

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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In re: :  
 : Case No. 06-51848  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> : (Jointly Administered)  
 :  
Debtors. : Chapter 11  
 :  
 : Honorable Marilyn Shea-Stonum  
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**MOTION FOR ORDER (A) GRANTING AUTHORITY FOR THE SALE OF CERTAIN  
EQUIPMENT PURSUANT TO § 363(b); (B) ESTABLISHING BIDDING  
PROCEDURES; (C) SETTING DATE FOR AUCTION AND HEARING ON  
APPROVAL OF SALE OF EQUIPMENT; AND (D) APPROVING FORM OF NOTICE**

CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “Debtor” and collectively, the “Debtors” or “CEP”) in the above-captioned Chapter 11 cases (the “Cases”), hereby move (the “Motion”) for Order (A) Granting Authority for the Sale of Certain Equipment Pursuant to § 363(B); (B) Establishing Bidding Procedures; (C) Setting Date for Auction and Hearing on Approval of Sale of Equipment; and (D) Approving Form of Notice. In further support of this Motion, the Debtors represent as follows:

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<sup>1</sup> The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

## **BACKGROUND**

1. On September 20, 2006 (the "**Petition Date**"), the Debtors each filed a voluntary petition in this Court for relief under title 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. An official committee of unsecured creditors was appointed in these cases on September 28, 2006.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein is Bankruptcy Code section 363.

### **B. The Debtors' Business**

5. Debtor Thermoplastics Acquisition, LLC ("**Thermoplastics**") operates the Vandalia, Ohio facility which has approximately \$15 million in annual sales comprised of two different plastic technologies: injection blow molding and small injection molding. The injection blow molding sales have been approximately \$9.0 million per year and the small injection molding sales have been \$6.0 million per year. Based on the condition of the Debtors, and the changing needs of the Vandalia customer base, Thermoplastics decided to issue a WARN Notice

in August of 2006 to facilitate its restructuring. The basis of such a decision was primarily due to the continuing loss of small injection molding business due to pricing pressures and plant proximity to its customers. The remaining injection blow molding business is not sufficient to support a facility of the size and nature of Vandalia. As a result of these conditions, the Company made a decision to close this facility.

6. When this decision was made, Thermoplastics began notifying the customers and potential suitors of the proposed sale of the injection blow molding or Ossberger presses (the “**Presses**”) which it owns. There are only three manufacturers of this type of plastic technology in the United States: Trelleborg, Freudenberg/NOK, and Thermoplastics. Thus, there are only two non-debtor entities in the United States which would realistically have an interest in the Presses. It would be prohibitively expensive to ship the Presses overseas; thus, potential overseas purchasers were not contacted. The Debtors contacted both Trelleborg and Freudenberg/NOK. Each party expressed interest and has conducted due diligence, ultimately submitting initial indications of interest. Trelleborg submitted an offer of \$1,850,000 with no contingencies for the 16 Presses. Freudenberg/NOK submitted a bid of \$1,850,000 for the Presses, but required an assignment of the customer contracts related to the equipment. Given their chapter 11 filing and the resourcing of business by the Debtors’ customers, the Debtors may not have any customer contracts to assign.

7. Based on this and the fact that there is no brokerage or investment banking fee related to this sale, the Debtors determined that it is in the best interests of their estates to move forward with the Trelleborg offer, subject to bidding as set forth herein. Attached hereto as Exhibit A is a proposed Asset Purchase Agreement (the “**Purchase Agreement**”) for the

Presses with Trelleborg. The Debtors have proposed Trelleborg as a Stalking Horse Purchase and request that the Court grant Trelleborg the stalking horse protections discussed herein.

8. The Debtors believe that consummation of a sale of the Presses with the Successful Bidder, whether Trelleborg or Freudenberg/NOK, is in the best interests of the Debtors' estates. The Purchase Agreement proposes a purchase price of \$1,850,000 which far exceeds the orderly liquidation value which is \$542,000 and the forced liquidation value which is \$369,000.

9. Because the only two companies that would conceivably purchase the Presses have been contacted and have submitted offers, the Debtors have fully canvassed the market for potential purchasers and the Successful Bid (as defined below) will represent the highest offer conceivable for the Presses. The sale method pursued by the Debtors is in the best interests of the Debtors' creditors and estates.

### **RELIEF REQUESTED**

10. Pursuant to the Proposed Sale Procedures Order, the Debtors are requesting that this Court, among other things:

- a. Approve section 6.1(d) of the Purchase Agreement,
- b. Approve Trelleborg's status as the stalking horse purchaser and the Break-Up Fee (the "**Break-Up Fee**") for Trelleborg as provided in Section 6.1(d) of the Purchase Agreement and as further described below;
- c. Approve the overbid procedures described below (the "**Overbid Procedures**");
- d. Establish a date for the Sale Auction as soon as possible but not later than the date set for the Sale Hearing;

- e. Schedule the Sale Hearing as soon as possible after entry of the Sale Procedures Order, but not later than November 28, 2006 to approve any sale transaction(s) to the highest or otherwise best bidder(s) and establishing deadlines for objections and responses to the relief requested in the Sale Motion;
- f. Approve the form of notice (the “**Sale Auction and Sale Hearing Notice**”) of all of the foregoing in substantially the form attached hereto as Exhibit B.

**A. The Break-Up Fee**

11. Trelleborg requires the Break-Up Fee as an inducement to go forward with the Proposed Sale as set forth in the Sale Procedures Order. Under Section 6.1(d) of the Purchase Agreement, the Break-Up Fee is payable as follows:<sup>2</sup>

- a. Break-Up Fee. Debtors shall be jointly and severally obligated to pay Trelleborg a “Break-Up Fee” of \$35,000 if: (1) the conveyance of the Presses to a Person other than Trelleborg either through a sale pursuant to Section 363 of the Bankruptcy Code, under a plan supported by Lender (including a “new value” plan) confirmed pursuant to Section 1129 of the Bankruptcy Code or in any other manner with the consent of Lender (an “**Alternate Transaction**”); provided, that at the earlier of the date that Seller abandons the Bankruptcy Code Section 363 sale process contemplated by the Purchase Agreement, or the conclusion of the Bankruptcy Code Section 363 sale hearing contemplated by this Motion, Trelleborg is ready, willing and able to consummate the transactions contemplated by the Purchase Agreement and the Ancillary Agreements (as defined in the Purchase Agreement) subject to the satisfaction of all of the conditions to Purchaser’s obligations set forth in Article VII of the Purchase Agreement.

**B. Additional Bid Procedures**

12. In addition to the Break-Up Fee and the Overbid Protection in Section 6.1(ii) of the Purchase Agreement, the Debtors request that the Sale Procedures Order incorporate the following additional procedures:

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<sup>2</sup> In the event of any conflict between the terms of this Motion and the Sale Procedures Order, the Sale Procedures Order shall control.

### **Bidder Qualifications**

13. Only qualified bidders (the **“Qualified Bidders”**) may submit an offer to purchase the Presses. Persons or entities who wish to become Qualified Bidders (**“Proposed Qualified Bidders”**)<sup>3</sup> must submit an offer to purchase all or any portion of the Presses on or before 5:00 p.m. (eastern time) on a date that is at least two days prior to the Sale Auction (the **“Bid Deadline”**), and must comply with each of the following requirements for its bid to be considered by the Debtors (a **“Qualified Bid”**):

- a. Provide the Debtors with evidence that, in the reasonable discretion of the Debtors, establishes that the Proposed Qualified Bidder has sufficient financial ability to close and consummate a cash sale on the terms set forth in its bid pursuant to an Overbid Purchase Agreement (as defined below). Any Proposed Qualified Bidder shall provide Debtors and Debtors’ counsel, within twenty-four (24) hours after Debtors’ request, with financial statements and other documents requested by the Debtors relating to its business activities and its ability to perform in the event that its bid is accepted.
- b. Unless previously delivered to Debtors, execute and deliver to the Debtors a confidentiality agreement (the **“Confidentiality Agreement”**) to be provided by Debtors, prior to conducting any due diligence or obtaining information considered confidential by Debtors.
- c. Submit an executed form of the asset purchase agreement (as may be subsequently modified pursuant to the Bid Procedures, an **“Overbid Purchase Agreement”**), marked to show all changes from the Purchase Agreement and include with such submission all schedules and exhibits with respect thereto.
- d. Provide for a date by which the transactions under the Overbid Purchase Agreement must close (a **“Closing Date”**), which shall as soon as practicable after the last of the conditions set forth in Articles VII thereof is satisfied or waived, but in no event later

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<sup>3</sup> Trelleborg shall be deemed a Qualified Bidder and its bid a Qualified Bid.

than three business days after entry of the Sale Order (as defined below).

- e. Tender a good faith deposit in the form of an electronic wire transfer of immediately available funds, or a bank or certified check, in the amount of \$100,000 to counsel to the Debtors (or, in the case of a wire transfer of immediately available funds, to an account designated by Debtors' counsel), which will be deposited and maintained in a segregated escrow account subject to the terms hereof. If a Proposed Qualified Bidder becomes the Successful Bidder (as defined below), its deposit will be applied towards the amount of the Successful Bid (as defined below). All deposits of Qualified Bidders shall be held by the Debtors and returned on the earlier to occur of (x) the date of closing of the transactions under the Successful Bidder's Purchase Agreement and (y) the date the Debtors abandon the sales process contemplated hereby. Any deposit tendered by a Qualified Bidder that becomes the Successful Bidder shall be (i) forfeited to the Debtors (without prejudice to any other remedies available to the Debtors for such breach) in the event that such Successful Bidder breaches its obligations under its Overbid Purchase Agreement, or (ii) returned to such Successful Bidder in the event that such Successful Bidder's Overbid Purchase Agreement is terminated other than by reason of any breach by such Successful Bidder of any of its obligations in connection therewith.
- f. Provide a written statement that (i) it agrees, and intends its bid, to comply with the Bidding Procedures and the terms of the Sale Procedures Order, as well as with such other terms and procedures as may be imposed by the Court or the Debtors on the Sale Auction, at or prior to the Sale Auction; (ii) its bid (as the same may be enhanced at the Sale Auction) shall be irrevocable through the later to occur of the conclusion of the Sale Hearing or, if it is the Successful Bid or the second or third highest bid, November 30, 2006; (iii) that it believes in good faith that its bid constitutes a Qualified Bid; (iv) its deposit shall be treated in accordance with the provisions of the Sales Procedure Order; and (v) its bid (as the same may be enhanced at the Sale Auction) is not subject to any due diligence or financing conditions.

#### **Delivery of Qualified Bids**

14. Any Qualified Bids for the Presses shall be on terms and conditions at least as favorable (as determined by Debtors in their business judgment) as the terms of the Purchase Agreement.

15. All Qualified Bids shall be in writing (and shall be accompanied by a redline of such Overbid Purchase Agreement against the Purchase Agreement), with copies of such bids (including accompanying redlined Overbid Purchase Agreement) to be served on and received by the Bid Deadline by:

- a. the Debtors' counsel, Joseph F. Hutchinson, Jr. and Thomas M. Wearsch, Baker & Hostetler LLP, 3200 National City Center, 1900 East Ninth Street, Cleveland, Ohio 44114;
- b. the Debtors' investment bankers, James Stephenson, Glass & Associates, c/o CEP Holdings, LLC, 3650 W. Market Street, Suite 340, Akron, Ohio 44333;
- c. counsel to the Creditors Committee – Mark Freedlander and Sally Edison, McGuire Woods, Dominion Tower, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142;
- d. counsel to the Lender – Jeremy Downs and Shira Isenberg, Goldberg Kohn, 55 East Monroe, Suite 3700, Chicago, Illinois 60603;
- e. Trelleborg – Adam H. Bloomenstein, Trelleborg Corp., 445 Enterprise Court, Bloomfield Hills, MI 48302;and
- f. the United States Trustee – Maria Giannirakis, Office of the United States Trustee, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., East, Suite 441, Cleveland, Ohio 44114.

16. Only (a) Qualified Bidders that submit Qualified Bids and (b) Trelleborg will be entitled to participate in the Sale Auction.

### **The Sale Auction**

17. The Debtors shall conduct an auction for the Presses (the “**Sale Auction**”) at the offices of Debtors' counsel, Baker & Hostetler, LLP, 3200 National City Center, 1900 East Ninth Street, Cleveland, Ohio 44114, on a date set by the Court as soon as possible after the entry of the Sale Procedures Order. Bidding at the Sale Auction will commence with the offer represented by the Purchase Agreement. The initial overbid (the “**Initial Overbid**”) by a



Qualified Bidder (other than Trelleborg) for the Presses shall be, at a minimum, in an amount equal to the Purchase Price set forth in the Purchase Agreement plus \$100,000.

18. Thereafter, any further overbid with respect to the Presses shall be in increments of at least \$25,000 and bidding shall continue in \$25,000 increments, until all Qualified Bidders have made their final offers on a sale of the Presses.

19. Trelleborg is not permitted to credit bid any portion of the Break-Up Fee (as defined below) in any overbid it may elect to make on the Presses.

20. The Debtors, in consultation with their financial advisor, shall have the sole right and discretion to conduct the auction in the manner the Debtors reasonably determine is most likely to maximize the value of the Presses under the circumstances. At the conclusion of the Sale Auction, and after consultation with Lender, the Debtors shall announce their determination as to the highest or otherwise best bid for the Presses (the **“Successful Bid”**), and the Qualified Bidder in respect thereof will become the **“Successful Bidder”**. In consultation with the Lender, the Debtors shall have the right to determine which Qualified Bid, if any, is the highest or otherwise best bid at the Sale Auction. The Debtors have the right to take into account any and all matters that the Debtors, in the sound exercise of their business judgment, deem appropriate to take into account in making the determination as to which bid is the highest and otherwise best bid, subject to the terms of the Sale Procedures Order. Formal acceptance of a Successful Bid, however, shall not occur unless and until the Court enters an order (a **“Sale Order”**) in form and substance satisfactory to the Debtors and the Successful Bidder approving the Successful Bid and authorizing the Debtors to consummate the sale to the Successful Bidder

in accordance with the Purchase Agreement or the Overbid Purchase Agreement, as the case may be, following the conclusion of the Sale Hearing.

21. Upon the failure to consummate the sale of the Presses to the Successful Bidder in accordance with the Purchase Agreement or an Overbid Purchase Agreement, as the case may be, because of a breach or failure to consummate the sale on the part of the Successful Bidder, the Debtors shall (with the prior written consent Lender) require the bidder having the next highest or otherwise best Qualified Bid to buy the Presses under its Purchase Agreement or Overbid Purchase Agreement, as the case may be and as modified at the Sale Auction. In all cases, a Qualified Bidder who has been offered the Presses for sale in accordance with this paragraph shall automatically become the Successful Bidder, and its Qualified Bid shall automatically become the Successful Bid, without further order of the Court.

22. Nothing herein shall prohibit Lender from submitting a credit bid pursuant to Section 363(k) and Lender shall be deemed a Qualified Bidder.

### **Notice**

23. The Debtors request that this Court schedule the Sale Hearing as soon as possible after entry of the Sale Procedures Order, but in no event later than November 28, 2006.

24. Pursuant to Bankruptcy Rules 2002, 6004, 6006 and 9014, the Debtors request that they be authorized to give notice of the Sale Motion, the Sale Auction, and the Sale Hearing by mailing a copy of the Sale Auction and Sale Hearing Notice in substantially the form of Exhibit B hereto by first class mail, to the following (collectively, the “**Notice Parties**”):

- a. All creditors (if any) asserting a security interest, lien, encumbrance or other interest against all or any portion of the Presses;
- b. The Office of the United States Trustee;
- c. All parties who have requested notice in these Chapter 11 cases;
- d. all other parties on the Master Service List maintained in this case; and
- e. All other persons or entities who in the last six months have expressed an interest in writing in acquiring the Presses, if any.

25. The Debtors shall serve the Sale Auction and Sale Hearing Notice on the Notice Parties within three day or earlier after entry of the Sale Procedures Order by this Court, by first-class mail, postage prepaid. The Sale Auction and Sale Hearing Notice shall provide that any party that has not received a copy of the Sale Motion or the Sale Procedures Order that wishes to obtain a copy of the Sale Motion or the Sale Procedures Order, including all exhibits hereto, may view and download such documents by visiting the Debtors' bankruptcy website [www.bmcgroup.com/cep](http://www.bmcgroup.com/cep).

### **Proceeds**

26. The proceeds of all sales of the Debtors' assets pursuant to the Sale Motion shall be applied pursuant to the Financing Order, including any final order thereon.

### **APPLICABLE AUTHORITY**

#### **A. Justification for the Overbid Protections**

27. The Overbid Protections described herein are reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values. Trelleborg will be a stalking horse for competitive bids, perhaps leading to further competition

and the establishment of a baseline against which higher or otherwise better offers can be measured.

28. As indicated, Debtors hereby request that the Court approve certain overbid protections for Trelleborg that are customary in similar circumstances (collectively, the “Overbid Protections”), including (a) the Break-Up Fee in the amount of \$35,000, (b) the Initial Overbid in respect of an offer for all or substantially all of the Presses, and (c) bidding increments of \$25,000 for all or substantially all of the Presses after the Initial Overbid. The Debtors submit that cause exists to approve the Overbid Protections because they are fair and reasonable under the circumstances.

29. The Debtors believe that the payment of the Break-up Fee and the establishment of Overbid Protections are both reasonable and necessary to induce Trelleborg to enter into the transactions encompassed by the Purchase Agreement and to obtain the highest price possible for the Presses.

30. To compensate Trelleborg for serving as a “stalking horse” whose bid will be subject to higher or better offers, the Debtors seek approval of the Break-Up Fee in the event Trelleborg is not the Successful Bidder and/or the Presses are sold to a third party. The Debtors and Trelleborg believe that the Break-Up Fee is reasonable, given the benefits to the estates of having a definitive Purchase Agreement and the risk to Trelleborg that a third-party offer ultimately may be accepted, and that the Overbid Protections and the Break-Up Fee are necessary to preserve and enhance the value of the Presses for the Debtors’ estates.

31. Bidding incentives encourage a potential purchaser to invest the requisite time, money and effort to negotiate with the Debtors and perform the necessary due diligence attendant to the acquisition of the Debtors' assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee and Overbid Protections, under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24,28 (Bankr. S.D.N.Y. 1989) (bidding incentives may "be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (internal quotation marks and citations omitted).

32. The Overbid Protections and the Break-Up Fee pass muster under the "business judgment rule." The Purchase Agreement and the Overbid Protections, including the Break-Up Fee, are the product of extended good faith, arm's-length negotiations between the Debtors and Trelleborg. Under the circumstances, the Overbid Protections, including the Break-Up Fee, are fair and reasonable in amount and are reasonably intended to compensate for the risk to Trelleborg of being used as a "stalking horse."

33. Further, the Overbid Protections, including the Break-Up Fee already have encouraged competitive bidding, in that Trelleborg would not have entered into the Purchase Agreement without these provisions. The Break-Up Fee thus has "induc[ed] a bid that otherwise would not have been made and without which bidding would [be] limited." *In re O'Brien Environmental Energy, Inc.*, 181 F.3d at 527, 537 (3d Cir. 1999). Similarly, Trelleborg's offer, provides a minimum bid on which other bidders can rely, thereby "increasing the likelihood that

the price at which the [Presses will be] sold will reflect its true worth.” *Id.* Finally, the mere existence of the Overbid Protections permits the Debtors to insist that competing bids for the Presses be materially higher or otherwise better than the Purchase Agreement, a clear benefit to the Debtors’ estates.

34. In sum, the Debtors’ ability to offer the Overbid Protections enables them to ensure the sale of the Presses to a contractually-committed bidder at a price they believe to be fair while, at the same time, providing them with the potential of even greater benefit to the estates. Thus, the Overbid Protections, including the Break-Up Fee, should be approved.

35. Furthermore, the Break-Up Fee of 1.9% is well below the spectrum of termination fees approved by bankruptcy courts in chapter 11 cases. *See e.g., In re Medlab. Inc.*, Case No. 97-1893 (PJW) (Bankr. D. Del., April 28, 1998) (Court approved termination fee of 3.12%, or \$250,000, in connection with \$8,000,000 sale transaction); *In re FoxMeyer Corp. et al.*, Case No. 96-1329 (HSB) through 96-1334 (HSB) (Bankr. D. Del., Oct. 9, 1996) (Court approved termination fee of 7.47%, or \$6,500,000, in connection with \$87,000,000 sale of substantially all of Debtors’ purchase assets); *In re Edison Bros. Stores. Inc. et al.*, Case No. 95-1354 (PM) (Bankr. D. Del., Dec. 29, 1995) (Court approved termination fee of 3.5%, or \$600,000, in connection with \$17,000,000 sale of Debtors’ entertainment division); *In re Indust. Gen. Corp.*, Case No. 95-895 (PM) (Bankr. D. Del.) (Court approved termination fee of 3.57%, or \$500,000, in connection with \$14,000,000 sale transaction). The Break-up Fee and the Expense Reimbursement therefore should be approved as reasonable and necessary to maximize the value of the Presses.

**B. Sale Free and Clear of Liens, Claims and Other Encumbrances Generally.**

36. The Debtors seek authority, pursuant to Section 363(b), to enter into a transaction (the “Transaction”) for the sale of the Presses free and clear of any and all liens, claims, encumbrances, or other interests.

37. Section 363(b) provides in pertinent part that “[t]he trustee, 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). In general, a debtor may sell property of the estate outside of the ordinary course of business where the sale of such property represents an exercise of the debtor’s sound business judgment. *See e.g., Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *See also In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *In re Work Recovery, Inc.*, 202 B.R. 301, 303 (Bankr. D. Ariz. 1996) (affirming that a debtor selling estate property should do so with good business judgment); *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (affirming the sound business test as “a more sensible approach for providing creditors with a measure of protection outside the plan-confirmation process”); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business judgment test of *In re Lionel Corp.*).

38. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F. 3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re The Ohio Corrugating Co.*, 59 B.R. 11, 13 (Bankr. N.D. Ohio 1985); *In re Atlanta Packaging Prod., Inc.*, 99 B.R. 124, 131 (Bankr. N.D.

Ga. 1988) (“It is a very well-established principle of bankruptcy law that the objective of bankruptcy sales and the [debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”)

39. Under Rule 6004, “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). A large measure of discretion is accorded a bankruptcy court in deciding whether a private sale of a debtor’s assets should be approved. *Matter of Embrace Sys. Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (citing *In re Blue Coal Corp.*, 168 B.R. 553, 564 (M.D. Pa. 1994)). A private sale of a debtor’s assets is appropriate if the statutory requirements are met, the bid is fair, and the sale is in the best interests of the estate and its creditors. *Id.* In determining whether to authorize a sale of property outside the ordinary course of business, a court should evaluate whether the transaction is fair and equitable and in the best interest of all creditors, as demonstrated mainly by evidence that the value of the transaction to the debtor yields a fair market value. *See, e.g., Matter of Correa Rodriguez*, 123 B.R. 153, 155 (Bankr. D. Puerto Rico 1991). Evidence that a transaction involving estate property under Section 363 will be at fair market value permits the conclusion that the transaction is in the best interest of the estate. *In re Planned Sys., Inc.*, 82 B.R. 919, 923 (Bankr. S.D. Ohio 1988) (finding sufficient evidence of fair market value and adequate exposure where property was listed with a broker since the prior year).

**C. The Proposed Transaction(s) Satisfies the Bankruptcy Code’s Requirements.**

40. The Debtors believe that the proposed Transaction will accomplish a “sound business purpose” and will maximize the value of Debtors’ estates in the most expeditious way possible. As set forth above, the Transaction will be the result of good faith



arm's length negotiation with a disinterested bidder or bidders. The sale of the Presses will reflect a fair and reasonable value as determined by the Debtors based on the Stalking Horse Bid and any competing bids. The Debtors have determined that the sale as proposed herein will best further the intended purpose of expeditiously liquidating Debtors' estate and maximizing returns for creditors. For these reasons, the Debtors submit that the proposed Transaction will be undertaken in good faith and will be for fair value within the meaning of 11 U.S.C. § 363(m). The Debtors further submit that the notice procedures requested herein will provide all parties with adequate notice and time to object to the sales requested hereunder.

41. The proposed Transaction satisfies the requirements of Section 363(f) for a sale free and clear of liens, claims, encumbrances and interests. Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property as an entity other than the estate only if –

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or
- (4) such interest is in bona fide dispute;
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

42. Because Section 363(f) is drafted in the disjunctive, satisfaction of any of these five (5) requirements will suffice to approve any proposed sale of some or all of the Property. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793-96 (Bankr. D. Del. 2002) (Section

363(f) is written in the disjunctive; the court approved the sale “free and clear” where only one of the five subsections of section 363(f) were met); *In re Elliot*, 94 B.R. 343 (E.D. Pa. 1988).

43. Multiple courts have interpreted Section 363(f) broadly in authorizing free and clear sales. *See, e.g., In re Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1149-50 (6th Cir. 1991); *UMWA 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 582 (4th Cir. 1996) (finding the purchaser took the coal company’s assets free and clear of any successor liability under the Coal Act pursuant to Section 363(f)(5)); *Ragosa v. Canzano (In re Colarusso)*, 295 B.R. 166, 175 (B.A.P. 1st Cir. 2003) (stating “the range of interests under § 363(f) may be broader than under § 541(a)(1), because, unlike § 541(a)(1), § 363(f) has no *exceptions*”) (emphasis added); *In re Lady H Coal Co.*, 193 B.R. 233, 247 (Bankr. S.D. W. Va. 1996). The Bankruptcy Court for the Southern District of West Virginia has described application of Section 363 sales as follows:

The well established rule that sales within a bankruptcy proceeding occur free and clear of any interest is founded upon the principle that good faith purchasers receive clean title to the property and that any claims against the property attach to the proceeds. Accordingly, the definition of “interest” has been interpreted broadly, although not limitless.

*In re Lady H Coal Co.*, 193 B.R. at 247, *aff’d*, *Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (the bankruptcy court decision in *Lady H Coal Co.* was upheld by the Fourth Circuit Court of Appeals which noted that Congress did not intend to limit the scope of Section 363(f) to *in rem* interests; the Fourth Circuit declined to adopt such a restrictive reading of Section 363(f) and held that the debtors could sell their property free and

clear of their obligations to a benefit plan arising under The Coal Act); *Volvo Whit Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948-49 (Bankr. N.D. Ohio 1987) (debtor's assets sold free and clear of existing tort claims).

44. Any liens against the Presses will be transferred from the Presses to the proceeds of such sale to the same extent and with the same priority and validity as such liens had in such Presses prior to the closing of such Transaction.

#### **No Prior Request**

45. No prior request for the relief sought in this Sale Procedures Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form of the Sale Procedures Order, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: October 16, 2006  
Cleveland, Ohio

Respectfully submitted,

CEP HOLDINGS, LLC, et. al.,  
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.  
One of Their Attorneys

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