UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

IN RE:	) Chapter 11
ROCKFORD PRODUCTS CORPORATION, *et al.*,	) Case No. 07 B 71768) Jointly Administered
Debtors	) Hon. Manuel Barbosa

NOTICE OF DEBTORS' MOTION FOR: (I) AN ORDER (A) APPROVING SALE PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING THE FORM AND MANNER OF SHORTENED NOTICE, (C) SCHEDULING A SALE HEARING, AND (D) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that at 10:30 a.m. on October 31, 2007, or as soon thereafter as may be heard, the above-captioned Debtors shall appear before the Honorable Manuel Barbosa, Judge of the above-entitled Court, in Courtroom 115, U.S. Federal Court House, 211 South Court Street, Rockford, Illinois 61101, or before any judge sitting in his stead, and present the Debtors' Motion for: (I) an Order (A) Approving Sale Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Approving the Form and Manner of Shortened Notice, (C) Scheduling a Sale Hearing, and (D) Granting Related Relief; and (II) an Order (A) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, and (B) Granting Related Relief, which is hereby served upon you.

Respectfully submitted,

Dated: October 29, 2007

ROCKFORD PRODUCTS CORPORATION, *et al.*

By: /s/ Thomas J. Augspurger

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IN RE:	)	Chapter 11
ROCKFORD PRODUCTS CORPORATION, *et al.*,	)	Case No. 07 B 71768
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DEBTORS' MOTION FOR: (I) AN ORDER (A) APPROVING SALE PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING THE FORM AND MANNER OF SHORTENED NOTICE, (C) SCHEDULING A SALE HEARING, AND (D) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

Rockford Products Corporation ("Rockford Products" or the "Seller"), and Rockford Products Global Services, Inc. ("Rockford Global"), chapter 11 debtors and debtors-in-possession (each a "Debtor" and collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), pursuant to sections 105 and 363 of title 11 of the United States Code, as amended by the Bankruptcy Abuse & Consumer Protection Act of 2005 (the **"**Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby move (the "Motion") this Court for entry an order in substantially the form attached hereto as **Exhibit A** (the "Sale Procedures Order"):

A. establishing sale procedures, substantially in the form of **Exhibit B** hereto (the "Sale Procedures"), to govern the sale (the "Sale") of all or substantially all of Rockford Products' assets used in the operation of its Cold Formed Products Division (the "Assets"), as identified in further detail below;

B. approving certain bid protections in connection therewith, including overbid protections and a break-up fee, all as described in greater detail below;

C. scheduling an auction to sell the Assets (the "Auction");

D. scheduling a hearing (the "Sale Hearing"), with a deadline for parties to object, for entry of an order in substantially the form attached hereto at **Exhibit C** (the "Sale Order") approving the sale of the Assets to the entity with the highest and best offer (the "Sale Hearing") free and clear of all liens, claims, encumbrances, and other interests (collectively, the "Liens"), and, to the extent requested by a buyer, the assumption and assignment of any executory contracts or unexpired leases related to the Assets;

E. approving the form and manner of shortened notice of the proposed Sale, the Sale Procedures, and the Sale Hearing;

F. approving the form of sale notice (the "Sale Notice") in substantially the form attached hereto at **Exhibit D1** (with stalking horse) or **Exhibit D2** (without stalking horse);

G. approving the form of notice (the "Assumption Notice") to counterparties to executory contracts and unexpired leases in substantially the form attached hereto at **Exhibit E**; and

H. granting other requested relief.

In support of this Motion, the Debtors respectfully represent as follows.

JURISDICTION

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are (a) sections 105(a) and 363 of the Bankruptcy Code; and (b) Bankruptcy Rules 2002 and 6004.

BACKGROUND

3. On July 25, 2007 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for reorganization relief under the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 Cases are being jointly administered.

4. A detailed description of the Debtors' businesses as well as the events leading to the bankruptcy filing can be found in the Affidavit of Douglas D. Wells in Support of First Day Motions filed with this Court on July 25, 2007, Dkt. No. 4 (the "Wells Affidavit"), and incorporated by reference herein.

5. On August 2, 2007, the U.S. Trustee appointed a Committee of Unsecured Creditors (the "Committee"). On August 28, 2007, the Court approved the retention of counsel for the Committee.

I. Pre and Post-Petition Financing

6. Debtor Rockford Products operates under a Loan and Security Agreement ("Loan Agreement") with Bridge Opportunity Finance, LLC and Bridge Healthcare Finance, LLC (collectively, the "Agents"), dated April 4, 2007, pursuant to which Rockford Products granted the Agents security interests in substantially all its assets, consisting primarily of accounts receivable, inventory, and equipment. Debtor Rockford Global guaranteed the loan. On July 26, 2007, at the first-day hearings in these Cases, this Court entered an interim order authorizing the Debtors to use cash collateral, and granting certain protections and security to the Agents.[1]

7. On August 22, 2007, this Court held a hearing on entry of the Interim Cash Collateral/Financing Order on a final basis. At the hearing, the Agents and the Committee discussed their agreement to certain changes to the Interim Cash Collateral/Financing Order and read those changes into the record. On August 27, 2007, the Court entered the Cash Collateral/Financing Order on a final basis (Bankr. Dkt. No. 121) (the "Final Cash Collateral/Financing Order"). The Final Cash Collateral/Financing Order required the Debtors,

[1] See Order Authorizing Debtors: (A) to Use Cash Collateral; (B) to Incur Postpetition Debt; and (C) to Grant Adequate Protection and Provide Security and Other Relief to Bridge Opportunity Finance, LLC and Bridge Healthcare Finance, LLC (Bankr. Dkt No. 21) (the "Interim Cash Collateral Financing Order").

among other things, to sell one of its divisions, Rockford International Group ("RIG"), by August 31, 2007. See Final Cash Collateral/Financing Order, Schedule A, ¶21. The Final Cash Collateral/Financing Order also requires the Debtors to sell the remaining assets of Rockford Products – i.e., the Assets-- no later than October 6, 2007, with the sale proceeds applied in accordance with the terms of the Final Cash Collateral/Financing Order. See Final Cash Collateral/Financing Order, Schedule A, ¶40.

8. The parties have periodically modified the Final Cash Collateral/Financing Order in order to extend certain of the deadlines contained therein and to provide the Debtors with additional financing in the form of continued overadvances. For example, on September 5, 2007, the Debtors orally moved for certain limited amendments to the Final Cash Collateral/Financing Order, including an increase in the overadvance available under the Cash Collateral/Financing Order. On September 6, 2007, the Court entered its first amendment to the Final Cash Collateral/Financing Order (Bankr. Dkt. No. 144).

9. On September 28, 2007, upon motion to amend, this Court entered a second amendment to the Final Cash Collateral/DIP Order (Bankr. Dkt 174). The second amendment to the Final Cash Collateral/Financing Order: (a) extended the deadlines set forth in definition of the term "Sale Covenants" to provide the Debtors until October 19, 2007 to consummate a sale of the Assets; (b) made certain changes to the term "Overadvance" and provided an Overadvance to the Debtors through and including October 12, 2007 to provide the Debtors with enhanced liquidity; and (c) included the Agents' consent to certain ordinary course and/or de minimis sales and disposition of assets.

10. On October 17, 2007, upon motion to amend, this Court entered a stipulation and third amendment to the Final Cash Collateral/Financing Order (Bankr. Dkt No.197). The third

amendment to the Final Cash Collateral/Financing Order provided, among other things, that certain key customers must pay down receivables, and the Agents extended the Overadvance through and including October 26, 2007, and for the Agents to make increased overadvances to the Debtors.

11. Under the terms of the Final Cash Collateral/Financing Order, the Debtors' financing terminates on October 29, 2007. See Final Cash Collateral/Financing Order (Bankr. Dkt No. 121). Despite the Agents' repeated forbearances and grants of extensions, the Debtors have, until recently, been unable to secure a purchaser for the Assets and have run out of time and money. In addition, several of Debtors' key customers have advised the Debtors and the Agents that unless the Debtors consummate a going concern sale of the Cold Formed Division by no later than_____, such key customers will have no other choice but to source their requirements for parts the Debtors currently supply to the key customers with alternative suppliers other than the Debtors. Concurrently with the filing of this Motion, the Debtors have filed a motion seeking entry of a Fourth Amended Cash Collateral/Financing Order under which the Agents have agreed to extend the overadvance and date of termination of financing to November 16, 2007. Failure to fully consummate a sale of the Assets in short order will lead to a termination of the Debtors' rights to use cash collateral.[2]

II. The Debtor's Marketing and Sales Efforts

12. Prior to the RIG sale, discussed below, Rockford Products consisted of two operating divisions, both operating out of Rockford, Illinois. One division, RIG, was a distributorship that purchased from international and domestic manufacturers and sourced to the automotive and commercial applicance industries certain fasteners and other related parts used in

[2] The Debtors have conferred with the Agents regarding the terms and schedule proposed in this Motion. The Agents reserve any and all rights under the Cash Collateral/DIP Order.

such industries. The other, larger division, employing over 400 hourly and salaried workers, consists of the Cold Formed Products Division, which manufactures ball studs, ball pins, brackets, housings, track and specially engineered bolts for a variety of applications in the automotive industry and serves larger customers such as Federal-Mogul Corporation, Caterpillar, Inc., Metaldyne Company, LLC, ZF Lemforder Corporation, and Affinia Products Corp.

13. Over time, the Debtors made numerous efforts to sell all or parts of Rockford Products. Over the last ten years, the Debtors engaged two different investment banking firms to find a buyer for Rockford Products. Lincoln Partners of Chicago (now Lincoln International) conducted the last form sale process, which took place in 2003.

14. Silverman Consulting, retained in these Cases as the Debtors' financial advisors, has also marketed Rockford Products from January 2007 through the present. During that period, Silverman Consulting spoke with over 55 financial and strategic buyers for all or some of Rockford Products' assets. The process included assembling an extensive Offering Memorandum describing Rockford Products, its operations, financial history, and projections in detail. Due, in large part, to the well-documented troubles in the automotive industry, and notwithstanding its extensive marketing and sales efforts, Rockford Products was not successful in garnering considerable interest in either of its operating divisions.

15. Rockford Products has incurred operating losses since 2006, which reduced the amount of liquidity available to it for operations. Tightening liquidity, in turn, led to depleted supplies and inventory levels and resulted in decreased sales volume, higher overhead, and consistent operating losses. These factors culminated in a downward spiral over the last year. In order to stop the hemorrhaging, the Debtors' bankruptcy filings were predicated upon a quick

sale of all or substantially all of Rockford Products' assets. Simply put, the Debtors did not have the means to survive a long, drawn out bankruptcy process.

16. Immediately upon filing for bankruptcy, Rockford Products engaged in negotiations with a prospective purchaser for the sale of all or substantially all of its assets. While the Debtors would have preferred to sell Rockford Products as a whole, they recognized that buyers predominately expressed an interest in one or the other of the two operating divisions. Given prevailing market interests, on August 9, 2007, the Debtors filed a motion[3] seeking to sell all or substantially all of the inventory and assets of RIG pursuant to a public bidding process, which resulted in a successful bid. By Order dated September 5, 2007, the Court approved the sale of RIG to RB Distribution, Inc., which was the highest and best bidder. The Debtors consummated that transaction on September 10, 2007.

17. Through the sale of RIG and afterward, Rockford Products continued to work diligently with the original prospective purchaser for the sale of the remaining assets of Rockford Products—namely the Cold Formed Products Division. Despite considerable efforts on both sides, in early September 2007, the prospective purchaser declined to move forward with the purchase of the Cold Formed Products Division. That sudden and unexplained departure left the Debtors in a precarious state—with no sale in sight of their larger operating division, considerable operating losses, a declining enterprise value, and the loss of confidence in the marketplace by the key customers and vendors alike in Rockford Products' ability to continue operating.

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[3] See Debtors' Motion For (I) An Order (A) Approving Sale Procedures In Connection With The Sale Of Certain Of The Debtors' Assets, (B) Approving The Form And Manner Of Notice, (C) Scheduling A Sale Hearing, And (D) Granting Related Relief; And (II) An Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets Free And Clear Of All Liens, Claims, Encumbrances And Other Interests; And (B) Granting Related Relief, (Dkt. No. 74).

18. Since that time, the Debtors carefully examined all viable options, including reaching out to their key customers to support their business in the short term. Indeed, those efforts culminated in the stipulation and third amendment to the Final Cash Collateral/Financing Order where certain customers agreed to pay down receivables to not grater than 25-day terms to provide the Debtors with increased liquidity and the Agents agreed to increase the Debtors' overadvance facility. As a result, however, the Debtors learned that several of their key customers intend to resource business from the Debtors absent the Debtors consummating quickly a going concern sale of the business that provides a continuing source of supply for the key customers. The Debtors then concluded that an expedited approval and consummation of a sale of Cold Formed Products is imperative. Absent the continued support of the Debtors' key customers, the going concern value in the Cold Formed Products Division will be eliminated leaving the Debtors without another viable alternative other than an orderly liquidation and wind-down of the business. The orderly liquidation and wind down of the business will ultimately result in a termination of all of the employees and a complete cessation of the Debtors' operations, a result the Debtors', at the inception of these cases and today, desire strongly to avoid. Accordingly, through considerable efforts, the Debtors have found a potential buyer (the "Potential Buyer") for the Assets and are in the process of finalizing an asset purchase agreement (the "APA") scheduled to be finalized on or about October 31, 2007. If the parties are successful and the APA will generate sufficient proceeds to pay the Agents in full, in cash, on the closing date (unless otherwise agreed to), the Potential Buyer will constitute a "stalking horse" bidder for the Assets and will expect and be provided all of the benefits accorded to a stalking horse bidder, including bid protection.

19. As is presently contemplated by the Potential Buyer, the prospective sale will allow Cold Formed Products to continue to operate at its present location in Rockford, thereby maintaining hundreds of jobs in the community. Additionally, it will allow vendors to continue to conduct business locally. As stated above, the Debtors' only available alternative to the sale process is to shutter the remaining plant, terminate all employees, and liquidate all remaining assets.

THE ASSETS

20. The Debtors file this Motion in order to seek this Court's approval for a sale of the Cold Formed Products Division. The Assets consist of, among other things, all of the assets and business operations of the Cold Formed Products Division, including, without limitation, all personal property, accounts receivable, inventories, equipment and tooling, business records, contracts, licenses, governmental permits, intellectual property, goodwill associated with Rockford Products and the Cold Formed Products Division, interest in and to any refund of taxes, all rights in the nature of insurance, indemnification or contribution to the extent related to the Assets, and all capital stock or other ownership interests in any subsidiary of Rockford Products. The Assets also consist of certain executory contracts and a real property lease under which a buyer may wish to acquire the Debtors' rights. The Debtors have and will continue to make every effort that the Assets be sold on a going concern basis in order to maximize proceeds for the estates and minimize the hardship on their employees and customers.

THE PROPOSED SALE PROCEDURES

21. The sale of the Assets is subject to the highest and best offer. In order to ensure that the highest and best price is received for the Assets, the Debtors seek approval of the proposed Sale Procedures set forth in Exhibit B attached hereto and incorporated herein by this

reference in their entirety. Once approved, the Sale Procedures will govern the submission of competing bids and the selection and approval of the highest and best offer for the Assets. Copies of the Sale Procedures shall be distributed to any party expressing an interest in purchasing the Assets.

22. As part of the Sale Procedures, should the APA be executed by October 31, 2007, Rockford Products seeks advance approval of the Break-Up Fee, as described in the Sale Procedures, in the amount of 3% of the purchase price under the APA. The Break-Up Fee is payable only (i) upon the closing of a transaction involving the Sale of the Assets by Rockford Products to a buyer or buyers other than the Potential Buyer and/or (ii) where the Agents exercise their rights to credit-bid under Section 363(k) of the Bankruptcy Code, following an Auction in which the Potential Buyer is the stalking horse bidder, or the filing by the Debtor of a plan of reorganization or liquidation that does not contemplate the sale of the Assets by the Debtor to the Potential Buyer in accordance with the terms of the APA.

23. Additionally, the Sale Procedures provide that, should the Potential Buyer be the stalking horse bidder, bidders must submit initial overbids in an amount of at least **$100,000** in excess of the Purchase Price and the Break-Up Fee under the APA. Subsequent overbid amounts must be in increments of at least **$50,000;** provided that Rockford Products, in consultation with the Agents and the Creditors' Committee, shall retain the right to modify the bid increment requirements.

RELIEF REQUESTED

24. By this Motion, pursuant to Bankruptcy Code sections 105 and 363, the Debtors seek entry of the Sale Procedures Order: (a) approving the Sale Procedures; (b) setting forth a deadline for parties to object to the sale of the Assets; (c) scheduling the Auction and Sale

Hearing at which the Debtors will present an order (the "Sale Order") seeking sale of the Assets free and clear of any claims, liens, interests, and encumbrances; and (d) approving the form and manner of shortened notice provided herein.

BASIS FOR RELIEF

I. Approval Of The Sale Procedures Is Appropriate And In The Best Interests Of The Estate

A. The Proposed Sale Procedures and the Sale Hearing is Appropriate.

25. The Debtors believe that they will obtain the maximum recovery for their creditors if the Assets are sold pursuant to the procedures outlined below. The Debtors canvassed the market to identify parties that may be interested in purchasing the Assets, and received several expressions of interest regarding the same, including that of the Potential Buyer. The Debtors expect that the procedures outlined below, subject to this Court's approval, may result in a bidding process involving one or more such interested parties.

26. As set forth more completely in the Sale Procedures, the Debtors submit that the following procedures are both fair and equitable and will result in the highest and best recovery for the Assets:

a. A hearing on the Sale Procedures will take place at **10:30 a.m. on Wednesday, October 31, 2007**. No later than **Thursday, November 1, 2007**, the Debtors will (i) serve copies of (a) the Sale Notice, (b) the approved Sale Procedures, (c) the Sale Procedures Order, as entered, and to the extent executed, and (d) the APA, if entered into with the Potential Buyer (collectively, the "Sale Procedures Materials") on: (i) all parties on the Master Service List; (ii) all persons or entities known or reasonably believed to have asserted a Lien on any of the Assets; (iii) all counterparties to any executory contracts or unexpired leases that the Debtors seek to assume and assign as part of the Sale; and (iv) all persons or entities known or reasonably believed to have expressed an interest in acquiring the Assets; and (ii) serve the Sale Notice, attached here at Exhibit D1 or D2, depending on the circumstance, by First Class United States mail, postage prepaid, on the entire creditor matrix in these Cases.

b. The Debtors propose that any party interested in purchasing the Assets be required to submit a written offer for the purchase of the Assets no later than **5:00 p.m. Central Time on Thursday, November 8, 2007**. Any such offer must be addressed to (a)

counsel for the Debtors, Dewey & LeBoeuf, LLP, Two Prudential Plaza, 180 North Stetson Avenue, Suite 3700, Chicago, IL 60601, Attn: Mohsin N. Khambati, Tel: (312) 794-8052; Fax: (312) 792-6552; email: mkhambati@dl.com (b) counsel for the Official Committee of Unsecured Creditors at Greenberg Traurig, LLP, 77 W. Wacker Drive, Suite 2500, Chicago, IL 60601, Attn: Nancy A. Peterman, and (c) counsel for the Agents at Goldberg, Kohn, Bell, Block, Rosenbloom & Moritz, Ltd., 55 E. Monroe Street, Suite 3300, Chicago, Illinois 60603, Attn: Andrew R. Cardonick. Further, any such offer must meet the requirements set forth in the attached Sale Procedures.

c. To the extent there are competing Qualified Bids, the Debtors will conduct an Auction of the Assets upon notice to all Qualified Bidders (as defined in the Sale Procedures) starting at **10:00 a.m. Central Time on Monday, November 12, 2007**, at the offices of Dewey & LeBoeuf LLP, Two Prudential Plaza, 180 North Stetson Avenue, Suite 3700, Chicago, IL 60601.

d. The Debtors and any successful bidder shall have entered into an asset purchase agreement (the "Successful APA") no later than **Tuesday, November 13, 2007**.

e. The Debtors propose to file with the Court, no later than **5:00 p.m. Central Time on Tuesday, November 13, 2007**, each of: (i) a copy of the executed Successful APA entered into by and between the Debtors and the successful bidder; (ii) a notice (the "Assumption Notice") of executory contracts, licenses, and unexpired leases that the Debtors will seek to assume and assign to the successful bidder, which will identify the amounts, if any, that the Debtors believe they owe to such contract or lease counterparty to cure defaults under each respective executory contract, license, and unexpired lease; and (iii) a draft of the proposed Sale Order (collectively, the "Sale Materials").

f. The Debtors must serve copies of the Sale Materials, no later than **5:00 p.m. Central Time on Tuesday, November 13, 2007**, by overnight delivery on each of: (i) the parties on the Master Service List; (ii) all persons or entities known or reasonably believed to have asserted a Lien on any of the Assets; and (iii) all counterparties to any executory contracts or unexpired leases that the Debtors seek to assume and assign as part of the Sale.

g. The Debtors further request that the Court hold a Sale Hearing on the Assets on **Thursday, November 15, 2007 at 1:00 p.m. Central Time** before the Honorable Jacqueline P. Cox or any other Judge sitting in her stead at the United States Bankruptcy Court for the Northern District of Illinois, located in Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chambers 656, Chicago, Illinois 60604. Parties will have until **4:00 p.m. Central Time on the Wednesday, November 14, 2007** to object to the Sale.

27. All dates, deadlines and form and manner of notice set forth herein are subject to modification at the Debtors' sole discretion, without further order from the Court. Such

modification is effective immediately upon the filing of a notice of such modification with the Court.

28. The Sale Notice will provide that any party that wishing to obtain a copy of this Motion, the Sale Procedures Materials, or Sale Materials may do so by contacting counsel for the Debtors at Dewey & LeBoeuf, LLP, Two Prudential Plaza, 180 North Stetson Avenue, Suite 3700, Chicago, IL 60601, Attn: Mohsin N. Khambati, Telephone (312) 794-8052; Facsimile (312) 794-8100; Email: mkhambati@dl.com.

B. The Proposed Shortened Notice of Sale is Appropriate

29. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors and parties-in-interest with 20 days notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time, date and place of the Sale Hearing and the deadline for filing any objections thereto.

30. With continuing operating losses and working capital diminishing on a daily basis, the Debtors cannot afford any delay in the Sale without risking a precipitous decrease in the value of the Assets, and accordingly, in the purchase price. In addition, an imminent sale is essential to retaining key customer relationships, any further deterioration of which would effectively destroy any remaining enterprise value. Thus, the Debtors request a shortened timeline to "lock in" the best purchase price and thus the best outcome for their estates and creditors.

31. The Debtors submit that the notice of the Sale Motion and the Sale Hearing as provided for herein constitutes good and adequate notice of the Sale, the Sale Procedures, and the Sale Hearing to the Debtors' creditors and other parties in interest, as well as to those entities potentially interested in bidding on the Assets. Therefore, the Debtors respectfully request that this Court approve the notice procedures proposed above.

C. The Sale Procedures Are Appropriate and Will Maximize the Value Received for the Assets

32. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991); Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992) (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24,28 (Bankr. S.D.N.Y. 1989) (same).

33. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (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"); Integrated Resources, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting Cello Bag Co. Inc. v. Champion Int'l Corp. (In re Atlanta Packaging Products, Inc.), 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

34. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. See, e.g., Integrated Resources, 147 B.R. at 659 (such procedures "encourage bidding and to maximize the value of the debtor's assets"); In re Financial News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991),

("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates").

35. The Debtors believe that the Sale Procedures will establish the parameters under which the value of the Assets may be enhanced. Such Procedures will increase the likelihood that the Debtors will receive the greatest consideration for the Assets because they ensure a competitive and fair bidding process. The Sale Procedures also allow the Debtors to undertake the sale of the Assets as expeditiously as possible, which the Debtors believe is essential to maximizing the value of its estate.

36. Additionally, the Debtors believe that the proposed Sale Procedures provide an appropriate framework for selling the Assets and will enable the Debtors to review, analyze and compare all bids received to determine which bid is in the best interests of the Debtors' estates and in the best interests of creditors.

37. Finally, the Debtors believe that the Sale Procedures are consistent with other procedures previously approved under the relevant standards governing auction proceedings and bidding incentives in other bankruptcy proceedings. See Integrated Resources, 147 B.R. at 659; 995 Fifth Avenue Assocs., 96 B.R. at 28.

38. Therefore, the Debtors submit that the proposed Sale Procedures are reasonable, appropriate and within the Debtors' sound business judgment under the circumstances because they will serve to maximize the value that the Debtors will recover from the Sale of the Assets.

D. The Break-Up Fee is Appropriate Under the Circumstances.

39. Approval of break-up fees, expense reimbursements and other forms of bidding protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code has become an established practice in chapter 11 cases. Bankruptcy courts

have approved bidding incentives similar to the Break-Up Fee 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 Loral Space & Communications Ltd., Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. 2003) (approving break-up fee and expense reimbursement); In re Magellan Health Services, Inc., Case No. 03-40515 (PCB) (Bankr. S.D.N.Y. 2003) (approving termination fee, commitment fee and reimbursement of expenses); In re Adelphia Business Solutions, Inc., Case No. 02-11389 (REG) (Bankr. S.D.N.Y. 2002) (approving termination fee and reimbursement of expenses); In re Bradlees Stores, Inc., Case No. 00-16035 (BRL) (Bankr. S.D.N.Y. 2000) (approving termination fee and reimbursement of expenses); Integrated Resources, 147 B.R. at 662 (approving termination fee plus reimbursement of expenses); 995 Fifth Ave. Assocs., 96 B.R. at 28 (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").

40. Outside the bankruptcy context, courts routinely uphold the business judgment of independent boards that approve break-up fees that are designed to maximize value and do not chill the auction process. Such fees are presumptively appropriate under the business judgment rule and non-bankruptcy courts rarely rule on their propriety. See, e.g., Cottle v. Storer Communications, Inc., 849 F.2d 570, 574-75 (11th Cir. 1988); CRTF Corp. v. Federated Dep't. Stores, Inc., 683 F. Supp. 422, 440 (S.D.N.Y. 1988); Samjens Partners I v. Burlington Indus., Inc., 663 F. Supp. 614, 623 (S.D.N.Y. 1987); McMichael v. United States Filter Corp., 2001 U.S. Dist. LEXIS 3918 (C.D. Cal. 2001); Matador Capital Mgmt. Corp. v. BRC Holdings, Inc., 729 A.2d 280, 295 (Del. Ch. Ct. 1998); Kysor Indus. Corp. v. Margaux, Inc., 674 A.2d 889, 897 (Del. Super. Ct. 1996) (explaining that termination fees are not unusual in merger context).

41. With respect to break-up fees in bankruptcy cases, courts have generally considered three (3) factors when assessing proposals for such fees: (1) whether the relationship of the parties who negotiated the break-up fee is tainted by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the fee is unreasonable relative to the proposed purchase price. See Integrated Resources, 147 B.R. at 657. Here, each of these three factors supports approval of the Break-Up Fee. The Debtors and the Potential Buyer are unrelated and have been dealing at arms-length. Without the Break-Up Fee, the Debtors will not be able to enter into an APA with the Potential Buyer. Finally, at 3% of the purchase price, the Break-Up Fee is both reasonable and standard.

42. Some courts have also applied the standard of whether the interests of all concerned parties are best served by such fee. See S.N.A. Nut Company, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); In re Tiara Motorcoach Corp., 212 B.R. 133, 137 (Bankr. N.D. Ill.) (concluding that where the debtor had not created post-petition Sale Procedures or solicited post-petition bids and no definitive sale agreement had been completed or circulated, the breakup fee would not serve and protect the interests of the estate, creditors, and equity holders). For the reasons outlined above, the Break-Up Fee is essential to the sale process, does not discourage bidding, and serves the interests of all concerned parties.

43. In addition, courts consider whether the proposed break-up fee is "reasonably related to the bidder's efforts and the transaction's magnitude," Integrated Resources, 147 B.R. at 662-63, and is reasonable in relation to the purchase price. In the present case, the maximum Break-Up Fee payable to the Potential Buyer is 3% of the purchase price under the APA. These amounts, in terms of their percentages, are of the same order of magnitude as break-up fees approved by this Court in other cases. In re CXM, Inc., Case No. 03-28236 (Bankr. N.D. Ill.

July 24, 2003) (fee representing 2.59% of purchase price upheld); In re FSC Corp., Case No. 00-04659 (Bankr. N.D. Ill. February 28, 2000) (break-up fee of 3.4% plus reimbursement of expenses is reasonable); Financial News Network, Inc., 980 F.2d 165, 167 (2d Cir. 1992) (noting without discussion a $8.2 million break-up fee on a $149.3 million transaction -- or 5.5% of total consideration offered); LTV Aerospace and Defense Co. v. Thomson-CSF, S.A. (In re Chateaugay Corp.), 198 B.R. 848, 861 (S.D.N.Y. 1996), aff'd, 108 F.3d 1369 (enforcing a $20 million "reverse break-up fee" payable to debtor on a $450 million offer -- 4.4% of total consideration); Integrated Resources, 147 B.R. at 662 (break-up fee representing up to 3.2% of bidder's out-of-pocket expenses, or 1.6% of the proposed purchase price; expert testified that outside of bankruptcy, break-up fees average 3.3%); Cottle, 849 F.2d at 578-79 (approving a $29 million fee on a $2.5 billion transaction -- or 1.16% of total consideration); In re Great Northern Paper, Inc., Case No. 03-10048 (Bankr. D. Me. February 18, 2003) (fee of 5.4% plus reimbursement of expenses upheld); In re Hechinger Investment Co., Case No. 99-02261 (PJW) (Bankr. D. Del. October 1, 1999) (fee of 3.0% upheld); In re Montgomery Ward Holding Corp., Case No. 97-01409 (PJW) (Bankr. D. Del. February 17, 1998) (fee of 4.0% upheld). Compare In re Twenver, Inc., 149 B.R. 954, 956 (Bankr. D. Colo. 1992) (disapproving a proposed topping fee in excess of 10% of total bid).

44. Should the APA be executed by October 31, 2007 and be deemed the stalking horse the proposed Break-Up Fee of 3% would be: (i) an actual and necessary cost and expense of preserving the Debtors' estates, (ii) commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Potential Buyer, (iii) reasonable and appropriate, in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Buyer, and (iv) necessary

to induce the Potential Buyer to continue to pursue the Sale and to be bound by the APA. The Break-Up Fee also induced the Potential Buyer to negotiate a bid that may serve as a minimum floor bid on which the Debtors, their creditors, and other bidders may rely. The Potential Buyer has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible price for the Assets will be received. Accordingly, the Debtors submit that the Break-Up Fee will not chill bidding and is reasonable and appropriate under the circumstances.

E. The Initial and Subsequent Overbids Are Appropriate.

45. One important component of the Sale Procedures is the "overbid" provision. Should the APA be executed by October 31, 2007 and be deemed the stalking horse, a bid will be considered a Qualifying Bid (as that term is defined in the Sale Procedures) if it is in cash and equal to or in excess of the Purchase Price under the APA, plus the Break-Up Fee of **3%** of the Purchase Price (net of any applicable adjustments), plus **$100000** (such amounts, in the aggregate, the "Initial Minimum Overbid"). Each overbid increment thereafter must be at least **$50,000** higher than the previous bid; provided that the Debtor, in consultation with the Agents and the Creditors' Committee, shall retain the right to modify the bid increment requirements.

46. The Initial Minimum Overbid is necessary not only to compensate the Debtor for the risk that it assumes in foregoing a known, willing and able Potential Buyer for a new potential acquirer, but also to ensure that there is an increase in the net proceeds received by the estate, after deducting the Break-Up Fee to be paid to the Potential Buyer in the event of a prevailing overbid at the Auction. See, e.g., In re Colony Hill Assocs., 111 F.3d 269, 270 (2d Cir. 1997) (requiring minimum overbids to exceed Buyer's initial offer of $7.5 million by at least $650,000 or 8.6%); Financial News Network, 980 F.2d at 165, 166-67 (requiring minimum overbids to exceed Buyer's offer of $105 million by at least $10 million or 9.5%); In re Tempo Technology Corp., 202 B.R. 363, 369 (D. Del. 1996) (requiring minimum overbids of $1.4

million in cash where original purchase price was $150,000 cash plus $3 million in stock of the Buyer and $500,000 of assumed liabilities); In re Wintex, Inc., 158 B.R. 540, 543 (D. Mass. 1992) ("Debtor may avoid the increased costs and complexity associated with considering additional bids for sale of debtor's property unless the additional bids are high enough to justify their pursuit. The 10% increase requirement is one example of a reasonable litmus test.").

47. In light of the reasonable value of the Assets, the Debtors believe that such initial overbid is reasonable under the circumstances, and will enable the Debtors to maximize the value for the Assets while limiting any chilling effect to the sale process.

II. Approval Of The Sale Is Appropriate And In The Best Interest Of The Debtors' Estate

48. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors have determined, after consultation with the Agents, that the Sale of the Assets by public auction and pursuant to the Sale Procedures will enable the Debtors to obtain the highest and best offer for the Assets (thereby maximizing the value of its estate) and is therefore in the best interests of the Debtors, their estates and creditors.

49. The Debtors propose the sale of the Assets after thorough consideration of all viable alternatives, and it is supported by a number of sound business reasons. Accordingly, given the financial condition of the Debtors, the depletion of their working capital, and the exigent circumstances involving key customer relationships, a sale of the Assets is appropriate under section 363(b) of the Bankruptcy Code. See, e.g., Del. & Hudson Railway, 124 B.R. at 177 (affirming the bankruptcy court's approval of a sale of substantially all of the debtor's assets where the debtor would have been "in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan"); Titusville

Country Club, 128 B.R. at 400 (granting an expedited hearing on a motion to approve a sale as a result of "deterioration" of the debtor's assets); Coastal Indus., Inc. v. Internal Revenue Service (In re Coastal Indus., Inc.), 63 B.R. 361, 366-69 (Bankr. N.D. Ohio 1986) (approving an expedited sale pursuant to section 363(b) of the Bankruptcy Code just five weeks after the petition date where the debtor was suffering operating losses). All of the factors discussed in the cases cited above apply to the Debtors and the Assets.

A. The Sale of the Assets Free and Clear of Liens Is Authorized by Section 363(f)

50. The Debtors further submit that it is appropriate to sell the Assets free and clear of liens pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the sale proceeds of the Assets, to the extent and with the same validity and priority as existed with respect to the Assets. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

> (i) applicable nonbankruptcy law permits sale of such property free and clear of such interests;
>
> (ii) such entity consents;
>
> (iii) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
>
> (iv) such interest is in bona fide dispute; or
>
> (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

51. This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides 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).

52. Bankruptcy Code section 363(f) is drafted in the disjunctive. Thus, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets "free and clear" of liens and interests. In re Dundee Equity Corp., 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) ("[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

53. The Debtors believe that one or more of the tests of section 363(f) will be satisfied with respect to the transfer of the Assets pursuant to the Sale Procedures and an Asset Purchase Agreement entered into with any prospective purchaser. Specifically, the Debtors believe that section 363(f)(2) will be met in connection with the Sale under an Asset Purchase Agreement because each of the parties holding liens on the Assets, will consent, or absent any objection to subsequent entry of the Sale Order, will be deemed to have consented to the Sale.

B. The Assets Should Be Sold Free and Clear of Successor Liability

54. Under the terms of any prospective Asset Purchase Agreement, the successful bidder for the Assets would also not be liable for any of the Debtors' liabilities as a successor to the Debtors' business or otherwise (the "Excluded Liabilities"). Extensive case law exists providing that claims against the winning bidder are directed to the proceeds of a free and clear sale of property and may not subsequently be asserted against a buyer.

55. Although Bankruptcy Code section 363(f) provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined in the Bankruptcy Code. Precision

Indus., Inc. v. Qualitech Steel SBQ, LLC, 209 F.3d 252, 259 (2000); In Qualitech, the Seventh Circuit construed the term "any interest" very broadly. 327 F.3d at 345. Folger Adam Security V. DeMatteis/MacGregor JV, 209 F.3d 252, 257 (3d Cir. 2000). In the case of In re Trans World Airlines. Inc., 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term "any interest." The Third Circuit observed that while some courts have "narrowly interpreted that phrase to mean only in rem interests in property," the trend in modern cases is towards "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" Id. at 289 (citing 3 Collier on Bankruptcy 363.06[1]). As determined by the Fourth Circuit in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in Folger, the scope of section 363(f) is not limited to in rem interests. Thus, the Third Circuit in Folger stated that Leckie held that the debtors "could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." Folger, 209 F.3d at 258.

56. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); In re New England Fish Co., 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII

employment discrimination and civil rights claims of debtor's employees); In re Hoffman, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); American Living Systems v. Bonapfel (In re All Am. Of Ashburn, Inc.), 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded on successor doctrine in a sale of assets free and clear); WBQ Partnership v. Virginia Dept. of Medical Assistance Services (In re WBQ Partnership), 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).

57. Pursuant to Bankruptcy Code section 363(f), the successful bidder is entitled to know that the Assets are not infected with latent claims that will be asserted against the successful bidder after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale of the Assets should state that the successful bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Assets.

C. Authorization Of Assumption And Assignment Of Assumed Contracts, Licenses, and Leases

58. As may be required by the Successful APA, the Debtors request approval, under 11 U.S.C. § 365, of the assumption and assignment of any executory contracts, licenses, and unexpired leases to be assumed (the "Assumed Agreements") and assigned to the successful bidder. The Debtors further request that the order approving any sale provide that the Assumed Agreements will be transferred to, and remain in full force and effect for the benefit of, the successful bidder notwithstanding any provisions in the Assumed Agreements, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment.

59. The Assumed Agreements for such successful bidder will be identified in a schedule to the Asset Purchase Agreement that will be noticed along with the Sale Materials and such successful bidder will pay any cure costs.

60. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

> [T]he trustee may assign an executory contract or unexpired lease of the debtor only if –
>
> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under section 365(a) of the Bankruptcy Code, a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . .;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

61. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession's decision to assume an executory contract, courts have consistently applied a "business judgment" test when reviewing

no such a decision. See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 318 U.S. 523, 550 (1953); Matter of Talco, Inc., 558 F.2d 1369, 1173 (10th Cir. 1977). A debtor satisfies the "business judgment" test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D. N.Y. 1986). The assumption and assignment of the Assumed Agreements set forth in the Asset Purchase Agreement, to the extent required by a successful bidder, may be necessary for the Debtors to successfully sell the Assets. Thus, the business judgment standard is satisfied.

62. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction. " See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524,538 (Bankr. D.N.J. 1989). See also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rust. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). All Qualified Bidders, as defined in the Sale Procedures, will be providing one or more commitment letters to the Debtors showing they are sufficiently capitalized to perform their obligations under the Asset Purchase Agreement and under the Assumed Agreements, and they will be prepared, if required, to provide evidence to that effect at the Sale Hearing. Consequently, assumption and assignment of the Assumed Agreements is appropriate under the circumstances.

63. As set forth above, each counterparty to an executory contract or unexpired lease with the Debtors relating to the Cold Formed Products Division shall receive a copy of the Sale Materials informing such counterparty that such executory contract or unexpired lease may be assumed by the Debtors and assigned to a prospective purchaser at the Sale Hearing. Such

notice shall identify the amounts, if any, that the Debtors believe they owe to such contract or lease counterparty to cure defaults under each respective executory contract and unexpired lease (the "Cure Amounts"). The Debtors propose that, unless a contract counterparty objects, in writing, to any of the Cure Amounts contained in the Assumption Notice, the counterparty will receive from the purchaser at the time of the sale closing (or promptly thereafter), the Cure Amounts as set forth in the Sale Materials (assuming that the executory contract or unexpired lease is assumed and assigned). Such objection must set forth all specific defaults in any executory contract or unexpired lease and claim a specific monetary amount that differs from the amount (if any) specified by the Debtors in the Sale Materials. The Debtors shall be relieved of all liability accruing or arising at any time under Assumed Agreements. The successful bidder's promise to perform under such contract or lease will constitute adequate assurance of future performance under such contract or lease.

D. Request for Waiver of Rule 6004(h) Stay

64. By this Motion, the Debtors seek a waiver of any stay of effectiveness of the Sale Order. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. Proc. 6004(h). Under the terms of the Final Cash Collateral/FinancingOrder (as amended to date), the Debtors are required to sell the Assets and distribute proceeds to the Agents no later than October 29, 2007. The Agents have granted the Debtors a minimal extension of that deadline. The Debtors, therefore, request a waiver of the stay imposed by Bankruptcy Rule 6004(h).

CONCLUSION

65. For the foregoing reasons, the Debtors submit that (i) the proposed Sale Procedures are proper and necessary and reasonably calculated to serve the best interests of their

estates; (ii) the Sale Procedures will permit the Debtors to sell the Assets in a fair, expedient and prudent manner; and (iii) the relief requested in this Motion will maximize recoveries for creditors and is in the best interest of the Debtors and their estates. Accordingly, the Debtors request that the Court enter the Sale Procedures Order approving the relief requested in this Motion, set the Sale Hearing to consider and approve the Sale Order regarding the sale of the Assets.

NOTICE

66. A copy of this Motion has been provided to: (i) all parties on the Master Service List (ii) all persons or entities known or reasonably believed to have asserted a Lien on any of the Assets; (iii) all counterparties to any executory contracts or unexpired leases that the Debtors seek to assume and assign as part of the Sale; and (iv) all persons or entities known or reasonably believed to have expressed an interest in acquiring the Assets. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

67. No previous motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully requests that the Court approve the Sale Procedures, enter the Sale Procedures Order in substantially the same form as attached hereto, and grant such other and further relief as is just and proper.

Dated: October 29, 2007

ROCKFORD PRODUCTS CORPORATION, *et al.*

By: /s/ Thomas J. Augspurger

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