to all such obligations.

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

35. This Order and Asset Purchase Agreement shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtors and the Purchaser, their respective successors and permitted assigns, including, without limitation, any trustee appointed in a chapter 7 case if one or more of these cases are converted from chapter 11, all creditors and equity holders 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 Purchased Assets.

36. Nothing in any order of this Bankruptcy 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 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.

37. The covenants to be performed after the Closing shall survive the Closing to the extent provided for in the Asset Purchase Agreement.

38. Notwithstanding Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing, and the Sale Motion shall be deemed to provide sufficient notice of the Debtors' request for relief from stay. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Asset Purchase Agreement at any time, subject to the terms of the Asset Purchase Agreement.

39. All proceeds received by the Debtors relating to the sale of the Purchased Assets shall be applied in accordance with the provisions of the Final Order Under 11 U.S.C. §§ 105,

361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and Fed. R. Bank. P. 2002, 4001, and 9014 (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, and (III) Granting Adequate Protection to Prepetition Secured Parties [Docket No. 1420].

40. This Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order and the Asset Purchase Agreement in all respects and to decide any disputes concerning this Order and the Asset Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Asset Purchase Agreement and this Order.

Dated: May 11, 2009
Wilmington, Delaware


THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE