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Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re : Chapter 11
: :
Oldco M Corporation : Case No. 09-13412 (MG)
(f/k/a Metaldyne Corporation), *et al.*, : :
: (Jointly Administered)
Debtors. : :
: :
-----X

**NOTICE OF HEARING ON
MOTION OF DEBTORS AND DEBTORS
IN POSSESSION FOR (A) APPROVAL AND
ENTRY, PURSUANT TO BANKRUPTCY RULE 9019, OF THE
STIPULATION AND AGREED ORDER AMONG DEBTORS AND DEBTORS
IN POSSESSION AND SPIRIT SPE PORTFOLIO 2005-1, LLC AND (B) APPROVAL
AND AUTHORITY, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE,
TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES RELATED THERETO**

PLEASE TAKE NOTICE THAT:

1. A hearing on the Motion of Debtors and Debtors in Possession for (A) Approval and Entry, Pursuant to Bankruptcy Rule 9019, of the Stipulation and Agreed Order Among Debtors and Debtors in Possession and Spirit SPE Portfolio 2005-1, LLC and (B) Approval and Authority, Pursuant to Section 365 of the Bankruptcy Code, to Assume and Assign Certain Unexpired Leases Related Thereto shall be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in Room 501 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, on **December 15, 2009 at 10:00 a.m. (Eastern Standard Time)**.

2. Objections, if any, to the relief sought in the Motion must be made in writing, with two hard copies to Chambers, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the Southern District of New York and be filed with the Bankruptcy Court and must be served in accordance with the Administrative Order, Pursuant to Bankruptcy Rule 1015(c), Establishing Case Management and Scheduling Procedures in these cases (Docket No. 133) (the "Case Management Order") so as to be actually received by the parties on the Special Service List and such parties upon whom the Motion was required to be served pursuant to the terms of the Case Management Order not later than **4:00 p.m. (Eastern Standard Time) on December 7, 2009** (the "Objection Deadline").

3. If no objections are timely filed and served with respect to this Motion, the Debtors may, on or after the Objection Deadline, submit to the Court a final order substantially in the form attached to such Motion, which final order may be entered with no further notice or opportunity to be heard offered to any party.

4. Copies of the Motion, the Case Management Order and the Special Service List may be obtained from the Court's website at <http://ecf.nysb.uscourts.gov> or, free of charge, at www.bmcgroup.com/metaldyne.

Dated: November 24, 2009
New York, New York

Respectfully submitted,

/s/ Ryan T. Routh

Richard H. Engman

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11
Oldco M Corporation :
(f/k/a Metaldyne Corporation), *et al.*, : Case No. 09-13412 (MG)
: (Jointly Administered)
Debtors. :
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**MOTION OF DEBTORS AND DEBTORS
IN POSSESSION FOR (A) APPROVAL AND
ENTRY, PURSUANT TO BANKRUPTCY RULE 9019, OF THE
STIPULATION AND AGREED ORDER AMONG DEBTORS AND DEBTORS
IN POSSESSION AND SPIRIT SPE PORTFOLIO 2005-1, LLC AND (B) APPROVAL
AND AUTHORITY, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE,
TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES RELATED THERETO**

TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

Oldco M Corporation (f/k/a Metaldyne Corporation) and 30 of its domestic direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows:

Background

1. On May 27, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By an order entered on May 29, 2009, the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On June 4, 2009, the United States Trustee appointed, pursuant to section 1102 of the Bankruptcy Code, an official committee of unsecured creditors (Docket No. 129) (the "Creditors' Committee").

3. Oldco M Corporation (f/k/a/ Metaldyne Corporation) is a wholly-owned subsidiary of Metaldyne Holdings LLC ("Metaldyne Holdings"), which, in turn, is a wholly-owned subsidiary of Asahi Tec Corporation ("Asahi Tec"), a Japanese corporation. RHJ International S.A. ("RHJI"), a corporation formed under the laws of Belgium and listed on the Euronext exchange, presently holds approximately 60.1% of the outstanding capital stock of Asahi Tec. Debtor MD Products Corp. ("MD Products") is a New York corporation. Oldco M Corporation is the direct or indirect parent of MD Products, each of the other Debtors and each of the Debtors' nondebtor subsidiaries (collectively, the "Oldco M Companies"). As of the Petition Date, the Oldco M Companies were leading global manufacturers of highly engineered

metal components for the global light vehicle market and among the 50 largest auto parts suppliers in North America.

4. Shortly after the Petition Date, the Debtors filed motions (Docket Nos. 214 and 323) to sell a majority of their assets and to establish an auction process or processes and bid procedures to consummate these sales, and also began the process of marketing their other business units for sale (collectively, the "Sale Processes"). The Sale Processes generated substantial interest in the Debtors' assets throughout June and July of 2009 and, ultimately, more than 10 parties submitted indications of interest and proposed asset purchase agreements for one or more of the Debtors' business units.

5. On August 5, 2009 and August 6, 2009, the Debtors held an auction (the "Auction"), pursuant to which MD Investors Corporation ("MD Investors") presented a bid for the assets, which included a cash component, a credit bid component and other consideration. On August 12, 2009, the Court entered an order (Docket No. 674) (the "Sale Order") authorizing the sale to MD Investors (the "MD Investors Transaction") of substantially all of the Debtors' assets free and clear of all liens, claims, interests and encumbrances. The MD Investors Transaction closed on October 16, 2009 (the "Closing"). The Debtors are in the process of winding down and liquidating their remaining assets and seeking confirmation of a plan of liquidation in these cases.

6. For the fiscal year ended March 29, 2009, the Oldco M Companies recorded annual revenue of approximately \$1.32 billion, of which approximately \$782 million was from sales of the Debtors. As of March 29, 2009, utilizing book values, the Oldco M Companies had assets of approximately \$977 million and liabilities of approximately \$927 million.

Jurisdiction

7. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

8. The Debtors hereby seek: (a) approval and entry, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and sections 363 and 365 of the Bankruptcy Code, the Stipulation and Order Among Debtors and Spirit SPE Portfolio 2005-1, LLC Regarding Leases of Nonresidential Real Property Located in Livonia, Michigan and Middleville, Michigan (the "Stipulation"), attached hereto as Exhibit 1, resolving issues relating to certain leases and subleases concerning nonresidential real property let by Spirit SPE Portfolio 2005-1, LLC ("Spirit 2005") to the Debtors; and (b) approval and authority, pursuant to section 365 of the Bankruptcy Code, to assume and assign certain of the aforementioned leases and subleases.

Facts Relevant to This Motion

9. Debtor Oldco M Machining and Assembly Company, Inc. (fka Metaldyne Machining and Assembly Company, Inc.) ("MM&A") and Spirit 2005, as the assignee of Kojaian MD-Multistate, L.L.C. and Kojaian MD Middleville, L.L.C., are parties to a lease agreement dated January 23, 2002, as amended (the "Middleville Lease") for premises located in Middleville, Michigan (the "Middleville Premises").

10. Debtor Oldco M Company LLC (fka Metaldyne Company LLC) and Spirit 2005, as the assignee of Kojaian MD-Multistate, L.L.C. and Kojaian MD Livonia, L.L.C.,

are parties to a lease agreement dated January 23, 2002, as amended (the "Livonia Prime Lease") for premises located in Livonia, Michigan (the "Livonia Premises").

11. On or about May 9, 2003, Oldco M Company, with the consent of the landlord, entered into a sublease (the "Livonia Sublease" and with the Livonia Prime Lease, the "Livonia Leases") for the Livonia Premises with Fittings Products Co., LLC ("Fittings Products"), pursuant to which Oldco M Company sublets the Livonia Premises to Fittings Products. Upon information and belief, Fittings Products has assigned its subtenant's interest to Hi-Vol Products, LLC ("Hi-Vol").

12. On or about September 9, 2009, the Debtors filed their Third Omnibus Motion of Debtors and Debtors in Possession, Pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, for an Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases (Docket No. 764) (the "Rejection Motion"), pursuant to which the Debtors proposed to reject the Livonia Leases under section 365 of the Bankruptcy Code.

13. Presently, the deadline for the Debtors to assume or reject unexpired leases of nonresidential real proportion is December 23, 2009.¹ The Debtors have indicated to Spirit 2005 that they may desire to continue to lease the Middleville Premises for a period of time after December 23, 2009 in order to continue production for certain customers on terms that are, at minimum, cost-neutral to the Debtors' estates, and to permit the orderly liquidation and removal of equipment.

¹ See Order, Pursuant to Section 365(d)(4) of the Bankruptcy Code, Extending Time for the Debtors in Possession to Assume or Reject Unexpired Leases of Nonresidential Real Property (Docket No. 713) at ¶ 2.

14. In order to resolve the issues between the parties, the Debtors and Spirit 2005 have entered into the Stipulation, which provides:²

- the Debtors' tenant interest in the Livonia Prime Lease will be assigned to Spirit 2005 (Stipulation at ¶ 1);
- the Debtors' sublandlord interest in the Livonia Sublease will be assumed and assigned to Spirit 2005 (Stipulation at ¶ 2);³
- the portion of the Rejection Motion that relates to the Livonia Leases will be deemed withdrawn (Stipulation at ¶3);
- the cure cost for the Livonia Leases shall be \$0.00 (Stipulation at ¶¶ 1, 2);
- the Middleville Lease is amended to allow the Debtors to occupy the Middleville Premises month-to-month (Stipulation at ¶ 4);
- in consideration of the amendment to the Middleville Lease, the Debtors shall pay Spirit 2005, in addition to monthly rent: (a) \$281.88 in unpaid rents, penalties and administrative fees that have accrued through October 31, 2009; (b) \$22,323.45 on account of unpaid property taxes; (c) \$5,000 per month, beginning on December 2, 2009, for tax obligations; (d) \$3,322.20 for unpaid parking lot lease obligations; and (e) \$474.60 per month for parking lot rent (Stipulation at ¶ 5); and
- as a liquidated claim for the rejection of the Middleville Lease, Spirit 2005 shall have an unsecured nonpriority claim against the chapter 11 estate of MM&A in the amount of \$784,620.40 (Stipulation at ¶ 7).

Argument

15. Bankruptcy Rule 9019(a) provides that "[o]n a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). A settlement agreement should be approved if it is "fair, equitable and in the best interests of the estate." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991). Moreover, a court need only ensure that the settlement does not "[fall] below

² To the extent the terms of this Motion and the terms of the Stipulation are inconsistent, the terms of the Stipulation shall govern.

³ Fittings Products and Hi-Vol have not indicated whether they will consent to this arrangement. This Motion is being filed on notice to give such parties an opportunity to object and be heard in respect to the relief requested herein.

the lowest point in the range of reasonableness." Id. at 496-97 (citing In re W.T. Grant, Co., 699 F.2d 599, 608 (2d Cir. 1983)). In addition, section 363(b) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and the transaction is in good faith).

16. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Section 365(f) of the Bankruptcy Code provides that a debtor may assign an unexpired lease that the debtor has assumed pursuant to section 365(a) of the Bankruptcy Code. 11 U.S.C. § 365(f). See In re Chrysler, LLC, 405 B.R. 84, 98 (Bankr. S.D.N.Y. 2009) ("Pursuant to section 365(a) of the Bankruptcy Code, a debtor-in-possession may assume executory contracts or unexpired leases and, pursuant to section 365(f), it may assign such contract or lease."). Courts routinely approve motions to assume, assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993)

(stating that section 365 of the Bankruptcy Code "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject."); see also In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) ("business judgment" test should be applied to assumption and rejection decisions).

17. Here, the Stipulation was negotiated between the parties and represents a fair and comprehensive resolution of the issues between the Debtors and Spirit 2005. The Stipulation, also, is in the best interests of the Debtors' estates and is a sound exercise of the Debtors' business judgment.

18. The payments under the amended Middleville Lease are fair and reasonable under the circumstances. Foremost, the Debtors' customers will bear most of the continued production costs, including lease overhead, at the Middleville Premises. Having additional time in the Middleville Premises also will permit the Debtors to maximize the sale value of the personal property located at the premises through underlying sales. Moreover, the amount of the rejection damages claim for Spirit 2005 for the Middleville Lease has been negotiated by the parties and is reasonable and consistent with section 502(b)(6) of the Bankruptcy Code. Therefore, the resolution of issues related to the Middleville Lease amendment, pursuant to the terms set forth in the Stipulation, is in the best interests of the Debtors' estates and a sound exercise of the Debtors' business judgment.

19. Additionally, the terms of the Stipulation related to the resolution of the issues concerning the Livonia Leases are fair and reasonable. The Debtors do not make any profit on the Livonia Sublease. The cure costs related to the Livonia Leases are \$0.00. Furthermore, all obligations owed by the Debtors to Spirit 2005 and all Spirit 2005's claims

against the Debtors related to the Livonia Leases will be waived. Therefore, the assumption and assignment of the Livonia Leases, pursuant to the terms set forth in the Stipulation, are in the best interests of the Debtors' estates and a sound exercise of the Debtors' business judgment.

Request for Waiver of Stay

20. Pursuant to Bankruptcy Rule 6006(d),⁴ the Debtors request that the Court waive the 10-day stay that would apply to the assumption and assignment of the Livonia Leases to Spirit 2005 and the approval of the Middleville Lease amendment. Ample cause exists to waive the stay in this instance because the Debtors' ability to assume or reject nonresidential real property leases expires in late December and the Middleville Lease, also, expires in late December. Furthermore, the Debtors and Spirit 2005 have agreed to the terms of the Stipulation. Lastly, the proposed Stipulation provides that the stay under Bankruptcy Rule 6006(d) be waived. See Stipulation at ¶8. Therefore, the Debtors believe that ample cause exists to lift the 10-day stay with respect to the assignment of the Livonia Leases to Spirit 2005.

Notice

21. Pursuant to the Administrative Order, Pursuant to Rule 1015(c) of the Federal Rules of Bankruptcy Procedure, Establishing Case Management and Scheduling Procedures (Docket No. 133) (the "Case Management Order"), entered on June 5, 2009, notice of this Motion has been given to (a) the parties identified on the Special Service List and the General Service List (as such terms are defined in the Case Management Order), (b) Spirit 2005 and (c) Fittings Products and Hi Vol Products, Inc. (and their counsel where known). Notice has

⁴ Bankruptcy Rule 6006(d) provides in relevant part that "[a]n order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) [of the Bankruptcy Code] is stayed until the expiration of 10 days after the entry of the order, **unless the court orders otherwise.**" Fed. R. Bankr. P. 6006(d) (emphasis added).

also been given in compliance with Rule 6006 of the Federal Rules of Bankruptcy Procedure.
The Debtors submit that no other or further notice need be provided.

No Prior Request

22. No prior request for the relief sought in this Motion has been made to this
or any other Court.

WHEREFORE, the Debtors respectfully request that the Court (a) approve and
enter the Stipulation attached hereto as Exhibit 1, granting the relief requested herein; and
(b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: November 24, 2009
New York, New York

Respectfully submitted,

/s/

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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re: : Chapter 11
: :
: : Case No. 09-13412 (MG)
Oldco M Corporation :
(fka Metaldyne Corporation), et al., :
: : (Jointly Administered)
Debtors. :
-----X

**STIPULATION AND ORDER BETWEEN DEBTORS AND SPIRIT SPE PORTFOLIO
2005-1, LLC REGARDING LEASES OF NONRESIDENTIAL REAL PROPERTY
LOCATED IN LIVONIA, MICHIGAN AND MIDDLEVILLE, MICHIGAN**

Oldco M Corporation (fka Metaldyne Corporation) and the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), and Spirit SPE Portfolio 2005-1, LLC ("**Spirit 2005**") stipulate and agree as follows:

A. Debtor Oldco M Machining and Assembly Company, Inc. (fka Metaldyne Machining and Assembly Company, Inc.) ("**MM&A**") and Spirit 2005, as the assignee of Kojaian MD-Multistate, L.L.C. and Kojaian MD Middleville, L.L.C., are parties to a lease agreement dated January 23, 2002, as amended (the "**Middleville Lease**") for premises located in Middleville, Michigan (the "**Middleville Premises**").

B. Debtor Oldco M Company LLC (fka Metaldyne Company LLC) ("**Oldco M Company**") and Spirit 2005, as the assignee of Kojaian MD-Multistate, L.L.C. and Kojaian MD Livonia, L.L.C., are parties to a lease agreement dated January 23, 2002, as amended (the "**Livonia Prime Lease**") for premises located in Livonia, Michigan (the "**Livonia Premises**").

C. On or about May 9, 2003, Oldco M Company, with the consent of the landlord, entered into a sublease (the "**Livonia Sublease**") for the Livonia Premises with Fittings Products

Co., LLC ("**Fittings Products**"), pursuant to which Oldco M Company sublets the Livonia Premises to Fittings Products. Upon information and belief, Fittings Products assigned its subtenant's interest to Hi Vol Products, Inc. (the "**Livonia Subtenant**").

D. The Debtors and Spirit 2005, or affiliates of Spirit 2005 also are party to additional leases of nonresidential real property that are not being addressed or resolved in this Stipulation and Agreed Order.

E. On May 27, 2009, the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code. By an order entered on May 29, 2009, the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession, pursuant to 11 U.S.C. §§ 1107(a) and 1108.

F. On or about September 9, 2009, the Debtors filed their Third Omnibus Motion of Debtors and Debtors in Possession, Pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, for an Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases (Docket No. 764) (the "**Rejection Motion**"), pursuant to which the Debtors proposed to reject the Livonia Prime Lease and the Livonia Sublease under section 365 of the Bankruptcy Code.

G. Pursuant to an order of the Court (Docket No. 713), the deadline for the assumption or rejection of nonresidential real property leases under section 365(d)(4) of the Bankruptcy Code is December 23, 2009.

H. The Debtors have indicated to Spirit that they may desire to continue to lease the Middleville Premises for a period of time after December 23, 2009 in order to continue

production for certain customers on terms that are, at minimum, cost-neutral to the Debtors' estates.

I. The Debtors and Spirit 2005 have determined to resolve the issues relating to the Rejection Motion and issues relating to the Middleville Premises on the following terms and conditions.

J. The Debtors and Spirit 2005 have determined that this Stipulation and Agreed Order should be noticed to parties in interest to provide them with notice and an opportunity to object.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Livonia Prime Lease Assumption/Assignment. As of the date of entry of this Stipulation and Agreed Order, the Livonia Prime Lease shall be deemed assumed and assigned to Spirit 2005, and the Debtors shall have no other or further right or obligation to lease the Livonia Premises from the Landlord from and after that date or perform any of the other obligations set forth in the Livonia Master Lease relating to Livonia Premises from and after that date. Any payments held or received by the Debtors from the Livonia Subtenant under the Livonia Sublease will be promptly remitted or paid over to Spirit 2005. The amount to be paid to cure all defaults under the Livonia Prime Lease under section 365(b) of the Bankruptcy Code shall be \$0.

2. Livonia Sublease Assumption/Assignment. The assignment of the Livonia Prime Lease shall not impact the existence of the Livonia Sublease. Also effective as of the date of entry of this Stipulation and Agreed Order, the Debtors' sub-landlord interests in the Livonia Sublease shall be assumed and assigned, pursuant to section 365 of the Bankruptcy Code, to Spirit 2005. Upon assumption and assignment, all defaults of the sub-landlord under the Livonia

Sublease shall be deemed cured, and the amount to be paid to cure all defaults of the sub-landlord under the Livonia Sublease under section 365(b) of the Bankruptcy Code shall be \$0.

3. Withdrawal of Rejection Motion. The Rejection Motion is deemed withdrawn as moot with respect to the Livonia Prime Lease and the Livonia Sublease.

4. Middleville Lease Amendment. The Middleville Lease is hereby amended effective December 1, 2009 on the terms set forth on Exhibit A attached hereto. The parties will work in good faith to document such amendment (or to determine that such documentation is unnecessary under the circumstances), but a failure to complete such documentation will not prevent the effectiveness of any such amendments.

5. Consideration for Amendment. In consideration for the amendments to the Middleville, Michigan lease, the Debtors shall pay to Spirit 2005 (i) all unpaid rent, penalties and administrative fees in the amount of \$281.88 that have accrued through October 31, 2009, within five business days of the entry of this Stipulation and Agreed Order (the "**Effective Date**"); (ii) \$22,323.45 on account of unpaid property taxes, within five business days of the Effective Date; (iii) beginning December 2, 2009, for the month of December, and on the second day of each month through the end of the Term, MM&A or its Successor shall pay \$5,000 per month to Spirit 2005, in addition to the contract rent, for tax obligations and in consideration for the amendment to the Middleville Lease (but if the Effective Date of this Stipulation occurs after December 2, 2009, the first payment to be made under this provision will not be made until after the Effective Date); (iv) \$3,322.20 for unpaid parking lot lease obligations, which amount shall be remitted to Spirit 2005 for forwarding to the Village of Middleville (if not previously paid by Spirit 2005 to the Village of Middleville) within five business days of the Effective Date; and

(v) \$474.60 per month through the date of termination of the Amended Middleville Lease, for parking lot rent, to be paid to Spirit 2005 or directly to the Village of Middleville.

6. NRRP Deadline and Assignment to Successor. The deadline to assume or reject the Middleville Lease under section 365(d)(4) of the Bankruptcy Code is extended until the date of termination of the Middleville Lease, as amended by Exhibit A hereto. The rights of the Debtors under the Middleville Lease, as amended hereby, and this Stipulation and Agreed Order may be assigned to a trustee or other successor to MM&A, including an estate representative appointed under section 1123 of the Bankruptcy Code (a "**Successor**").


7. Rejection Damages Claim. As a liquidated claim for the rejection of the Middleville Lease, Spirit 2005 shall have an unsecured nonpriority claim against the chapter 11 estate of MM&A in the amount of \$784,620.40. Spirit 2005 shall file a proof of claim consistent with this paragraph 7 within 20 days of the entry of this Stipulation and Agreed Order and shall have no other or further proofs of claim, including any administrative claims, relating to the Middleville Lease or the Livonia Prime Lease in these chapter 11 cases (including any further obligation to pay "parking lot rent" with respect to the Middleville, Michigan facility).

8. Miscellaneous. Pursuant to Federal Rule of Bankruptcy Procedure 6006(d), this Stipulation and Order will be effective immediately upon entry, and the 10 day stay provided for by Federal Rule of Bankruptcy Procedure 6006(d) is waived.

Dated: November __, 2009

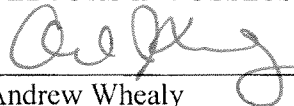
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED:

 11/24/09

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 11/24/09

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ATTORNEY FOR SPIRIT SPE
PORTFOLIO 2005-1, LLC and SPIRIT SPE
PORTFOLIO 2007-1, LLC

EXHIBIT A

Terms of Amendment

The amended Middleville Lease ("Amended Middleville Lease") shall be deemed amended as follows:

- (1) Basic Rental for the period December 1, 2009 through May 31, 2010 shall be the Basic Rental Paid for the month of October 2009. No additional CPI-based adjustments to Basic Rental shall occur.
- (2) The Term of the Amended Middleville Lease shall expire on May 31, 2010 or upon such earlier date if a timely Termination Notice is provided by MM&A.
- (3) Effective immediately, MM&A or its Successor shall be entitled to terminate the Lease on the last day of each month provided that MM&A or its Successor provides a notice (a "**Termination Notice**") so that it is received by Spirit 2005 no later than the first day of the month during which the Middleville Lease is to be terminated (i.e., if MM&A desires to terminate the lease effective April 30, 2010, the Termination Notice must be sent and received by April 1, 2010).
- (4) MM&A shall have no obligations to pay taxes under the Amended Middleville Lease, such obligations deleted and replaced by MM&A's obligation to make the Monthly Payment.
- (5) Beginning December 1, 2009, Spirit 2005 shall have the right to market the property, but shall have no right to require MM&A to vacate the Middleville Premises sooner than May 31, 2010.
- (6) In the event that MM&A or a Successor identifies a purchaser for the business operated at the Middleville Premises, Spirit 2005 shall agree to enter into a replacement lease with such buyer on terms substantially similar to those set forth under the original Middleville Lease.