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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	)	Chapter 11 Cases
TUSA-EXPO HOLDINGS, INC.,	)	Case No. 08-45057-dml-11
OFFICE EXPO, INC.,	)	(Jointly Administered)
TUSA OFFICE SOLUTIONS, INC.	)	
Debtors.	)	**EXPEDITED HEARING REQUESTED**

DEBTORS' MOTION FOR ENTRY OF AN ORDER (i) APPROVING BID PROCEDURES, (ii) APPROVING BREAK-UP FEE, (iii) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (iv) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF TUSA OFFICE SOLUTIONS, INC. FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES; (v) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (vi) GRANTING RELATED RELIEF

TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

Tusa-Expo Holdings, Inc. ("Holdings") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this motion seeking entry of an order (i) approving bid procedures, (ii) approving break-up fee, (iii) scheduling a sale hearing and approving the form and manner of notice thereof, (iv) authorizing the sale of substantially all of the assets (the

"Assets") of Tusa Office Solutions, Inc. (the "Seller" or "Office Solutions") free and clear of all liens, claims, and encumbrances, (v) approving the assumption and assignment of certain executory contracts and unexpired leases, and (vi) granting related relief (the "Motion"). In support of this Motion, the Debtors respectfully state as follows:

INTRODUCTION AND OVERVIEW

1. The Debtors are in the business of selling and distributing office furniture. Office Solutions operates as a full service furniture dealer and management company and is one of the nation's largest dealerships of furniture manufactured by Knoll, Inc. ("Knoll"). Prior to filing bankruptcy, Office Expo, Inc. ("Office Expo") sold new and pre-owned office furniture from retail locations in Farmers Branch and Longview, Texas. The Office Expo stores have since been closed.

2. In 2005, the shareholders of Office Solutions and the shareholders of Office Expo entered into an agreement to form Holdings as a holding company to acquire all of the stock of both Office Solutions and Office Expo (the "2005 Transaction"). The parties had hoped and expected that their new business affiliation would be mutually beneficial, allowing each entity to either meet the needs of or provide a reliable referral for every business sector in the market – from individuals needing to furnish a simple home office, to international corporations needing to configure and furnish a new corporate campus.

3. Initially after the 2005 Transaction, the two companies registered modest profits on a consolidated basis, but due to unexpected costs, declining sales on the retail side, and other factors, the Debtors have experienced significant losses over the last eighteen months. The Debtors have contributed a disproportionate amount of working capital and credit availability to Office Expo to try to salvage that company's operations. As a result, the Debtors have become

severely undercapitalized. Office Solutions continues to experience healthy sales and productivity, but faced with a liquidity crisis, the Debtors filed chapter 11 to reorganize their corporate and financial structure, to preserve the value of their businesses and to maximize the return to creditors.

4. The Debtors have concluded that the most efficient and comprehensive resolution of Office Solution's financial difficulties and the maximization of the value of its assets for its creditors can best be achieved through a sale of substantially all of the Office Solutions assets and its business as a going concern.[1] It is anticipated that the proposed asset sale will allow the business of Office Solutions to continue in a seamless fashion with the current management team and workforce in place, allowing the new company to meet customer needs and complete orders on schedule and without interruption.

5. To this end, Office Solutions expects to enter into an Asset Purchase Agreement (the "Agreement")[2] substantially in the form attached hereto as **Exhibit "A"** with Knoll. Pursuant to the Agreement, Office Solutions proposes to sell substantially all of its assets to Knoll or its designated assignee (the "Purchaser"), or to a higher bidder pursuant to an auction process. The Agreement represents a "stalking horse" proposal from Knoll against which other bids can be evaluated. The Debtors propose to allow other interested buyers to bid for the purchase of the Office Solutions assets through an auction and sale process described more fully below.

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[1] By separate motion, the Debtors intend to request entry of an order permitting the Debtors to dispose of the Office Expo inventory through an orderly liquidation process.

[2] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Agreement. An executed Asset Purchase Agreement will be filed with the Court at a later time.

6. By this Motion, the Debtors seek the entry of two orders. First, the Debtors request entry of an order on an expedited basis approving the bid procedures described herein, approving a break-up fee and other bidder protections, setting a hearing on the proposed sale and approving the form and manner of notice for such hearing (the "Bid Procedures Order"). Second, the Debtors seek entry of an order after the auction process has concluded approving the sale of substantially all of the assets of Office Solutions to the highest and best bidder and approving the assumption and assignment of certain executory contracts and unexpired leases (the "Sale Order").

JURISDICTION AND VENUE

7. This Court has jurisdiction to consider this Sale Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. §157(b). Venue of these cases and this Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections 363(b), 363(f), and 365(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

A. Procedural Background

9. On October 31, 2008 and November 5, 2008 (the "Petition Date")[3] the Debtors filed voluntary petitions for relief in this Court under chapter 11 of the Bankruptcy Code.

10. The Debtors continue to manage and operate their businesses as debtors in

[3] Office Expo and Holdings filed their petitions on October 31, 2008, and Office Solutions filed its petition on November 5, 2008.

possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

11. No creditors' committee has been appointed in these cases by the United States Trustee. Further, no trustee or examiner has been requested or appointed in any of the Debtors' chapter 11 cases.

12. On November 6, 2008, the Court entered an order directing the joint administration of the Debtors' chapter 11 cases.

B. Overview of Office Solutions' Operations

13. Office Solutions began its corporate existence in 1984 as a contract office furniture dealer aimed at providing quality office furniture and related services for its commercial clients. In 1997, an investment group led by Charles J. Tusa acquired the equity interests in Office Solutions, and since that time, Office Solutions has grown into the largest contract furniture dealer in the Metroplex. Today, Office Solutions occupies a 75,000 square foot showroom and warehouse in Carrollton, Texas, with sales and service offices both at its Carrolton location and in Fort Worth.

14. Office Solutions currently operates as a full service office furniture dealer and management company, providing its clients with a broad range of services from project design and space planning, to furniture selection, to relocation and installation services, to post-sale scheduled maintenance, all designed to help its clients achieve an efficient and effective workplace environment. Office Solutions is currently the fourth largest Knoll furniture dealer in the United States, and additionally offers furniture from such other notable manufacturers as the HON Company, OFS Furniture, DirTT Environmental Solutions, Bernhardt, and over 250 other manufacturers. In addition to furnishing many of the largest law and accounting firms in Texas, Office Solutions' customer list includes such corporate giants as American Airlines, Chesapeake

Energy, Pier I Imports, Blockbuster, Bell Helicopter, La Quinta, Sysco Foods and Dr. Pepper 7-Up. Office Solutions currently employs approximately 140 individuals in the areas of accounting, administration, consulting, design, installation, inventory management, marketing, project management, sales and technical services.

PROPOSED AUCTION AND SALE OF ASSETS

15. As previously noted, Office Solutions expects to enter into the Agreement with Knoll to sell substantially all of its assets to the Purchaser or to a higher bidder. In consultation with its advisors, the Debtors believe the Purchaser's offer to purchase the Assets (the "Asset Sale") represents the highest and best offer for the Assets. The Agreement is the result of extensive arm's-length negotiations between the Purchaser and the Seller. The Debtors seek approval of the Agreement and the transactions contemplated thereby, and seek authority to sell the Assets to the Purchaser (or, alternatively, to a Winning Bidder as defined herein), free and clear of all mortgages, pledges, security interests, assignments, conditional sales or other title retention agreements, encumbrances, liens, claims, assessments, options, charges or interests of any kind (the "Liens"), except as otherwise provided in the Agreement.

16. The Seller has marketed its Assets to known potential buyers and will continue to market its Assets pending the Auction (as defined below). The Seller will advise previously interested parties of the sale process and solicit bids from them as well.

A. Summary of Terms of the Agreement

17. The principal terms[4] of the Agreement between the Seller and the Purchaser include the following:

[4] The following summary is intended solely to give interested parties an overview of the significant terms of the Agreement. Interested parties should refer to the Agreement for the complete and detailed terms thereof. In the event of any inconsistencies between this summary and the Agreement, the Agreement shall control.

a. The Parties. The Seller under the Agreement is Office Solutions. The Purchaser is Knoll or its designated assignee.

b. The Assets. The property to be sold under the Agreement comprises, without limitation, all of the Seller's right, title and interest in and to the assets used in connection with its operation, including machinery, equipment (including leasehold interests in equipment subject to capitalized leases, spare parts, trade fixtures, furniture, office furniture and office supplies, Assigned Contracts (defined in the Agreement), Inventory (defined in the Agreement), Seller's corporate name and trademarks, tradenames, patents, and copyrights, bank accounts, computer hardware and software, accounts, work orders, outstanding purchase orders for office furniture and related products, internet address and website, and insurance policies of which the Seller is an owner or beneficiary.

c. The Excluded Assets. The Seller shall retain its right, title and interest in and to and shall not transfer to Purchaser, rights or causes of action vested in the Seller to avoidance actions under the Bankruptcy Code and other claims or proceedings of the Seller and certain other assets listed at section 2.2 of the Agreement. Under section 2.2 of the Agreement, avoidance actions and any other claims and causes of action against the Purchaser shall be waived, released, and discharged in connection with the Asset Sale.

d. The Assumption of Liabilities. The Purchaser shall assume on and as of the Closing Date certain of the Seller's liabilities, including, obligations, commitments and liabilities of the Seller that arise after the Closing Date under the Assigned Contracts as well as certain liabilities for customer deposits; subject to certain limitations described in the Agreement at section 2.3(b), all currently outstanding liabilities and obligations of the Seller under the Assigned Contracts which Purchaser selects to be assigned, including all costs to cure and compensate for actual pecuniary loss as required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts; executed real property leases for the business premises of the Seller at terms and rent rates acceptable to the Purchaser; and certain warranties for products and installation services provided by the Seller to customers (collectively, the "Assumed Liabilities").

e. The Excluded Liabilities. Notwithstanding anything to the contrary contained or implied in the Agreement, the Purchaser shall not assume and shall have no liability for any debts, liabilities obligations, taxes, contracts, or commitments of any party not expressly assumed by the Purchaser under section 2.3 of the Agreement.

f. The Purchase Price. The aggregate purchase price payable by the Purchaser to the Seller for the Assets is $2,000,000 (payable as follows: (i) $300,000 credit bid against the DIP Facility (as defined in the Agreement), (ii) $1,500,000 credit bid against Knoll's prepetition secured claim; and (iii) $200,000 cash), **plus** assumption by the Purchaser of Assumed Liabilities, **plus** Purchaser's agreement to satisfy, at Closing, the Textron Obligation (as defined in the Agreement) and the DIP Facility.

g. Deposit. The Purchaser shall deposit $50,000 (the "Deposit") with counsel for the Seller to be held in a segregated interest-bearing account.

h. Conditions to Closing. Subject to conditions in the Agreement, the closing shall take place on or before **January 6, 2009**, unless extended by the mutual consent of both parties as provided in the Agreement (the "Closing Date"). On or before the Closing Date, certain conditions must be met as described at Article VI of the Agreement, among other things, (i) the Bankruptcy Court must have approved the Sale Motion and Agreement; (ii) the Bankruptcy Court must have approved the assumption and assignment of the Assigned Contracts (defined herein) from the Seller to the Purchaser; (iii) the Purchaser shall be the Winning Bidder at the Auction; (iv) the Purchaser shall have received an executed two-year non-competition and non-solicitation agreement of the Seller and Charles J. Tusa; and (v) the Seller must be an active, ongoing business at the Closing Date.

i. Bid Procedures Order. The Agreement requires the entry of a Bid Procedures Order (defined herein) which, among other things, approves (i) the Bid Procedures as a mechanism by which the Seller seeks to obtain the highest and best offer for the Assets, (ii) bid protections for the Purchaser including the Break-Up Fee (defined herein) in accordance with the terms of the Agreement, and (iii) procedures for an Auction.

j. Sale Approval Order. The Agreement requires the entry of the Sale Approval Order approving, conducting, and/or authorizing, among other things, (i) the Agreement including the terms and conditions thereof, (ii) the sale of the Assets to the Purchaser free and clear of all Liens, and (iii) the assumption and assignment of the Assigned Contracts.

B. Bid Procedures

18. To maximize the value of the Seller's assets for the benefit of this chapter 11 estate, the Seller proposes to implement the bid procedures substantially in the form attached hereto as **"Exhibit B"** (the "Bid Procedures") for the Auction and Asset Sale. The proposed Bid Procedures provide that if a Qualified Bidder submits a Qualified Bid to the Seller, an Auction shall be conducted to determine the Winning Bidder. If no Qualified Bid is submitted to the Seller, no Auction will be held and the Agreement with the Purchaser will be submitted to the Court for approval.

19. In an exercise of the Debtors' sound business judgment, the Debtors have

determined that it is in the best interest of Seller's chapter 11 estate, its creditors, and all parties in interest to conduct an Auction for the sale of the Assets pursuant to the Bid Procedures.

20. At the conclusion of the Auction, the Seller shall inform each of the Qualified Bidders of the selection of the Winning Bidder and whether any Qualified Bidder has elected to become a backup bidder (the "Backup Bidder") to purchase the Assets according to its latest offer in the event the Winning Bidder fails to close the Asset Sale. The Seller proposes that the sale of the Assets be awarded, subject to final approval of the Court, to the highest and best bidder through the Bid Procedures detailed substantially in the form attached at **Exhibit "B."**

C. Break-up Fee

21. Should the Winning Bidder be a party other than Purchaser, and that entity consummates the Asset Sale at Closing, then Purchaser, as the stalking horse bidder, shall be entitled to a break-up fee in the amount of $250,000 (the "Break-up Fee").[5] The Seller shall not be obligated to pay the Break-Up Fee, if prior to the occurrence of any Break-Up Fee Event (as defined in the Agreement), the Agreement has been validly terminated pursuant to Article VIII of the Agreement either by the Seller or the Purchaser.

22. As more specifically described in section 3.17 of the Agreement, the Seller will become obligated to pay the Break-Up Fee upon the occurrence of a Break-Up Fee Event without further order of the Bankruptcy Court and the Seller's obligation to pay the Break-Up Fee shall constitute an administrative expense of the Seller under sections 503(b) and 507(a)(1) of the Bankruptcy Code. If a Break-Up Fee is due pursuant to section 3.17 of the Agreement, the Seller shall pay the Break-Up Fee to the Purchaser upon the closing of the Asset Sale to the

[5] In addition, the Agreement provides for the award of the Break-up Fee under certain other conditions which would result in the sale of a material portion of the Seller's assets or equity interests to a party other than Purchaser. *See* definition of "Break-Up Fee Event" in Section 1.1 of the Agreement.

Winning Bidder from the proceeds of the Asset Sale. The Seller's obligation to pay the Break-Up Fee shall survive the termination of the Agreement (except as described in section 3.17 of the Agreement).

23. The Break-up Fee is intended in part to reward the Purchaser for the risk of becoming the stalking horse bidder and to compensate Purchaser for expenses occasioned by its unsuccessful purchase effort, including expenses associated with due diligence, reasonable legal and accounting fees, and lost opportunity costs. The Break-Up Fee is reasonable compensation for the risk Knoll took in entering into the Agreement subject to higher and better offers and committing cash towards the purchase of the Assets without any assurances at the end of the day that it will be the Winning Bidder. The Break-Up Fee will enable the Seller to ensure that it is obtaining the highest and best terms for sale of the Assets. The Break-up Fee will be due Purchaser at Closing and shall be payable from the proceeds of the Asset Sale.

24. If for any reason a Winning Bidder fails to consummate the Asset Sale, on or before January 6, 2009, the Seller requests authority to immediately consummate the Asset Sale with the Backup Bidder with the next highest or otherwise best bid according to such Backup Bidder's latest offer. The Seller believes that by implementation of the Bid Procedures, it will maximize the value of its assets for the estate and its creditors and parties in interest.

RELIEF REQUESTED

25. By this Sale Motion, the Seller requests the entry of two orders. First, the Seller requests entry of the Bid Procedures Order following a hearing set on an expedited basis (the "Bid Procedures Hearing") (a) approving the Bid Procedures substantially in the form attached hereto as **Exhibit "B"**, (b) authorizing and scheduling an Auction, (c) approving payment of the Break-Up Fee; (d) scheduling a hearing to authorize and approve the Asset Sale to Purchaser or

to another Winning Bidder (the "Sale Hearing"), and (e) approving the form and manner of the notice of the Sale Hearing.

26. Second, the Seller requests that, at the Sale Hearing, the Court approve the Asset Sale by entering an order (the "Sale Approval Order"), (a) authorizing and approving the Asset Sale free and clear of all Liens pursuant to section 363 of the Bankruptcy Code, and (b) authorizing the Seller to assume and assign the Assigned Contracts, as provided in the Agreement, pursuant to section 365 of the Bankruptcy Code.

BASIS FOR RELIEF

A. The Proposed Sale of Assets and Process is Within the Seller's Sound Business Judgment and Should Therefore be Approved

27. Section 105(a) of the Bankruptcy Code provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]." *See* 11 U.S.C. § 105(a). The Fifth Circuit has acknowledged that section 105 confers broad powers on bankruptcy courts:

> [Section] 105 [is] 'an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of [section] 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of their jurisdiction …'

Davis v. Davis (In re Davis), 170 F.3d 475, 492 (5th Cir. 1999) (citations omitted).

28. Section 105(a) of the Bankruptcy Code "may be used only to carry out the provisions of Title 11." *In re CoServ, L.L.C.*, 273 B.R. 487, 494 n. 9 (Bankr. N.D.Tex. 2002). The major premise of chapter 11 is the continued and uninterrupted operation of the debtor. Thus, the requested relief by the Debtors is consistent with the "furtherance of the provisions of the Bankruptcy Code." *Id. See also In re Southmark Corp.*, 113 B.R. 280, 281 (Bankr. N.D.Tex. 1990) (stating that the court may "issue any order necessary or appropriate to carry out the

provisions of the [Bankruptcy] Code").

29. Section 363(b) of the Bankruptcy Code provides that a chapter 11 debtor, after notice and hearing, may sell property of the estate outside of the ordinary course of business. Bankruptcy courts are given a great deal of discretion when deciding whether to authorize a sale of a debtor's assets outside of the ordinary course of business. *See* 11 U.S.C. § 363(b).

30. Courts look to various factors to evaluate whether to approve a motion under section 363(b), such as: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice has been provided. *In re Condere*, 228 B.R. 615, 626 (Bankr. S.D.Miss. 1998). The terms and conditions of the proposed Asset Sale satisfy each of the foregoing factors.

1. A Sound Business Justification Exists for the Asset Sale

31. The Debtors respectfully submit that adequate business reasons exist to justify the Asset Sale and performance under the Agreement. *See Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226-27 (5th Cir. 1986) (stating that the decision to authorize a sale of a debtor's assets outside of the ordinary course of business is a determination based upon the debtor's business justification.). Courts have made it clear that a debtor's showing of a sound business justification need not be unduly exhaustive, but rather, a debtor is simply "required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D.Ohio 1984); *see also In re Continental Air Lines, Inc.*, 780 F.2d at 1226.

32. Approval of the Asset Sale is appropriate in this case because the Debtors seek to protect the value of Seller. *See In re Cummins Utility, L.P.*, 279 B.R. 195, 198 (Bankr. N.D.Tex.

2002) (the sale of all of the debtor's assets "resulted in substantially greater return to the estate" where the evidence established that the debtor's business was "rapidly deteriorating"); *see also In re Torch Offshore, Inc.*, 327 B.R. 254, 258 (E.D. La. 2005) (the debtor provided "undisputed evidence" that the debtor's property was deteriorating and the court held that there was a sound business justification for the sale). The administrative and economic costs of maintaining the Seller's Assets over the long-term is not in the best interests of the Seller's chapter 11 estate, individually, or the Debtors' estates, collectively. This is so because the Debtors are currently severely undercapitalized and have virtually no access to credit outside of the DIP Facility. If the Debtors are unable to sell the Assets as proposed herein, it is likely that the Seller will have to cease operations and liquidate. The proposed sale will maximize the value of the Seller's estate, will provide some return for Seller's creditors, and will ensure that Seller's business will continue beyond bankruptcy, thereby preserving jobs and allowing for continued business relationships with existing vendors, many of whom are creditors in this case.

33. The Debtor's business strategy to maximize the value of the Seller's estate includes the Asset Sale and the filing of a liquidating plan.[6] Without a prompt sale of the Assets, the Debtors anticipate immediate and irreparable deterioration in Seller's going concern value and the depletion of funds that would otherwise be available to the Seller's creditors. Moreover, the DIP Facility specifically requires that the proposed Asset Sale be closed by January 6, 2009. Under these circumstances, the Asset Sale represents the highest and best use for the Sale Assets and sound business reasons exist justifying the Asset Sale as requested herein.

2. The Sale Maximizes the Estate's Value

[6] The Asset Sale is not a *sub rosa* plan affecting the payment of claims or denial of rights of creditors. *See In re Continental Air Lines, Inc.*, 780 F.2d at 1227-28. Moreover, in claiming that the sale is a *sub rosa* plan, an objecting party must "specify exactly what protection is being denied." 780 F.2d at 1227-28.

34. Both before and after the Petition Date, the Seller has been actively engaged in activities directed at maximizing the value of its Assets. These activities have included numerous conferences, meetings, and presentations to possible lenders, financial partners, creditors, and prospective purchasers.

35. The superiority of the Purchaser's proposal to bids for the Assets will be tested pursuant to the Bid Procedures. Consequently, the reasonableness of the consideration to be received by the Seller will ultimately be demonstrated by a "market check" through an auction process, which is the best means for establishing whether the highest and best price is being paid for the Sale Assets. The Debtors believe that the sale of the Assets will realize maximum value for the Seller's estate and that the Seller has obtained the highest and best offer for the Assets.

3. The Agreement was Negotiated in Good Faith

36. The Debtors believe that the Purchaser, if ultimately selected as the Winning Bidder, will be a "good-faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser is one of the Debtors' prepetition and postpetition secured lenders. As previously discussed, the Agreement is the product of extensive, good faith, arm's-length negotiations between the Seller and the Purchaser. Accordingly, the Debtors request the Court to find that the Purchaser is a "good-faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code with respect to the Agreement.

4. The Debtors Have Provided or Will Provide Adequate Notice of the Proposed Sale

37. In accordance with Bankruptcy Rule 6004(f)(1), a debtor's sale of property outside of the ordinary course of business may be by private or by public auction. *See* FED.R.BANKR.P. 6004(f)(1). Further, pursuant to Bankruptcy Rule 2002(a)(2), the Bankruptcy Court may, for cause shown, shorten or direct another method of giving notice regarding the

twenty-day period for the proposed use, sale or lease of property of the estate other than in the ordinary course of business. *See* FED.R.BANKR.P. 2002(a)(2). Subject to Bankruptcy Rule 6004, the notice of a proposed use, sale, or lease of property required under Bankruptcy Rule 2002(a)(2) must include the time and place of any public sale, the terms and conditions of any private sale, and the time fixed for filing objections. *See* FED.R.BANKR.P. 2002(c)(1). Moreover, the notice of a proposed use, sale, or lease of property is sufficient if it generally describes the property. *See* FED.R.BANKR.P. 2002(c)(1).

38. The Debtors have provided sufficient and timely notice of this Sale Motion and of the proposed Asset Sale to the Notice Parties as described more fully herein. Further, the Debtors will file and serve on the Notice Parties a copy of the entered Bid Procedures Order, the completed Bid Procedures, and a Notice of Hearing for the Sale Hearing.

39. The Debtors submit that such notice as set forth herein satisfies the notice requirements of Bankruptcy Rules 2002 and 6004 and section 363(f) of the Bankruptcy Code, and constitutes good and sufficient notice and that no other or further notice is required. Accordingly, the Debtors respectfully request that this Court authorize such notice to the Notice Parties.

40. Considering all of the foregoing factors, the Debtors' election to sell the Assets is clearly justified and the Asset Sale will enable the Debtors to obtain the highest and best offer for the Assets, thereby maximizing the value of the Seller's chapter 11 estate.

B. The Sale of Assets Should be Granted Free and Clear of Liens

41. The Debtors request that the Assets be transferred to the Purchaser free and clear of all Liens, with all valid Liens to attach to the proceeds of the sale. Section 363(f) of the Bankruptcy Code provides, in part, that a debtor in possession may sell property of the estate

outside of the ordinary course of business free and clear of any other entity's interest in such property, if such entity consents, if such interest is in bona fide dispute, or if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. *See* 11 U.S.C. §§ 363(f)(2), (f)(4), and (f)(5). *See also In re Collins*, 180 B.R. 447, 449-50 (Bankr. E.D.Va. 1995) ("Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the Court to approve the proposed sale."); *In re P.K.R. Convalescent Ctrs., Inc.*, 189 B.R. 90, 93-94 (Bankr. E.D.Va. 1995) ("[Section] 363 covers more situations than just sales involving liens ... Section 363(f) addresses sales free and clear of any interest ..."); *In re Gen. Bearing Corp.*, 136 B.R. 361, 366 (Bankr. S.D.N.Y. 1992) (listing requirements).

42. Other than Liens in favor of the Seller's prepetition and postpetition secured lenders, Knoll and Textron Financial Corporation (the "Secured Lenders"), liens securing current ad valorem taxes, and a few secured claims pursuant to purchase money security interests or capital leases, the Debtors are unaware of any Liens that have been asserted against the Sale Assets. The Agreement provides for the payment of the Textron Obligation (as defined in the Agreement), the DIP Facility (as defined in the Agreement) and the secured portion of Knoll's indebtedness at Closing. To the extent other secured claims are not assumed by Purchaser, such secured claims shall attach to the proceeds of the sale. Further, the Debtors anticipate that the Secured Lenders and other secured creditors will consent to the Asset Sale or could otherwise be compelled, in a legal or equitable proceeding, to accept a money satisfaction of any such Lien.

43. Based upon the foregoing, the sale of the Assets to the Purchaser free and clear of Liens is appropriate under section 363(f) of the Bankruptcy Code.

C. The Purchaser has Exercised Good Faith as Provided under Section 363(m)

44. Section 363(m) of the Bankruptcy Code provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith," the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986) has held that:

> [t]he requirement that a purchaser act in good faith ... speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted).

45. The Debtors submit, and will adduce evidence (either through direct testimony or by proffer) at the Sale Hearing, that the Asset Sale and the transactions contemplated thereunder will be conducted in an arm's-length transaction, in which the Seller and all of the bidders at the Auction will have at all times acted in good faith under applicable legal standards. The Debtors shall therefore request that the Court make a finding that the Winning Bidder at the Auction has entered into the Agreement and/or Bidder's Agreement (as defined in the Bid Procedures), as the case may be, in good faith within the meaning of section 363(m) of the Bankruptcy Code.

D. Approval of Break-Up Fee is Warranted

46. As a condition to the Agreement, the Seller is required to obtain approval of the Break-up Fee in the Bid Procedures Order. The Purchaser has expended, and likely will continue to expend, considerable time, money, and energy pursuing the Asset Sale and has

engaged in extended arm's-length and good faith negotiations with the Seller. In recognition of these expenditures of time, energy, and resources, and the benefits of securing a stalking horse or opening bid, the Seller has agreed to provide Purchaser with the Break-up Fee of $250,000. Absent such provisions, the Purchaser would likely not have agreed to act as a "stalking horse." The Seller thus believes that in this instance it was necessary and appropriate for the Seller to agree to the Break-Up Fee. The Break-Up Fee represents a small percentage of the total consideration offered by Purchaser under the Agreement, which includes the $2,000,000 Purchase Price, the assumption of the Assumed Liabilities, the satisfaction of the Textron Obligation (which, as of the Petition Date, was estimated to be approximately $4.5 million) and satisfaction of the DIP Facility.

47. Break-up and other termination fees are a normal, and in some cases necessary, component of sales outside of the ordinary course of business under section 363 of the Bankruptcy Code. *See, e.g., In re Integrated Resources, Inc.*, 147 B.R. 650, 660 (S.D.N.Y. 1992) (noting that break-up fees may be legitimately necessary to convince a single "white knight" to enter the bidding by providing some form of compensation for the risk it is undertaking).

48. Under the circumstances described in the Agreement, the Break-Up Fee is fair and reasonable in view of, among other things, (a) the intensive analysis, due diligence investigation, and negotiations undertaken by the Purchaser in connection with the Asset Sale and (b) the efforts undertaken by the Purchaser have increased the chances that the Seller will receive higher value for the Assets, to the benefit of the Seller, its estate, its creditors, its employees, its vendors, and other parties in interest. *See In re Integrated Resources*, 147 B.R. at 657-63 (considering whether to approve a break-up fee, courts generally address (a) the

relationship between the initial bidder and the seller; (b) whether the fee is designed to encourage bidding; and (c) the size of the fee in relation to the purchase price).

49. As set forth herein, the Break-Up Fee represents a small percentage of the consideration to be paid under the Agreement and is within the range of customary break-up fees approved in other cases. The Debtors believe that the Bid Procedures and the Break-Up Fee are fair and reasonable and, combined with the Purchaser's offer to acquire the Assets, will maximize the value realized by the Seller's chapter 11 estate.

E. The Court Should Approve the Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases

50. The Debtors also seek authority, pursuant to sections 365(a) and 365(f) of the Bankruptcy Code, to assume and assign the Assigned Contracts which Purchaser designates as contracts the Purchaser wishes Seller to assume and assign. It is doubtful that any of the Assigned Contracts has any residual value to the Seller's chapter 11 estate. In the Debtors' business judgment, assumption and assignment of these Assigned Contracts is in the best interests of the Seller's estate and its creditors and should be authorized by the Court.

51. Section 365(f) of the Bankruptcy Code provides, in part, that, with certain exceptions not applicable here, a chapter 11 debtor may assume and assign an executory contract or unexpired lease of the debtor notwithstanding nonbankruptcy restrictions to such an assignment. 11 U.S.C. § 365(f)(1). The debtor may assign such contract or lease providing that the debtor assume the contract or lease pursuant to section 365 and provides adequate assurance of future performance by the assignee. 11 U.S.C. § 365(f)(2).

52. The Seller seeks to assume some or all of the Assigned Contracts, pursuant to the Sale Motion. The Agreement provides that at Closing the Purchaser will pay the costs, if any, to

cure defaults and compensate for actual pecuniary losses associated with any of the Assigned Contracts which Purchaser desires Seller to assume and assign. The Debtors intend to file a Notice of the Assigned Contracts (the "Designation of Assigned Contracts"), which will include the corresponding proposed cure amounts and costs necessary to compensate counter-parties for actual pecuniary losses (the "Cure Amounts") for the applicable Assigned Contracts. In this manner, all relevant parties will be afforded an opportunity to object to the assumption and/or assignment and the proposed Cure Amounts for each such Assigned Contract.[7] The Debtors propose that, in the Bid Procedures Order, the Court set a deadline for parties to object to the Motion and to the proposed Cure Amounts. The Debtors further propose that the Court order that, if no objection is timely received, the Cure Amounts set forth in the Designation of Assigned Contracts be controlling notwithstanding anything to the contrary in the Assigned Contract or any related documents, and that each non-Debtor party to the Assigned Contract shall be barred from asserting any other claim arising prior to the assignment against the Seller or the Purchaser or Winning Bidder as to the Assigned Contract. The Debtors further request that the Bid Procedures Order provide that, if an objection is made to the assumption or assignment of an Assigned Contract or to a proposed Cure Amount, such objection be considered at the Sale Hearing.

53. The Seller believes that the Purchaser (other other Winning Bidder) will be able to perform is obligations under the Assigned Contracts. Thus, Purchaser (or other Winning Bidder), as assignee to such Assigned Contracts, will have provided adequate assurance of future performance, and such Assigned Contracts can be assumed and assigned.

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[7] The Seller reserves the right to amend the Designation of Assigned Contracts at any time prior to the commencement of the Sale Hearing.

F. Notice of this Motion and the Relief Requested Herein is Adequate

54. To ensure that adequate notice of the Sale Motion is provided, the Debtors have served this Sale Motion, including all exhibits hereto, upon (a) the United States Trustee, (b) counsel to the Secured Lenders; (c) all parties included on each of the three Debtors' lists of 20 largest unsecured creditors; and (d) parties that has filed a request for notices with this Court (collectively, the "Notice Parties"). In addition, once the Bid Procedures Order has been entered, the Debtors intend to serve the Bid Procedures Order, the approved Bid Procedures and the Notice of Sale Hearing on the Notice Parties. Further, the Debtors intend to serve the Designation of Assigned Contracts on affected counter-parties to such agreements, providing such parties with an opportunity to object to the proposed assumption and assignment and to the proposed Cure Amounts.

55. The Debtors submit that such notice as set forth herein satisfies the notice requirements of Bankruptcy Rules 2002 and 6004 and section 363(f) and 365 of the Bankruptcy Code, and constitutes good and sufficient notice and that no other or further notice is required. Pursuant to Bankruptcy Rule 2002(m), the Bankruptcy Court is empowered to enter any order "designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." Accordingly, the Debtors respectfully request that this Court approve such notice as sufficient for the relief requested in this Motion.

56. Furthermore, to allow the Seller sufficient opportunity to analyze and respond to objections, if any, the Debtors propose that, in the Bid Procedures Order, the Court set a deadline for parties to object to the Motion.

G. The Ten-Day Stay Period Should be Waived

57. Unless the Bankruptcy Court orders otherwise, Bankruptcy Rules 6004(g) and 6006(d) provide, respectively, that (i) an order authorizing the sale of property pursuant to section 363 of the Bankruptcy Code and (ii) an order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code are automatically stayed for ten (10) days after entry of an order approving such sale or assignment. *See* FED.R.BANKR.P. 6004(g) and 6006(d). The purpose of Bankruptcy Rules 6004(g) and 6006(d) are to provide sufficient time for an objecting party to appeal before the approval order can be implemented. *See* Advisory Committee Notes to FED.R.BANKR.P. 6004(g) and 6006(d) (the "Advisory Notes").

58. Although Bankruptcy Rules 6004(g) and 6006(d) and the Advisory Notes are silent as to when a court should "order otherwise" and either eliminate or reduce the ten-day stay period, one treatise suggests that the ten-day period should be eliminated to allow an assignment or to close immediately "where there has been no objection." *See* 10 COLLIER ON BANKRUPTCY ¶¶ 6004.10 at 6004-20.1 and 6006.04 at 6006-18 (15th ed. rev. 2007). One court has held that, because the debtor had demonstrated that the sale price was reasonable, the buyer was ready to complete the sale, and there would be storage charges for the property, waiver of the ten-day stay period was justified. *In re Perry Hollow Management Co., Inc.*, 297 F.3d 34, 41 (1st Cir. 2002).

59. In this case, the Debtors will establish at the Sale Hearing that the sale price maximizes the value of the Seller's Assets, that the Purchaser has set a deadline by which the Asset Sale must be completed at January 6, 2009 and is prepared to complete the sale immediately upon approval by the Court and completion of requirements under the Agreement, and that business exigencies such as protecting the value of the Seller exist necessitating the

immediate closing of the Asset Sale. Therefore, cause exists for the court to waive the ten-day stay period as to the Sale Approval Order.

60. Moreover, the Seller does not anticipate that non-Debtor parties to the Assigned Contracts will have objections to the assignment to Knoll as Purchaser. Accordingly, the Debtors hereby request that the Bankruptcy Court waive the ten-day stay period under Bankruptcy Rules 6004(g) and 6006(d).

CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court (i) enter a Bid Procedures Order (a) approving the Bid Procedures substantially in the form attached hereto as **Exhibit "B"**, (b) authorizing and scheduling an Auction, (c) approving payment of the Break-Up Fee; (d) scheduling the Sale Hearing to authorize and approve the Asset Sale to Purchaser or to another Winning Bidder, and (e) approving the form and manner of the notice of the Sale Hearing, and (ii) enter a Sale Approval Order (a) authorizing and approving the Asset Sale free and clear of all Liens pursuant to section 363 of the Bankruptcy Code, and (b) authorizing the Seller to assume and assign the Assigned Contracts, as provided in the Agreement, pursuant to section 365 of the Bankruptcy Code. The Debtors additionally request that the Court grant such other and further relief as is just and proper.

DATED: November 19, 2008

Respectfully submitted,

By /s/ Jeff P. Prostok
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Proposed Attorneys for the Debtors
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the parties listed on the attached service list, via United States Mail, first class postage prepaid, or via ECF electronic Notice on the 19th day of November, 2008.

/s/ Jeff P. Prostok

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