

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE**

In re: )  
 ) Case No. 3:16-bk-08624  
WERTHAN PACKAGING, INC., )  
 ) Chapter 11  
Debtor. )  
 ) Judge Harrison  
 )  
 )

**MOTION BY DEBTOR PURSUANT TO 11 U.S.C. §§ 363(B), (F), (K), AND (M), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (A) APPROVE THE SALE TRANSACTION PURSUANT TO THE ASSET PURCHASE AGREEMENT WITH GATEWAY PACKAGING COMPANY, LLC, FREE AND CLEAR OF CLAIMS, LIENS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVE THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (C) APPROVE PROCEDURES TO ESTABLISH CERTAIN CURE AMOUNTS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED UNDER THE APA; (D) APPROVE SALE AND BIDDING PROCEDURES; AND (E) SCHEDULE A SALE APPROVAL HEARING**

Werthan Packaging, Inc., (“Werthan” or the “Debtor”), as debtor in possession in the above-captioned Chapter 11 case, pursuant to sections 363 and 365 of title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), respectfully moves the Court for, among other things, entry of an order: (A) approving the sale transaction pursuant to the asset purchase agreement together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as may be amended, the “APA”),<sup>1</sup> a copy of which is attached hereto as Exhibit A (excluding exhibits and schedules thereto) with Gateway Packaging Company, LLC (“Gateway” or the “Stalking Horse Bidder”), free and clear of claims, liens, encumbrances, and

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the APA. The APA has templates of schedules and exhibits that may not be final. The Debtor may file revised schedules and Exhibits to the APA.

other interests; (B) approving the assumption and assignment of certain executory contracts and unexpired leases; and, (C) approve procedures to establish certain cure amounts for executory contracts and unexpired leases to be assumed as part of the APA; (D) approving sale and bidding procedures; and, (E) scheduling a sale approval hearing. In support of this Motion, the Debtor relies on the *Declaration of Gary Murphey, Chief Restructuring Officer of Werthan Packaging, Inc., in Support of Various First Day Relief* (the “Murphey Declaration”) and further states:

### **JURISDICTION**

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

### **BACKGROUND**

2. On December 4, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is authorized to continue to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors’ committee has been appointed in this Chapter 11 Case.

3. Werthan, based in White House, TN, is a leading supplier of multiwall paper packaging for the pet food industry. This sixth generation company has been an important part of the fabric of Nashville business since the late 1860s. At its height the company employed over 1,200 people at its long-standing home in North Nashville.

4. In 2010 the company began its move to a modern 184,000 sq. ft. facility in White House, Tennessee. During 2016, the company installed a new 10-color flexographic press, and was awarded the Safe Quality Food (SQF) certification. With these initiatives accomplished, the

nearly 100 associates of the upgraded company expected to grow its paper packaging business, as well as introduce plastic packaging and packaging for human food into its product mix.

5. Unfortunately, Werthan's business did not expand as quickly as hoped, and on September 20, 2016, the Debtor engaged Gary Murphey and his company, Resurgence Financial Services, LLC ("RFS"), as Chief Restructuring Officer of the Debtor (the "CRO") to assist with possible financing sources and possibly run a sale process for the Debtor's assets. In early November 2016, Werthan communicated with Gateway about a potential sale of Werthan's assets. Gateway operates in the same general business as Werthan, so Werthan believed Gateway to be a natural selection of an entity potentially interested in purchasing Werthan's assets. Shortly thereafter, Gateway and Werthan negotiated and executed a letter of intent that ultimately led to Gateway's agreement to purchase substantially all of Werthan's assets pursuant to the terms of the APA, to be accomplished in a Chapter 11 case (the "Sale").

6. The Debtor expects that the proceeds from the Sale will enable the Debtor to repay its secured creditors in full, pay all of the administrative expenses of the bankruptcy estate, and make a distribution to unsecured creditors. Additionally, if Gateway is the successful bidder, Werthan believes that Gateway may retain certain of Werthan's employees.

#### **RELIEF REQUESTED BY THIS MOTION**

7. By this Motion, the Debtor seeks entry of two related orders. First, the Debtor requests the expedited entry of an order (the "Sale Procedures Order") in the form attached hereto as Exhibit B, pursuant to 11 U.S.C. §§ 363 and FED.R.BANKR.P. 2002 and 6004, (i) authorizing and approving certain proposed procedures to govern the sale process and provide for the submission of any competing bids for substantially all the Debtor's assets and the form and manner of notices of (a) the hearing to consider authorization and approval of the sale, and

(b) the assumption and assignment of executory contracts and unexpired leases of personal property and of nonresidential real property (collectively, the “Leases”) pursuant to 11 U.S.C. § 365; and (ii) setting a hearing to consider the sale on December 27, 2016, with an objection deadline of December 22, 2016. Second, the Debtor requests entry of an order (the “Sale Order”), pursuant to 11 U.S.C. §§ 363(b), (f), and (m), and 365 and FED.R.BANKR.P. 6004 and 6006, authorizing and approving, among other things, (i) the sale of the Debtor’s assets pursuant to the APA among the Debtor and the Stalking Horse Bidder free and clear of liens, claims, encumbrances, and other interests (the “363 Transaction”), and (ii) the assumption and assignment of certain executory contracts and Leases of the Debtor.

#### **THE ASSET PURCHASE AGREEMENT**

8. Subject to approval and the submission of any higher or better offers, the Debtor has reached an agreement with the Stalking Horse Bidder (together with the Debtor, the “Parties”) as embodied in the proposed APA. The APA is the result of extensive, arm’s-length negotiations between the Parties.

9. The 363 Transaction, as embodied in the APA, contemplates that substantially all of the Debtor’s assets (the “Purchased Assets”), will be sold and transferred to the Stalking Horse Bidder, and that certain liabilities of the Debtor (the “Assumed Liabilities”) will be assumed by the Stalking Horse Bidder. Assets excluded from the Sale, which are defined in the APA, will be administered in the Chapter 11 case.

10. The purchase price for the Purchased Assets is equal to the sum of approximately \$7,264,463.00 cash, subject to certain reductions or increases based on the value of “Net Working Capital Assets.”

## **PROPOSED SALE PROCEDURES AND NOTICE**

11. The sale of the Purchased Assets pursuant to the APA is subject to higher or better offers. The APA provides certain terms and procedures (collectively, the “Sale Procedures”), attached hereto as Exhibit C, to govern the submission of any competing offers based upon the APA.

12. The Debtor also proposes pursuant to Bankruptcy Rule 2003(d) and 2002(1), that publication of the Sale Notice (the “Publication Notice”), substantially in the form attached hereto as Exhibit D, on or before December 12, 2016 (the “Mailing Deadline”) or as soon as practicable thereafter (i) once in: *The Daily Ledger*, and on the website and in any trade publication of the Paper Shipping Sack Manufacturers’ Association, Inc. (the trade association for the Debtor’s industry), be deemed proper notice to any other interested parties whose identities are unknown to the Debtor.

## **THE SALE PROCEDURES SHOULD BE APPROVED**

13. Good and sufficient cause exists to approve the Sale Procedures. The Sale Procedures are in the best interests of the Debtor and its economic stakeholders and other parties because they will enable the Debtor to realize the maximum value from the sale of the Purchased Assets. Additionally, the Sale Procedures include appropriate noticing procedures to ensure all parties in interest will receive adequate notice of all relevant information.

14. The expeditious nature of the proposed Sale Procedures is reasonable and justified. The Sale Procedures will provide an additional procedural safeguard and market check that will enable any potentially qualified interested parties with an opportunity to come forward and make a competitive bid.

15. The Debtor requests the Sale Procedures be approved as soon as possible and that the Sale be approved within thirty (30) after the Petition Date. Because of the high debt and losses in the Debtor's business (as detailed in the Murphey Declaration) and because of the Buyer's concern over the erosion of the Debtor's business, the Sale on the proposed timeline is the only reasonable chance to maximize the value of the Debtor's assets for the benefit of creditors and the only potential for the Debtor's employees to have ongoing employment. Moreover, in order to prevent a substantial deterioration of the Debtor's assets and business, the Sale must be accomplished within a short time, approximately 5 weeks. In addition, the APA contemplates that the Sale will occur in a Chapter 11 process, and the APA requires that the Sale Procedures be approved promptly, and that the sale be closed within forty (40) days after the Petition Date. The Sale simply cannot be closed in that time frame without expeditious approval of the Sale Procedures. If the Sale cannot be consummated within the APA's required time frame, there is little chance that the Debtor's business would survive, to the detriment of the Debtor's employees, vendors, customers, and creditors. Thus expedited approval of the Sale Procedures, and approval of the Sale within the next thirty (30) days, is in the best interests of the Debtor and its estate.

16. The Debtor submits that the notice set forth in the Sale Procedures constitutes good and sufficient notice of the Sale Procedures, the Sale Hearing and the 363 Transaction, and that no other or further notice need be given.

17. The notice to be provided via the Publication Notice is reasonably calculated to provide all parties in interest (including parties with contingent claims) with the necessary information concerning the Sale Procedures, the Sale Hearing, and the 363 Transaction.

Accordingly, the proposed Publication Notice is appropriate and sufficient under the circumstances.

18. The Sale Procedures are reasonable. For example, there are detailed requirements for qualified bids and there is a defined minimum overbid to ensure that bidding will benefit the Debtor's estate. Also, the proposed break-up fee of \$215,000 represents less than 3.0% of the aggregate purchase price, and the Expense Reimbursement of up to \$200,000 is also reasonable given the size and complexity of this deal.

19. The Sale Procedures are also necessary to induce the Stalking Horse Bidder to provide the Stalking Horse Bid, and therefore, the Debtor to obtain the numerous benefits of the Stalking Horse Bid. For example, the Stalking Horse Bidder was unwilling to enter into the Stalking Horse APA without the inducement of the Break-up Fee and the Expense Reimbursement. Without the Stalking Horse Bidder, the Debtor would not have the certainty of a minimum price for the Purchased Assets and, thus, the Expense Reimbursement and the Break-up Fee preserve the value of the Debtor's estate. *See Corradino v. Lamb (In re Lamb)*, No. 96-1-1099-DK, 2002 WL 31508913, at \*2 (Bankr. D. Md. Oct. 11, 2002) (stating that a break-up fee should be in the best interest of the estate and necessary); *see also Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 536-38 (3d Cir. 1999).

20. The Stalking Horse Bidder has proceeded in reliance upon the agreement by the Debtor to seek the Sale Procedures and in reasonable expectation that this Court would enter an order providing such relief. The Debtor submits that the Sale Procedures are a normal and oftentimes necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. In particular, protections such as the break-up fee and the Expense Reimbursement encourage a potential purchaser to invest the requisite time, money, and effort to

conduct due diligence and negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *See e.g., In re Hupp Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (without any reimbursement, “bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence”); *In re Marrose Corp.*, Nos. 89 B 12171 (CB) to 89 B 12179 (CB), 1992 WL 33848, at \*5 (Bankr. S.D.N.Y. Feb. 15, 1992) (stating that “agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”).

21. The Publication Notice, the Sale Notice (attached as Exhibit E), the Assumption and Assignment Notice (attached as Exhibit F), and the method of service described herein and provided in the Sale Procedures Order, fully comply with Bankruptcy Rule 2002 and constitute good and sufficient notice of the Sale Procedures, the Bid Deadline, the 363 Transaction, the assumption and assignment of executory contracts and Leases, the relevant objection deadlines, the Sale Hearing, and all matters related thereto. Accordingly, the Debtor requests that the Court approve the form and manner of such notices substantially in the form of Exhibits D through F that are attached.

### **SALE OF THE PURCHASED ASSETS**

22. In accordance with Bankruptcy Rule 6004(f)(1), sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that a public auction of the Purchased Assets in accordance with the proposed Sale Procedures will enable it to obtain the highest or best offer for the Purchased Assets, thereby



maximizing the value of assets, and is in the best interests of the Debtor and its creditors and other stakeholders.

23. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that the “trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To obtain court approval to sell property under section 363(b), the Debtor must show a “sound business purpose” for the proposed action. *Stephens. Indus, Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *see also Comm. of Equity Sec. Holders v. Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983). The “sound business purpose” test commonly considers four factors:

- (1) a sound business reason or emergency justifies a pre-confirmation sale;
- (2) adequate and reasonable notice of the sale was provided to interested parties;
- (3) the sale has been proposed in good faith; and
- (4) the purchase price is fair and reasonable.

*In re Barnhill's Buffet, Inc.*, No. 07-08948, 2008 Bankr. LEXIS 2864, at \*7 (Bankr. M.D. Tenn. Feb. 28, 2008) (citing *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991)). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp.* (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

24. If a valid business justification exists, the applicable principle of law embeds the debtor’s decision to sell property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the Debtors.” *Official Comm. of Subordinated Bondholders v. Integrated Res Inc.* (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*,

488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). A section 363 sale should be approved if the Court is satisfied that the debtor has exercised sound business judgment; provided adequate notice; the Stalking Horse Bidder has proceeded in good faith; and the purchase price is fair. *See Barnhill's Buffet*, 2008 Bankr. LEXIS 2864, at \*7; *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991). The 363 Transaction satisfies each condition.

25. It is well established that a Chapter 11 debtor may sell all or substantially all its assets pursuant to section 363(b) prior to continuation of a Chapter 11 plan, provided the court finds an articulated business reason for the proposed sale, such as exists in the cases at bar. *See Consumer News & Bus. Channel Piship v. Fin. News Network Inc. (In re Fin. News Network Inc.)*, 980 F.2d 165, 169 (2d Cir. 1992) (in considering sale outside plan of reorganization, bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the [Bankruptcy] Code”) (quoting *Lionel* at 1069); *see also Licensing By Paolo. Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997) (“A sale of a substantial part of a Chapter 11 estate . . . may be conducted if a good business reason exists to support it.”); *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. an re Chateaugay Corp.*, 973 F.2d 141, 144 (2d Cir. 1992) (approval of subsidiary’s sale of its assets before confirmation of plan was not abuse of discretion) *In re Chrysler LLC*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009); *In re General Motors Corp.*, 407 B.R. 463 (Bankr S.D.N.Y. 2009).

26. This Motion requests approval of a sale transaction that embodies the objective of the Debtor to implement the only available means to maximize the value of the Debtor’s

business and, by extension, potentially preserve jobs for the Debtor's employees through an immediate sale.

27. To maximize the value of the Debtor's assets and instill confidence on the part of consumers, employees, suppliers, and other stakeholders that the business will effectively continue, the proposed sale of substantially all of the Debtor's assets to the Stalking Horse Bidder under 11 U.S.C. § 363 must be expeditiously pursued and approved. Implementation of the sale will best serve the interests of the Debtor's economic stakeholders, as the only other alternative will result in little or no recoveries from the Debtor's assets as well as severe economic consequences for its employees, suppliers, and their communities.

28. The Debtor, in the exercise of sound business judgment, has concluded that the 363 Transaction is the only means of preserving value and continuing the business for the benefit of all economic stakeholders. A long Chapter 11 case for the Debtor is not an option. No long term debtor-in-possession financing is available to the Debtor.

29. As described in the Murphey Declaration, the Debtor in working with the CRO, concluded that the most likely route to maximizing the value of the assets would be through identifying strategic buyers that needed capacity. The Debtor's president, Don Belmont, is the past chairman of the Paper Shipping Sack Manufacturing Organization (PSSMA). Mr. Belmont was therefore knowledgeable about potential strategic investors who would have an interest in the Company. The Debtor also contacted its major customer (a Fortune 100 company with extensive industry contacts) regarding identifying potential strategic investors. By mid-October, the Debtor had identified likely candidates, prepared a Confidential Offering Memorandum, set up an on-line data room, and commenced contacting various strategic investors as identified by Mr. Belmont and the Debtor's major customer. Certain potential purchasers signed mutual non-

disclosure agreements, reviewed the Confidential Offering Memorandum and gained access to the online data room in October. Ultimately, Gateway submitted its letter of intent, and in the course of the subsequent negotiations, the Debtor concluded that the 363 Transaction is the only realistic way for the Debtor's assets to retain going concern value, provide potential employment opportunities, and continue business in the interests of all stakeholders. The Debtor does not believe that there is any viable alternative to the proposed 363 Transaction. The 363 Transaction is, in the Debtor's business judgment, the most realistic way for the Debtor to provide its employees and vendors with an opportunity to have an ongoing business.

**THE 363 TRANSACTION MUST BE FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, INCLUDING RIGHTS OR CLAIMS BASED ON SUCCESSOR OR TRANSFEREE LIABILITY**

30. It is appropriate that the Purchased Assets be sold free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, except those liabilities assumed by Stalking Horse Bidder or a successful bidder, with any such liens, claims, encumbrances, or interests to attach to the net sale proceeds of the Purchased Assets. Section 363(f) of the Bankruptcy Code provides:

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

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) 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).

31. To facilitate the sale of the Purchased Assets, it is necessary to authorize the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, or interests, including rights or claims based on any successor or transferee liability (other than the liabilities assumed by Stalking Horse Bidder or any other successful bidder) with any such liens, claims, encumbrances, or interests to transfer to and attach to the net proceeds of the sale with the same rights and priorities therein.

32. The liens, claims, encumbrances, and interests held by creditors whose claims do not constitute Assumed Liabilities may be satisfied by at least one of the five conditions set forth in section 363(f), and any such liens, claims, encumbrances, and interests will be adequately protected by transfer to and attachment to the net proceeds of the sale of the Purchased Assets, subject to any claims and defenses the Debtor may possess with respect thereto. The value of the sale proceeds will be sufficient to satisfy the lienholders in full, thus satisfying section 363(f)(3) of the Bankruptcy Code. In addition, certain holders of liens have consented, or may be deemed to have consented, to the sale of the Purchased Assets, thereby satisfying section 363(f)(2) of the Bankruptcy Code.

33. Thus, the sale of the Purchased Assets free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, except for the liabilities assumed by the Stalking Horse Bidder or any other successful bidder, will satisfy the statutory prerequisites of sections 363(f) of the Bankruptcy Code. Accordingly, the Purchased Assets should be transferred to the successful bidder free and clear of all liens, claims, encumbrances, and interests, except for Assumed Liabilities, with such liens, claims, encumbrances, and interests to be transferred to and attach to the net sale proceeds of the Purchased Assets.

**ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

34. The APA establishes procedures for assuming and assigning executory contracts or Leases to the Stalking Horse Bidder. Specifically, the Stalking Horse Bidder has the right to designate as an “Assumable Executory Contract,” any Executory Contract or Lease that it may want to assume, subject to the procedures set forth in the “Assumption and Assignment Procedures” attached hereto as Exhibit F. The Debtor requests the Court to approve the Assumption and Assignment Procedures, which include procedures for determining cure amounts for the executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder pursuant to the APA.

**GOOD FAITH STALKING HORSE BIDDER**

35. The Stalking Horse Bidder has been and is acting in good faith and is entitled to the protections of Section 363(m) of the Bankruptcy Code, which 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).

36. The terms and provisions of the APA were negotiated by the Debtor and the Stalking Horse Bidder at arm’s length, without collusion and in good faith. The APA represents substantial value to the Debtor and provides fair consideration for the Purchased Assets. Moreover, the Stalking Horse Bidder holds no interests in the Debtor, and the Stalking Horse Bidder has no affiliation with the Debtor or its officers or directors.

37. Accordingly, the Stalking Horse Bidder should be found to be acting in good faith and entitled to the protections afforded under section 363(m).

**REQUEST FOR RELIEF UNDER BANKRUPTCY RULES 6004(H) AND 6006(D)**

38. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED.R.BANKR.P. 6004(h). Any order approving the sale of the Purchased Assets in accordance with the Sale Procedures must be effective immediately upon entry of such order by providing that the fourteen-day stay shall not apply. As described above, absent a prompt approval and consummation of the 363 Transaction, the Purchased Assets will rapidly decline in value as wasting assets. Therefore, it is imperative that the Sale Order be effective immediately to permit the 363 Transaction to close without any delay. The fourteen-day stay under Bankruptcy Rule 6004(h) should be waived.

39. Bankruptcy Rule 6006(d) provides that an order authorizing the assignment of an executory contract or unexpired lease under section 365(f) is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise. FED.R.BANKR.P. 6006(d). Any order approving the sale of the Purchased Assets, which includes approving the assumption and assignment of the Assumable Executory Contracts to the Stalking Horse Bidder, must be effective immediately upon entry of such order by providing that the fourteen-day stay shall not apply. The exigent circumstances necessitating the prompt consummation of the 363 Transaction mandates that the Sale Order, the assumption and assignment of the Assumable Executory Contracts to the Stalking Horse Bidder be effective immediately upon entry. It is essential that the Sale Order be effective without any delay by providing that the fourteen-day stay under Bankruptcy Rule 6006(d) is waived.

## **NOTICE**

40. No trustee, examiner or creditors' committee has been appointed in this Chapter 11 Case. The Debtor has provided notice of this motion via email, fax, hand delivery or overnight mail to: (a) Gateway Packaging Company, LLC, c/o McDonald Hopkins, Attention David Agay (b) the Office of the United States Trustee for the Middle District of Tennessee; (c) the Internal Revenue Service; (d) the Tennessee Department of Revenue; (e) the Pension Benefit Guaranty Corporation; (f) all secured creditors; (g) the twenty-five largest unsecured creditors; (h) all known utility providers; (i) the U.S. Environmental Protection Agency; (j) the Tennessee Department of Environment and Conservation; (k) the Metropolitan Government of Nashville (l) the City of White House, Tennessee; (m) Robertson County, Tennessee; (n) Sumner County, Tennessee; (o) lessors of real and personal property; and (p) known counterparties to contracts that may be assumed. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

41. The cost of mailing notice to all creditors in this Chapter 11 Case would be extremely expensive, and would not, in the Debtor's view, confer any substantial benefit on the Debtor, its estate, its creditors, or other parties-in-interest. Accordingly, and in light of the relief requested, the Debtor respectfully requests that any further notice of the Hearing and of the relief requested, other than as provided for in the Motion, be dispensed with and waived.

## **NO PRIOR REQUEST**

42. No prior request for the relief sought herein has been made to this or any other court.



**CONCLUSION**

WHEREFORE the Debtor respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

/s/ Paul G. Jennings  
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