IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PMGI Holdings, Inc., *et al*.,[1]	Case No. 13-12404 (CSS)
Debtors.	(Joint Administration Requested)

MOTION OF THE DEBTORS FOR AN ORDER, PURSUANT TO SECTIONS 105(A) AND 365(A) OF THE BANKRUPTCY CODE, AUTHORIZING THE ASSUMPTION OF TRANSACTION SUPPORT AGREEMENT

The debtors and debtors in possession in the above captioned cases (collectively, the "**Debtors**") hereby move (the "**Motion**") for entry of an order (the "**Proposed Order**"), substantially in the form attached hereto pursuant to sections 105(a) and 365(a) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") authorizing the Debtors to assume that certain Transaction Support Agreement, dated as of September 16, 2013 (together with all exhibits thereto, the

[1] The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Blue Hen Group Inc. (9667), Argus Payments Inc. (4661), Big Island Technology Group, Inc. (9795), Confirm ID, Inc. (7020), Danni Ashe, Inc. (5271), Fastcupid, Inc. (7869), Fierce Wombat Games Inc. (2019), FriendFinder California Inc. (2750), FriendFinder Networks Inc. (0988), FriendFinder Ventures Inc. (3125), FRNK Technology Group (7102), General Media Art Holding, Inc. (2637), General Media Communications, Inc. (2237), General Media Entertainment, Inc. (2960), Global Alphabet, Inc. (7649), GMCI Internet Operations, Inc. (7655), GMI On-Line Ventures, Ltd. (7656), Interactive Network, Inc. (5941), Magnolia Blossom Inc. (8925), Medley.com Incorporated (3594), NAFT News Corporation (4385), Penthouse Digital Media Productions Inc. (1056), Penthouse Images Acquisitions, Ltd. (9228), PerfectMatch Inc. (9020), Playtime Gaming Inc. (4371), PMGI Holdings Inc. (2663), PPM Technology Group, Inc. (9876), Pure Entertainment Telecommunications, Inc. (9626), Sharkfish, Inc. (1221), Snapshot Productions, LLC (7091), Streamray Inc. (2716), Streamray Studios Inc. (1009), Tan Door Media Inc. (1100),Traffic Cat, Inc. (1223), Transbloom, Inc. (1168), Various, Inc. (7762), Video Bliss, Inc. (6760), West Coast Facilities Inc. (4751), XVHUB Group Inc. (9401). The Debtors' business address is 6800 Broken Sound Parkway NW, Suite 200, Boca Raton, FL 33487 Inc. (2019), FriendFinder California Inc. (2750), FriendFinder Networks Inc. (0988), FriendFinder Ventures Inc. (3125), FRNK Technology Group (7102), General Media Art Holding, Inc. (2637), General Media Communications, Inc. (2237), General Media Entertainment, Inc. (2960), Global Alphabet, Inc. (7649), GMCI Internet Operations, Inc. (7655), GMI On-Line Ventures, Ltd. (7656), Interactive Network, Inc. (5941), Magnolia Blossom Inc. (8925), Medley.com Incorporated (3594), NAFT News Corporation (4385), Penthouse Digital Media Productions Inc. (1056), Penthouse Images Acquisitions, Ltd. (9228), PerfectMatch Inc. (9020), Playtime Gaming Inc. (4371), PMGI Holdings Inc. (2663), PPM Technology Group, Inc. (9876), Pure Entertainment Telecommunications, Inc. (9626), Sharkfish, Inc. (1221), Snapshot Productions, LLC (7091), Streamray Inc. (2716), Streamray Studios Inc. (1009), Tan Door Media Inc. (1100),Traffic Cat, Inc. (1223), Transbloom, Inc. (1168), Various, Inc. (7762), Video Bliss, Inc. (6760), West Coast Facilities Inc. (4751), XVHUB Group Inc. (9401). The Debtors' business address is 6800 Broken Sound Parkway NW, Suite 200, Boca Raton, FL 33487.

"**TSA**")[2] entered into by and among the Debtors, the Consenting First Lien Noteholders and the Consenting Second Lien Noteholders (collectively, the "**Parties**"). In support of this Motion, the Debtors rely upon, and incorporate herein by reference, the *Declaration of Ezra Shashoua in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**Shashoua Declaration**"). In further support of the Motion, the Debtors respectfully represent as follows:

Preliminary Statement

1. The TSA is the lynchpin of the Debtors' consensual restructuring and forms the roadmap to their prompt exit from these Chapter 11 Cases (defined herein). Facing the impending maturity of the First Lien Notes and the Parties' collective realization that the Debtors were in need of a balance sheet restructuring, the Debtors, prior to the Petition Date, engaged in lengthy negotiations with their main creditor constituencies, namely the Consenting First Lien Noteholders – the beneficial owners or advisors or investment managers for the beneficial owners of at least 80% of the outstanding First Lien Noteholder Claims – and the Consenting Second Lien Noteholders – the beneficial owners or advisors or investment managers for the beneficial owners of at least 78% of the outstanding principal amount of the Second Lien Notes[3] – over the terms of a restructuring transaction. Ultimately, the Parties reached agreement on the terms of the TSA, which is the product of a compromise negotiated at arms-length and in good faith between the Parties, and envisions an accelerated chapter 11 process so as to avoid any risk of erosion of the value of the estates. Indeed, the Parties feared that a free-fall into bankruptcy would disrupt the expectations of the Debtors' customer base and hamper the prospects for a successful reorganization. To avoid that result, the Parties entered into the TSA, because they

[2] A copy of the TSA is attached to the Proposed Order as Exhibit 1. Unless otherwise noted, capitalized terms used but not defined herein shall have the meanings ascribed to them in the TSA.

[3] The TSA incorporates the terms of the Bell/Staton Settlement Term Sheet. As a result, 100% of the Cash Pay Second Lien Noteholders support the TSA.

believe that it maximizes the opportunity to capture the value of the Debtors' businesses and position the Debtors for success post-emergence. The collective goal of the Parties is for the Debtors to effectuate a financial restructuring through a prompt exit from these Chapter 11 Cases with virtually no impact on day-to-day operations. The relief granted at the first day hearing is critical to achieving that result, as is the assumption of the TSA.

Jurisdiction, Venue, and Statutory Predicates

2. On the date hereof (the "**Petition Date**"), the Debtors commenced these cases (the "**Chapter 11 Cases**") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U. S.C. §§ 1408 and 1409.

4. The statutory and legal predicates for the relief sought herein are sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

Relief Requested

5. By this Motion, the Debtors seek the entry of an order (a) authorizing the Debtors to assume the TSA and (b) granting such other relief as is just and proper.

Background

6. The Debtors are a leading internet technology and entertainment company providing services in the rapidly expanding markets of adult dating, social networking and web-based video sharing and run several of the most heavily-trafficked websites in the world. The Debtors maintain a number of social networking and entertainment sites and offer a wide variety of online products and services which appeal to members of diverse cultures and internet groups.

The Debtors' services allow customers to socialize and connect with each other and groups, based on various interests, including ethnic, cultural, and entertainment interests, and to enjoy the Debtors' entertainment oriented content. The websites operated by the Debtors include social networking, online personals, live and recorded video, online chat rooms, instant messaging, photo and video sharing, blogs, message boards, email and premium content websites. The Debtors also produce and distribute original pictorial and video content, license the globally recognized Penthouse brand to a variety of consumer product companies and entertainment venues, and publish several branded men's lifestyle magazines.

7. Because of the internet-based nature of their businesses, the Debtors' operations reach around the globe and have an international presence. The Debtors operate their businesses through forty (40) subsidiaries located in the United States and have fifteen (15) related non-debtor affiliated entities. The Debtors have approximately 435 employees and, through their network, utilize a number of contracting firms and independent contractors to conduct their businesses and obtain their global reach. The Debtors and their affiliates have more than 220 million members and operate in more than 200 countries. The Debtors' total revenue for the four consecutive fiscal quarters ended June 30, 2013 was $293.70 million.

8. In addition to normal course costs of operations, market development and product enhancements, the Debtors have long term debt, including three tranches with maturities on September 30, 2013 and April 30, 2014. Those tranches include the (i) First Lien Notes, (ii) Non-Cash Pay Second Lien Notes and the Cash Pay Second Lien Notes.

9. Despite continuing member interest and high volume traffic, the Debtors did not make certain payments to the holders of Existing First Lien Notes and Cash Pay Second Lien Notes which constituted a default under their respective indentures. Working with certain

holders of their Senior Debt, the Debtors have undertaken to restructure their balance sheet and, on September 16, 2013, the entered into the TSA. The TSA provides the relevant terms to effect the Refinancing Transaction. As a result, the Debtors filed these Chapter 11 Cases in order to implement the Refinancing Transaction as contained in the TSA.

A. The Debtors' Restructuring Efforts

10. In late 2012, the Debtors began to pursue a restructuring transaction and retained CRT Capital Group, Inc. ("**CRT**"), to assist in those efforts. Beginning at that time and continuing throughout 2013, the Debtors, with the assistance of CRT, pursued several options with third parties to (i) delever the Reorganized Debtors, or (ii) consummate a sale to a third party. None of those third-party transactions ultimately came to fruition.

11. In parallel with its efforts to identify a viable third-party transaction, the Debtors and the Consenting First Lien Noteholders and the Consenting Second Lien Noteholders negotiated the contours of a recapitalization transaction (the "**Recapitalization Transaction**"). After substantial, arm's length negotiations, on September 16, 2013, the Debtors, the Consenting First Lien Noteholders and the Consenting Second Lien Noteholders entered into the TSA. The Debtors respectfully request that the Court authorize the Debtors to assume the TSA.

B. Overview of the TSA

12. The TSA commits the Debtors, the Consenting First Lien Noteholders and the Consenting Second Lien Noteholders to a pre-negotiated plan of reorganization designed to implement a comprehensive balance sheet restructuring that is intended to address the impending maturity of the First Lien Notes and solve the Debtor's liquidity issues by reducing the Debtors' debt service going forward. The Debtors have commenced these Chapter 11 Cases to pursue the Plan, the consummation of which will sufficiently delever the Debtors' capital structure to allow

the reorganized Debtors to operate effectively and return to their competitive position in the industry. The Debtors believe that the transactions contemplated by the TSA and the Plan will allow the Debtors to be a profitable enterprise going forward.

13. Specifically, the TSA contemplates, among other things, the following:[4]

(a) The consensual use of Cash Collateral; and

(b) On the Effective Date of the Plan:

(i) The cancellation of the First Lien Notes, and in full and final satisfaction of and in exchange for all allowed First Lien Noteholder Claims, each holder of First Lien Notes shall receive (a) New First Lien Notes in the principal amount equal to its First Lien Noteholder Claim excluding pre-petition and post-petition accrued and unpaid interest and unpaid fees and costs (which shall be satisfied in cash or otherwise as provided pursuant to clauses (b) and (c) below), (b) cash (the "**First Lien Non-Default Interest Cash Payment**"), in the amount of any accrued and unpaid interest comprising such claims at the applicable non-default rate, and (c) to the extent of any First Lien Excess Cash, cash (the "**First Lien Default Interest Cash Payment**") in the amount of any incremental accrued and unpaid interest comprising such claims at the applicable default rate, provided, however, that in the event that First Lien Excess Cash is insufficient to pay all incremental interest at the applicable default rate on all First Lien Notes, then each holder of a First Lien Noteholder Claim shall receive a pro rata share of any First Lien Excess Cash and any unpaid incremental interest at the applicable default rate shall be paid through the issuance of New First Lien Notes in a principal amount equal to such unpaid incremental interest at the applicable default rate;

(ii) The conversion of the Second Lien Notes into 100% of the common stock of the Reorganized FFN in exchange for the full and final satisfaction of the Second Lien Noteholder Claims. On the Effective Date each Second Lien Noteholder shall receive a pro rata share of (a) 100% of the New Common Stock, and (b) Second Lien Excess Cash, if any;

(iii) The reinstatement and unimpairment of the allowed Other Secured Claims in accordance with section 1124(2) of the

[4] The summary of the terms of the TSA contained herein is qualified in its entirety by reference to the TSA. If there are any inconsistencies between this summary and the terms of the TSA, the TSA shall govern in all respects.

Bankruptcy Code, or in exchange for such Other Secured Claim, either (a) cash in the full amount of such allowed Other Secured Claim, including any postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the collateral securing such allowed Other Secured Claim to the extent of the value of the holder's secured interest in such collateral, (c) the collateral securing such allowed Other Secured Claim and any interest on such allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code;

(iv) The payment in full in cash of Other Priority Claims;

(v) Either the payment in full in cash of General Unsecured Claims, or the reinstatement and satisfaction in the ordinary course of business of the General Unsecured Claims by the Reorganized FFN;

(vi) The extinguishment of all Securities Litigation Claims; and

(vii) The cancellation of the Existing Equity interests in FFN.

14. The TSA further provides that, subject to various conditions contained in the TSA, each of the Consenting First Lien Noteholders and the Consenting Second Lien Noteholders agree that:

(a) (A) so long as its vote has been properly solicited in accordance with applicable law, and subject to Section 24 of the TSA, such Consenting First Lien Noteholder or Consenting Second Lien Noteholder will timely vote all respective claims and/or rights against, or interests in, the Debtors (including, without limitation, all First Lien Noteholder Claims, Second Lien Noteholder Claims and, to the extent applicable, Equity interests) to accept the Plan and support approval of the Disclosure Statement, (B) he, she or it will negotiate in good faith definitive Plan Documents, (C) he, she or it will affirmatively grant (or, if applicable, not opt-out) of providing the releases provided for in the Plan, and (D) he, she or it will not (x) vote against the Plan or agree to, consent to, or provide any direct or indirect support for any plan of reorganization other than the Plan, (y) object to or otherwise commence any proceeding or oppose or alter any of the terms of the Disclosure Statement or Plan or take any other action that is materially inconsistent with the approval of the Disclosure Statement or Plan in the Bankruptcy Cases, or (z) withdraw,

change or revoke his, her or its vote in favor of the Plan; and

(b) to the extent such Consenting First Lien Noteholder or Consenting Second Lien Noteholder is or becomes the beneficial owner of any Second Lien Noteholder Claims or First Lien Noteholder Claims, respectively, or is or becomes the nominee, investment manager or advisor for a beneficial holder of any Second Lien Noteholder Claims or First Lien Noteholder Claims, respectively, such Consenting First Lien Noteholder or Consenting Second Lien Noteholder shall bound by the terms of the TSA as a Consenting Second Lien Noteholder or Consenting First Lien Noteholder, as applicable..

15. The TSA further provides that the Debtors, subject to paragraph 10 of the TSA, agree to:

(a) take any and all commercially reasonable actions in furtherance of the Recapitalization Transaction including but not limited to preparing first day bankruptcy motions and applications and Plan Documents materially consistent with the Plan Term Sheet and otherwise on terms reasonably acceptable to the Required Consenting Parties and the Debtors in advance of the dates specified in the Milestones;

(b) in the event that the Debtors have commenced any Bankruptcy Cases, (A) subject to clause (B) below, file with the Bankruptcy Court first day pleadings and applications consistent with the Recapitalization Transaction Terms within one (1) Business Day of the Petition Date; (B) file the Plan and Disclosure Statement with the Bankruptcy Court no later than ten (10) Business Day after the Petition Date, (C) take all commercially reasonable actions necessary to meet the Milestones; and (D) take any and all commercially reasonable actions in furtherance of obtaining approval of the Cash Collateral Order;

(c) use commercially reasonable efforts to promptly and expeditiously obtain any and all required governmental, regulatory and/or third-party approvals for the Recapitalization Transaction;

(d) provide draft copies of all Plan Documents, "first day" motions or applications and use commercially reasonable efforts to provide drafts of any other documents the Debtors intend to file with the Bankruptcy Court to the designated legal counsel for the Consenting First Lien Noteholders and the Consenting Second Lien Noteholders prior to the date when the Debtors intend to file such document and shall consult in good faith with such counsel

regarding the form and substance of any such proposed filing; provided, however, the Debtors will not be in breach of this provision by failing to provide to counsel to the Consenting First Lien Noteholders or the Consenting Second Lien Noteholders drafts of motions or pleadings that seek emergency or expedited relief; and

(e) use its commercially reasonable best efforts to proceed in good faith to avoid the occurrence of any event that may constitute an Agreement Termination Event.

16. The Milestones, which establish deadlines for the Debtors' achievement of various components of the Recapitalization Transaction, were a central point of the Parties' negotiations and include the following:

(a) The Debtors shall use their reasonable best efforts to file the Plan and Disclosure Statement within five (5) Business Days of the Petition Date, provided, however, that the Debtors shall have filed the Plan and Disclosure Statement within ten (10) Business Days of the Petition Date;

(b) The Bankruptcy Court shall have entered the Disclosure Statement Order within sixty (60) days of the Petition Date;

(c) The Bankruptcy Court shall have entered the Cash Collateral Order within three (3) Business Days of the Petition Date and such Cash Collateral Order shall be entered as a final order by forty (40) days after the Petition Date;

(d) The Bankruptcy Court shall have entered the Confirmation Order by within ninety (90) days of the Petition Date; and

(e) The Effective Date shall have occurred by the Outside Date, which is January 31, 2014.

17. The TSA may be terminated by the Parties upon the occurrence of any of the following events:

(a) the mutual written consent of the Issuers, the Required Consenting First Lien Noteholders and the Required Consenting Second Lien Noteholders;

(b) after the commencement of Bankruptcy Cases, by the Debtors upon written notice to the other Parties that they are exercising their fiduciary obligations consistent with Section 3(b) of the TSA;

(c) automatically upon the closing of an Other Transaction or upon the Effective Date of the Plan and the making of the distributions consistent with the Plan;

(d) automatically upon the occurrence of the Outside Date;

18. The TSA may also be terminated on or after the Petition Date, immediately and automatically, without notice, upon the occurrence of any of the following events; provided, that, none of the following events shall constitute an Agreement Termination Event if, within three (3) Business Days of such occurrence, the Required Consenting First Lien Noteholders and Required Consenting Second Lien Noteholders by written notice to the Issuers waive such Agreement Termination Event, in which case such Agreement Termination Event shall be deemed to have not occurred:

(a) the occurrence of a material breach by the Debtors of any of their obligations, covenants or commitments as set forth in the TSA, which breach has or could reasonably be expected to have a material adverse effect on the Consenting First Lien Noteholders or the Consenting Second Lien Noteholders, as applicable;

(b) the Plan shall have been modified or amended by the Debtors in a manner materially inconsistent with the Recapitalization Transaction Terms and without the consent of the Required Consenting First Lien Noteholders and the Required Consenting Second Lien Noteholders;

(c) the Bankruptcy Court shall have entered an order invalidating, disallowing, limiting or otherwise providing relief against the interests of any First Lien Noteholders or Second Lien Noteholders or any of the trustees of the First Lien Indenture or Second Lien Indentures with respect to any First Lien Noteholder Claims or the Second Lien Noteholder Claims or the priority, enforceability or validity of the liens securing the claims arising under the First Lien Indenture or either of the Second Lien Indentures;

(d) a Milestone has not been met;

(e) the occurrence of an event of default under the Cash Collateral Order that has not been timely cured in accordance therewith;

(f) any of the following shall have occurred: (a) the Debtors shall have

filed any motion, application, adversary proceeding or cause of action (x) challenging the validity, enforceability, perfection or priority of, or seeking avoidance or subordination of the claims arising under or the liens securing, the obligations in favor of the First Lien Noteholders or Second Lien Noteholders or (y) otherwise seeking to impose liability upon or to enjoin the First Lien Noteholders or the Second Lien Noteholders, or any of them; or (b) the Debtors shall have supported any application, adversary proceeding or cause of action referred to in the immediately preceding clause (a) filed by a third party, or consents to the standing of any such third party; or

(g) the Debtors shall have filed any motion or pleading with the Bankruptcy Court that is not consistent in any material respect with this Agreement, including the Recapitalization Transaction Terms, and such motion or pleading has not been withdrawn prior to the earlier of (i) two (2) business days of the Issuers receiving notice from either of the Required Consenting First Lien Noteholders or the Required Consenting Second Lien Noteholders that such motion or pleading is inconsistent with this Agreement or the Recapitalization Transaction Terms, and (ii) entry of an order of the Bankruptcy Court approving such motion or pleading.

19. The TSA may also be terminated on or after the Petition Date, immediately and automatically, without notice, upon the occurrence of any of the following events; provided, that, none of the following events shall constitute an Agreement Termination Event if, within three (3) Business Days of such occurrence, the Debtors by written notice to the other Parties and the Required Consenting First Lien Noteholders and Required Consenting Second Lien Noteholders by written notice to the Issuers waive such Agreement Termination Event, in which case such Agreement Termination Event shall be deemed to have not occurred:

(a) the occurrence of a material breach by any other Party of any of his, her or its obligations, covenants or commitments as set forth in the TSA, which breach has or could reasonably be expected to have a material adverse effect on the Debtors, the Consenting First Lien Noteholders or the Consenting Second Lien Noteholders, as applicable, and any such breach is not cured within three (3) Business Days after receipt of written notice of such breach from the Debtors, the Required Consenting First Lien Noteholders or the Required Consenting Second Lien Noteholders; provided, however, that a Party may not terminate the TSA on account of his,

her or its own material breach;

(b) the Bankruptcy Court shall have entered an order appointing a trustee or an examiner with expanded powers in the Bankruptcy Cases;

(c) the Bankruptcy Court shall have entered an order terminating or modifying the exclusive right of any debtor to file a plan;

(d) the Confirmation Order shall have been stayed, reversed, vacated or otherwise modified in a manner inconsistent with the Recapitalization Transaction Terms; or

(e) any of the Bankruptcy Cases shall have been dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

20. Importantly, the TSA does not purport to vitiate the Debtors' fiduciary duties in administering these Chapter 11 Cases. Specifically, the TSA provides:

(a) Notwithstanding anything to the contrary in the TSA, nothing in the TSA shall require the Debtors or any of its respective affiliates, subsidiaries, directors or officers (in such person's capacity as a director or officer) to take any action, or to refrain from taking any action, to the extent that taking such action or refraining from taking such action would be inconsistent with its fiduciary obligations under applicable law.

Basis for Relief Requested

21. The Debtors seek authority, pursuant to section 365(a) of the Bankruptcy Code, to assume the TSA. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject an executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). As noted by the United States Court of Appeals for the Second Circuit, "[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor in possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 Collier on Bankruptcy ¶ 365.01[1] (15th ed. 1993)).

22. The assumption or rejection of an executory contract or unexpired lease is subject to review under the business judgment standard. If a debtor has exercised "reasonable" business judgment, the court should approve the proposed assumption or rejection. See, e.g., NLRB v. Bildisco and Bildisco, 465 U.S. 513, 523 (1984); Group of Inst. Investors v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co., 318 U.S. 523, 550 (1943); In re Market Square Inn, Inc., 978 F.2d 116, 121 (3d Cir. 1992) (the "resolution of [the] issue of assumption or rejection will be a matter of business judgment by the bankruptcy court"); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib., 872 F.2d 36, 39-40 (3d Cir. 1989); Glenstone Lodge, Inc. v. Buckhead Am. Corp (In re Buckhead Am. Corp.), 180 B.R. 83, 88 (D. Del. 1995). Debtors are given significant discretion when requesting to assume or reject an executory contract. Stanziale v. Nachtomi (In re Tower Air, Inc.), 416 F.3d 229, 238 (3d Cir. 2005).

23. In addition, the Debtors seek approval of the assumption of the TSA pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code, providing, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. See, e.g., Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the

Bankruptcy Code."); In re Cooper Props. Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.").

24. The Debtors' decision to assume the TSA is an exercise of their sound business judgment. First, the terms of the TSA are the result of extensive, arms'-length negotiations between the Parties. Second, assumption of the TSA will ensure the support of a majority of the Debtors' secured lenders throughout the Plan process, and, thus, will help expedite and facilitate the Debtors' restructuring efforts during these Chapter 11 Cases. Third, the Debtors' obligations under the TSA remain subject to their fiduciary duties as debtors and debtors in possession.

25. The TSA is designed to ensure that the Debtors can emerge from these Chapter 11 Cases in an expeditious manner with a reduced debt burden, thereby allowing the Debtors to improve its operations and compete within the industry.

26. Courts in this District have approved the assumption of restructuring support agreements in other cases. See, e.g., In re Rural/Metro Corporation, Case No. 13-11952 (KJC) (Bankr. D. Del. Sept. 5, 2013); In re Bicent Holdings, LLC, Case No. 12-11304 (KG) (Bankr. D. Del. May 15, 2012); In re William Lyons Homes, Case No. 11-14019 (CSS) (Bankr. D. Del. Dec. 29, 2011); In re Satelites Mexicanos, S.A. DE C.V., Case No. 11-11035 (CSS) (Bankr. D. Del. April 13, 2011); In re HMP Servs. Holding Sub III, LLC, Case No. 10-13618 (BLS) (Bankr. D. Del. Jan. 20, 2011); In re NextMedia Group, Inc., Case No. 09-14463 (PJW) (Bankr. D. Del. Jan. 22, 2010); In re MES Int'l, Inc., Case No. 09-14109 (PJW) (Bankr. D. Del. Oct. 18, 2009).

27. For the foregoing reasons, the TSA is a critical component of the Debtors' proposed restructuring efforts and the Debtors' decision to assume the TSA represents a sound

exercise of the Debtors' business judgment.

Notice

28. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Senior Debt Holders; (c) creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (d) those parties requesting notice pursuant to Rule 2002; (e) the Office of the United States Attorney General for the District of Delaware; (f) the Internal Revenue Service; and (g) the Securities and Exchange Commission. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

29. No previous application for the relief sought herein has been made to this or any other court.

Conclusion

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and granting the Debtors such other and further relief as is just and proper.

Dated: September 17, 2013

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