

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PROXIM CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 05-11639 (PJW)
(Jointly Administered)

Related Docket No. 75

**ORDER: (I) APPROVING SALE BY DEBTORS OF SUBSTANTIALLY
ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE
BANKRUPTCY CODE, (II) ASSUMING AND ASSIGNING CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated June 27, 2005, (the "Motion") of Proxim Corporation, Proxim Wireless Corporation and Proxim International Holdings, Inc., (collectively, the "Sellers," or the "Debtors"), as debtors and debtors in possession, for, among other things, entry of an order pursuant to 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 (the "Sale Order") (i) authorizing the Debtors' sale (the "Sale") of the Purchased Assets, pursuant to and as described in the Asset Purchase Agreement, dated as of July 18, 2005, and annexed hereto as Exhibit A,² including all Schedules and Exhibits (as they may be amended, in accordance with the terms thereof, the "Purchase Agreement"), among the Debtors, as Sellers and Terabeam Wireless, the business name of YDI Wireless, Inc., as Purchaser (the "Purchaser"), free and clear of all liens, claims, encumbrances, and interests (as hereinafter

¹ The Debtors are the following entities: Proxim Corporation, a Delaware corporation, Proxim Wireless Networks, Inc., a Delaware corporation, Proxim International Holdings, Inc., a Delaware corporation, and WirelessHome Corporation, a Delaware corporation.

² Capitalized terms not defined herein shall have the meanings set forth in the Purchase Agreement.

defined collectively as "Interests"), with such Interests to transfer, affix, and attach to the proceeds of the Sale, all as more fully set forth herein; (ii) approving the Purchase Agreement; (iii) authorizing the assumption, assignment, and sale of certain executory contracts and unexpired leases (the "Purchased Contracts") pursuant to and as provided for in the Purchase Agreement and fixing or establishing the procedures to fix all amounts, if any, required to be paid or escrowed pending resolution of disputes concerning such amounts in connection with the assumption of the Purchased Contracts pursuant to 11 U.S.C. § 365(b)(1)(A) and (B) (the "Cure Amounts") and (iv) authorizing the exemption of the Sale from stamp and similar taxes; and the Court having entered an Order, dated July 1, 2005 (the "Bidding Procedures Order"), authorizing the Debtors to conduct an auction and approving the terms and conditions thereof (the "Auction") to consider higher or otherwise better offers for the Purchased Assets and approving (a) the procedures for the submission of competing bids, (b) the form and manner of notice of the Auction, (c) the Motion, in part, and (d) the Topping Fee; and a hearing on the Motion having been held on July 20, 2005 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered (i) the Motion, (ii) the objections thereto, (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest; and upon the record of the Sale Hearing and these cases; and after due deliberation thereon; and good cause appearing therefor, the Court hereby

FINDS, DETERMINES, AND CONCLUDES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The court has jurisdiction over this Motion and the transactions contemplated by the Purchase Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105, 363, and 365 of 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014.

E. As evidenced by the affidavits of service previously filed with the Court (i) proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Bidding Procedures Order, the Bidding Procedures, the Sale Hearing, the Sale and the assumption, assignment, and sale of the Purchased Contracts has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code, Fed. R. Bankr. P. 2002, 6004, and 9014, the Bidding Procedures Order and the Purchase Agreement, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Auction, the Bidding Procedures Order, the Bidding Procedures, the Sale Hearing,

the Sale, or the assumption, assignment and sale of the Purchased Contracts is or shall be required.

F. Each Debtor (i) has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale of the Purchased Assets by the Debtors has been duly and validly authorized by all necessary company action of each of the Debtors, (ii) has all of the power and authority necessary to consummate the transactions contemplated by the Purchase Agreement, and (iii) has taken all company action necessary to authorize and approve the Purchase Agreement and the consummation by such Debtors of the transactions contemplated thereby.

G. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtors to consummate such transactions.

H. Emergent circumstances and sound business reasons exist for the Debtors' Sale of the Purchased Assets pursuant to the Purchase Agreement. Entry into the Purchase Agreement and consummation of the transactions contemplated thereby constitute the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Purchased Assets pursuant to sections 105 and 363 of the Bankruptcy Code. Such business reasons include, but are not limited to, the following: (i) there is substantial risk of deterioration of the value of the Purchased Assets if the Sale is not consummated quickly; (ii) the Purchase Agreement constitutes the highest and best offer for the Purchased Assets; and (iii) the Purchase Agreement and the closing thereon will

present the best opportunity to realize the value of the Purchased Assets on a going-concern basis and avoid decline and devaluation of the Debtors' business.

I. The Purchase Agreement and the transactions contemplated by the Purchase Agreement were negotiated and have been and are undertaken by the Sellers and Purchaser at arms' length, without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. Because the Purchaser submitted a Qualified Bid in excess of the "stalking horse" bid submitted by Moseley Associates, Inc. ("Moseley"), an Auction was conducted in accordance with the Bidding Procedures Order on July 18, 2005, at which Purchaser was declared the highest and best bidder. The Auction was conducted at arms' length and in good faith within the meaning of section 363(m) of the Bankruptcy Code. As a result of the foregoing, the Sellers and Purchaser are entitled to the protections of section 363(m) of the Bankruptcy Code.

J. The Purchase Agreement was negotiated, proposed, and entered into by the Debtors and the Purchaser without collusion, in good faith, and from arms' length bargaining positions. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code.

K. The consideration provided by the Purchaser for the Purchased Assets is the highest and otherwise best offer received by the Debtors and is fair and reasonable. A sale of the Purchased Assets other than one free and clear of Interests would impact materially and adversely on the Debtors' estates, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale. Therefore, the Sale contemplated by the Purchase

Agreement is in the best interests of the Debtors, their estates, creditors, and all parties in interest.

L. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (ii) the Purchaser; (iii) the official committee of unsecured creditors appointed in these chapter 11 cases (the "Committee"); (iv) all entities that may have an interest in a transaction with respect to the Purchased Assets; (v) all entities known to have asserted any Interests in, upon or against the Purchased Assets or the Debtors; (vi) all Persons listed on Schedule 4.10(c) to the Purchase Agreement; (vii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (viii) all parties to Purchased Contracts; (ix) the United States Attorney's office; (x) the Securities and Exchange Commission; (xi) the Internal Revenue Service; (xii) Federal Trade Commission; and (xiii) all entities on the Master Service List.

M. The Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

N. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all Interests, including but not limited to claims otherwise arising under doctrines of successor liability.

O. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the

Debtors, their estates, and their creditors, if the sale of the Purchased Assets to the Purchaser and the assignment of the Purchased Contracts to the Purchaser was not free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of such Interests, including, without limitation, the Excluded Liabilities.

P. The Debtors may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-debtor parties to Purchased Contracts which did not object, or which withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of Interests and (ii) non-debtor parties to Purchased Contracts who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they assert an Interest.

Q. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection with the consummation of the Sale, and the assumption, assignment, and sale of the Purchased Contracts is in the best interests of the Debtors, their estates, their creditors, and all parties in interest. The Purchased Contracts being assigned to, and the Assumed Liabilities being assumed by, the Purchaser are an integral part of Purchased Assets being purchased by the Purchaser, and accordingly, such assumption, assignment, and sale of Purchased Contracts and Assumed

Liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

R. The Purchaser has (i) cured, or has provided adequate assurance of cure, of any default existing prior to the Closing under any of the Purchased Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The Purchaser has provided adequate assurance of its future performance of and under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

S. Approval of the Purchase Agreement and assumption, assignment, and sale of the Purchased Contracts and consummation of the Sale of the Purchased Assets at this time are in the best interests of the Debtors, their creditors, their estates, and all parties in interest.

For all of the foregoing and after due deliberation, the Court ORDERS, ADJUDGES, AND DECREES THAT:

General Provisions

1. The Motion is granted, as further described herein.
2. All objections and responses concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Hearing and to the extent any such objection or response was not otherwise withdrawn, waived, or settled, it is, and all reservations of rights or relief requested therein, overruled and denied.

Approval of the Purchase Agreement

3. The Purchase Agreement, and all of the terms and conditions thereof, is approved.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and comply with the terms of the Purchase Agreement, and consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions as may be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession, the Purchased Assets, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

6. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of any Debtor, all governmental entities (including the Federal Trade Commission), all non-debtor parties to the Purchased Contracts, all successors and assigns of the Purchaser, the Debtors and their affiliates and subsidiaries, the Purchased Assets, and any subsequent trustees appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order

confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Purchase Agreement or this Sale Order.

Transfer of Assets

7. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Sale Order, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser, and upon Closing shall be, free and clear of all Interests of any kind or nature whatsoever with all such Interests of any kind or nature whatsoever to attach to the net proceeds of the Sale (i.e., the Adjusted Purchase Price as defined in the Purchase Agreement) in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto.

8. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of the Purchased Assets, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets free and clear of all Interests of any kind or nature whatsoever.

9. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Interests in the Purchased Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Purchased Assets, then the Purchaser is authorized, on or after Closing, to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute

conclusive evidence of the release of all Interests in the Purchased Assets of any kind or, nature whatsoever subject to paragraph 7 hereof.

10. Notwithstanding anything to the contrary herein, the Purchased Assets do not include any goods of the Debtors which are in the possession of EDO Technical Services Operations ("EDO") or any assets in Lancaster, California as to which EDO asserts a statutory warehouseman's lien.

Assumption, Assignment, and Sale to Purchaser of Purchased Contracts

11. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtors' assumption, assignment and sale to the Purchaser, and the Purchaser's assumption on the terms set forth in the Purchase Agreement, of the Purchased Contracts identified on **Exhibit B** hereto is approved, and the requirements of section 365(b)(i) of the Bankruptcy Code with respect thereto are deemed satisfied. In accordance with the terms of the Asset Purchase Agreement and all other applicable provisions of the Bankruptcy Code, the Debtors and the Purchaser retain the right to modify **Exhibit B** to add or delete executory contracts or unexpired leases or otherwise amend such exhibit at any time through the Closing.

12. The Debtors are authorized and directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, conditioned and effective upon the Closing of the Sale, the Purchased Contracts free and clear of all Interests of any kind or nature whatsoever and (ii) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Purchased Contracts and Assumed Liabilities to the Purchaser.

13. With respect to the Purchased Contracts: (i) each Purchased Contract is an executory contract or unexpired lease of the Debtors under section 365 of the Bankruptcy Code; (ii) the Debtors may assume each Purchased Contract in accordance with section 365 of the Bankruptcy Code; (iii) the Debtors may assign each Purchased Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Purchased Contract that prohibit or condition the assignment of such Purchased Contract or allow the non-debtor party to such Purchased Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Purchased Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (iv) the Purchased Contracts shall be transferred and assigned to, and following the Closing of the Sale remain in full force and effect for the benefit of, Purchaser in accordance with their respective terms, notwithstanding any provision in any such Purchased Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer; (v) the Debtors are a party to each of the Assumed Contracts (including by reason of a prior acquisition of the original party to such Assumed Contracts) and have the legal authority to convey all of the Debtors' rights in such Assumed Contracts to Purchaser or the Successful Bidder; (vi) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Purchaser of each Purchased Contract have been satisfied; and (vii) upon Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract.

14. The Cure Amounts set forth on Exhibit B are the true, correct, final, and fixed amounts, and are the only amounts that are required to be paid upon assumption of the Purchased Contracts pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code. The Purchaser is authorized and directed to pay such amounts under sections 105, 363(b), and 365 of the Bankruptcy Code and the terms of the Asset Purchaser Agreement (including without limit section 2.2(c)). The Cure Amounts shall not be subject to further dispute or audit, including any based on performance prior to the time of assumption, assignment, and sale, irrespective of whether such Purchased Contract contains an audit clause.

15. Purchaser has demonstrated adequate assurance of future performance with respect to the Purchased Contracts and has satisfied the requirements of the Bankruptcy Code, including, without limitation, sections 365(b)(1) and (3) and 365(f)(2)(B) to the extent applicable.

16. There shall be no rent accelerations, assignment fees, increases or any other fees charged to Purchaser as a result of the assumption, assignment and sale of the Purchased Contracts. The validity of the assumption, assignment and sale to Purchaser shall not be affected by any dispute between any of the Debtors or their affiliates and another party to a Purchased Contract regarding the payment of any amount, including any cure amount under the Bankruptcy Code. The Purchased Contracts, upon assignment to Purchaser, shall be deemed valid and binding, in full force and effect in accordance with their respective terms.

17. Any party that may have had the right to consent to the assignment of its Purchased Contract is deemed to have consented to such assignment for purposes of section

365(e)(2)(A)(ii) of the Bankruptcy Code and otherwise if such party failed to object to the assumption and assignment.

18. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, except as provided in this Sale Order, all parties to the Purchased Contracts are forever barred and enjoined from raising or asserting against Purchaser any assignment fee, default, breach, claim, or pecuniary loss, or condition to assignment, arising under or related to the Purchased Contracts existing as of the Closing under the Purchase Agreement or arising by reason of the Closing under the Purchase Agreement. Except as provided in the Purchase Agreement or this Sale Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, their property or their assets or estates.

Transfer of DIP Lender Protections

19. Consistent with the Purchase Agreement and the Bidding Procedures Order, Moseley shall be paid the following amounts by Purchaser or by the Sellers out of the funds deposited by the Purchaser with the Sellers: (a) the DIP Loan Obligations (as defined in the Bidding Procedures Order) within one (1) business day following entry of this Sale Order; and (b) the Topping Fee (as defined in the Bidding Procedures Order) within two (2) business days following entry of this Sale Order. Upon such payments, Moseley shall be deemed to have irrevocably assigned and transferred to Purchaser all of Moseley's rights, benefits, and priorities under and arising from the DIP Loan Agreement, the documents and other transactions contemplated thereby, and any orders of the Bankruptcy Court relating thereto (the

"Assignment"). The payments to Moseley contemplated herein shall result in Purchaser acquiring all of the rights, benefits, priorities, and protections already granted to Moseley as lender pursuant to the *Final Order (A) Authorizing Postpetition Financing and Granting Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 361, 362, and 364; (B) Authorizing Use of Cash Collateral; (C) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (D) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 552; and (E) Scheduling Interim and Final Hearings Pursuant to Bankruptcy Rule 4001*, dated as of July 1, 2005 (the "Final DIP Order"), entered in the Chapter 11 Cases, provided, however, Purchaser shall not be entitled to the Commitment Fee (as defined in the DIP Loan Agreement) or any Lender Expenses (as defined in the DIP Loan Agreement) that arose prior to the Assignment. Any funds of the Purchaser's used to pay the Topping Fee shall be construed as an administrative priority expense of the Sellers' estates under Sections 503(b) and 507(a)(1) of the Bankruptcy Code. The Assignment shall not affect the rights of Warburg Group (as defined in the Final DIP Order), including, without limitation, with respect to adequate protection or consent to use cash collateral. Upon the Assignment, Moseley shall have no further obligations under the Final DIP Financing Order, including without limitation, any obligations to satisfy the Carve Out Expenses (as defined in the Final DIP Financing Order).

Additional Provisions

20. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law and may not be avoided under section 363(n) of the Bankruptcy Code.

21. On the Closing of the Sale, all parties are authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release their Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

22. This Sale Order (i) shall be effective as a determination that, subject to paragraph 7 hereof, on the Closing, all Interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

23. Except as otherwise expressly provided in the Purchase Agreement, Purchaser shall have no obligation to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans) or any other payment to employees of the Debtors. Except as provided in the Purchase Agreement, Purchaser shall have no liability with respect to any collective bargaining agreement, employee pension plan, employee welfare or retention, benefit and/or incentive plan to which any Debtors are a party and relating to the Purchased Assets

(including, without limitation, arising from or related to the rejection or other termination of any such agreement), and Purchaser shall in no way be deemed a party to or assignee of any such agreement, and no employee of Purchaser shall be deemed in any way covered by or, a party to any such agreement, and all parties to any such agreement are enjoined from asserting against Purchaser any and all claims arising from or relating to such agreement. Any and all notices, if any, required to be given to the Debtors' employees pursuant to the Workers Adjustment and Relocation Adjustment Act (the "WARN Act"), or any similar federal or state law, shall be the sole responsibility and obligation of the Debtors and Purchaser shall have no responsibility or liability therefore.

24. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

25. All entities who are presently, or on the Closing may be, in possession of any or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing.

26. Except for the Assumed Liabilities or as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Sale Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets other than for the Assumed Liabilities. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Purchase Agreement, to the extent allowed by law, the Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have

no successor or vicarious liabilities of any kind or character including, but not limited to, any such liability that may be imposed by statute (e.g., under so-called "bulk-sale" laws) or any theory of antitrust, environmental, products liability, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing.

27. Under no circumstances shall the Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Purchased Assets of any kind or nature whatsoever. The sale, transfer, assignment, and delivery of the Purchased Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors. All Persons holding Interests against or in the Debtors or the Purchased Assets of any kind or nature whatsoever (including but not limited to, the Debtors and/or their respective successors, including any trustee's thereof, creditors, employees, unions, former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against the Purchaser, its property, its successors and assigns, or the Purchased Assets, as an alleged successor or otherwise, with respect to any Interest of any kind or nature whatsoever such Person or entity had, has, or may

have against or in the Debtors, their estates, officers, directors, shareholders, or the Purchased Assets. Following the Closing, no holder of an Interest in the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Interest, or any actions that the Debtors may take in their chapter 11 cases.

28. Nothing in this Order shall be construed to limit, in any fashion, the lawful regulatory and enforcement powers of the Federal Trade Commission.

29. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to the Purchaser, (ii) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (iii) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (iv) interpret, implement, and enforce the provisions of this Sale Order, (v) protect the Purchaser against (a) any of the Excluded Liabilities or (b) any Interests in the Debtors or the Purchased Assets, of any kind or nature whatsoever, attaching to the proceeds of the Sale, and (vi) resolve any disputes arising from the assumption, assignment, and sale of the Purchased Contracts to the Purchaser; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Purchase Agreement or this Sale Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such

matter; provided further however, that nothing in this Sale Order shall contravene any provisions in the Purchase Agreement concerning the processes for dispute resolution.

30. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale of the Purchased Assets to the Purchaser (including the assumption, assignment, and sale of any of the Purchased Contracts), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

31. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, and all parties in interest, the Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code or, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding, provided however, that the purchase price allocation in section 2.3 of the Purchase Agreement shall not be binding on the Committee.

32. The provisions of this Sale Order and the terms and conditions of the Purchase Agreement shall be binding upon, fully enforceable against and inure to the benefit of

any trustee, responsible officer or other fiduciary appointed in any of the Debtors' chapter 11 cases under any section of the Bankruptcy Code or any applicable law. Such binding effect is an integral part of this Sale Order.

33. The failure specifically to include any particular provisions of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

34. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or the interests of the Committee or the Warburg Group.

35. The stay of orders authorizing the (i) use, sale, or lease of property as provided for in Fed. R. Bank. P. 6004(g) and (ii) assignment of an executory contract or unexpired lease as provided for in Fed. R. Bank. P. 6006(d) shall not apply to this Sale Order, and this Sale Order is immediately effective and enforceable.

36. In accordance with section 5.4.2 of the Final DIP Financing Order and subject to all rights granted to the Committee in connection with such order, on the closing of an Asset Sale and payment of the Postpetition Debt (as defined in the Final DIP Financing Order), the Debtors are authorized and directed to pay to the Warburg Group the first \$8,000,000 from the net proceeds of the sale approved hereby in partial satisfaction of the principal amount of the Warburg Group Obligations (as defined in the Final DIP Financing Order), plus any and all

reasonable fees, costs, and expenses incurred by members of Warburg Group in connection with monitoring the case up to and including the closing of the sale, such fees, costs and expenses being subject to application to the Court pursuant to Section 506(b) of the Bankruptcy Code. Such payment together with interest at a rate equal to the prevailing interest rate available on a standard escrow account for the relevant period maintained at Wilmington Trust, NA shall remain subject to (a) Purchaser's priority and payment rights in the event any portion of the Postpetition Obligations (as defined in the Final DIP Financing Order) is subsequently reinstated, and (b) disgorgement in the event of a successful challenge to the validity, enforceability, priority and/or extent of the Warburg Group Obligations and/or the Warburg Group Liens (including without limitation any recharacterization, reclassification or subordination of the Warburg Group Obligations). In this regard, Warburg Pincus Private Equity VIII, L.P. has represented and warranted that it has assets in excess of \$100 million and has the financial wherewithal to comply with any disgorgement order.

37. The terms of the resolution of the objection to the Sale Motion filed by Winthrop Resources Corporation read into the record at the hearing are approved and incorporated herein.

38. No avoidance actions, including those under Sections 542-544, 547-551 and 553 of the Bankruptcy Code, shall be included as part of the Purchased Assets, except any avoidance actions that could be asserted against counterparties to the Purchased Contracts.

Dated: July 20, 2005



PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE