

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) Case No. BK07-80482
)
BRANDEIS LOFTS, L.L.C.) Chapter 11
)
Debtor.)

ORDER UNDER 11 U.S.C. §§ 105(a), 363 and 365
AND FEDERAL BANKRUPTCY RULES 2002, 6004 AND 6006
AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY ALL OF
THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES AND THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES

This matter is before the Court upon the Motion dated December 24, 2007, as amended December 28, 2007, (the "Motion") of Brandeis Lofts, L.L.C. (the "Debtor"), seeking the entry of an Order by this Court pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Rules 2002, 6004, 6006 of the Federal Rules of Bankruptcy Procedure authorizing and approving:

- (a) The sale (the "Sale") of substantially all of the Debtor's assets, more generally known as the Brandeis Building and adjacent Parking Structure generally located at 210 South 16th Street, Omaha, NE 68102, together with the right to assume and assign any Executory Contracts and Unexpired Leases (the "Assets"), free and clear of all mortgages, liens, pledges, charges, security interests, interests under conditional sale, encumbrances, options, rights of first refusal, judgments, claims, demands, successor liability (including environmental), defects or adverse claim, interests or liabilities (whether known or unknown, accrued, absolute, contingent or otherwise, in on or arising from the Assets, but not free and clear of the interests existing under the Declaration of Condominium Ownership of Brandeis Building Condominiums (recorded August 31, 2005 as Instrument No. 2005108215 in the

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office of the Register of Deeds of Douglas County, Nebraska, as may be amended from time to time) or any rights of tenants that may exist under that certain Lease (Penthouse) dated July 30, 1981 by and between Morton Braiker and Clare Braiker, Trustees as landlord and The Brandeis Investment Company, as tenant, as multiply amended and assigned, easements, zoning restrictions, covenants of record and other non-monetary property interests created by substantive State law (all such claims and interests, other than the excluded interests, are hereinafter collectively referred to as the "Interests"), with the same attaching to the proceeds of the Sale pursuant to the terms of an asset purchase agreement ("Agreement") dated December 22, 2007, by and between Debtor and Townsend Investments II, LLC, ("Buyer");

- (b) The assumption and assignment of certain executory contracts and unexpired leases more specifically identified by the Debtor at the Sale Hearing or afterward (the "Assumed Contracts"); and
- (c) The assignment of the TIF Note, as that term is more fully defined and described herein;

The Court has examined and reviewed the Debtor's Motion and the exhibits attached thereto and has been fully advised of the relevant facts and circumstances surrounding the Motion. The Court has examined and reviewed the Objection filed by the Weitz Company, L.L.C. (Filing No. 111) and the Objection of Maxcom Real Estate Services, LLC (Filing No. 110) and received evidence with respect to the Objections. A hearing was held on the Motion and the Objections on January 8, 2008. Appearances of counsel were entered on behalf of Debtor, the Bank, Weitz,

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Maxcom and Buyer. Evidence was adduced and arguments of counsel were heard. The Objection of Maxcom was overruled on the record. The Court has been advised that The Weitz Company, L.L.C. ("Weitz") has resolved its Objection as provided in this Order and Weitz consents to the entry of the Order authorizing the Sale upon the condition that any proceeds received by Great Western Bank ("Bank"), or credited by Bank against its claim as hereinafter provided (other than those proceeds received or credited in payment of Bank's Debtor-in Possession loans ("DIP Loans")), will remain subject to such lien rights of Weitz as may be determined in the pending adversary proceeding. The Bank has advised the Court that this resolution is acceptable. Moreover, sufficient notice has been given in accordance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and Local Bankruptcy Rules and that based on the foregoing and the record presented to the Court, THIS COURT HEREBY FINDS THAT:

- A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
- B. The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of the United States Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
- C. Proper, timely, adequate and sufficient notice of the Motion has been provided, and such notice was good, sufficient, and appropriate under the particular circumstances, and no other or further notice of the Motion is or shall be required.
- D. No Trustee has been appointed in this case and the Debtor has remained in possession of its assets pursuant to 11 U.S.C. §§ 1107 and 1108.

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- E. The Debtor (i) has full power and authority to sell and transfer the Assets, (ii) has all of the power and authority necessary to consummate the sale of the Assets to the Buyer; and (iii) has taken all action necessary to authorize and approve the results of the Sale, and no further actions, consents or approvals are required for the Debtor to consummate such transactions.
- F. Approval of the Sale of the Debtor's Assets to the Buyer at this time is in the best interests of the Debtor, its creditors, its estate, and other parties in interest.
- G. The Debtor has demonstrated both (i) good, sufficient, and sound business purpose and justification, and (ii) compelling circumstances for the Sale pursuant to 11 U.S.C. § 363(b) under the terms of the plan of reorganization, which has been confirmed herein.
- H. 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:
- (a) All entities known to have expressed an interest in a transaction with respect to the Assets or a portion thereof during the past six (6) months,
 - (b) All entities known to have asserted any lien, claim, interest or encumbrance in or upon the Assets;
 - (c) 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;
 - (d) The United States Trustee's office;
 - (e) The Internal Revenue Service; and
 - (f) All entities on the Service list for this case.

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- I. The Agreement was reached by the parties without collusion, in good faith, and from an arm's length bargaining positions. The Buyer is a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Order. Neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the Sale to be avoided under 11 U.S.C. § 363(n).
- J. The consideration provided by the Buyer for the Assets based on the Agreement: (i) is fair and reasonable; (ii) is the highest and best offer for the Assets; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia, and it is unlikely that the Debtor and the Buyer would consummate the Sale if all claims, including successor liability, related to the Assets were not extinguished pursuant to Section 363(f) of the Bankruptcy Code upon the transfer to the Buyer.
- K. The Sale must be approved and consummated promptly in order to preserve the value of the Debtor's estate.
- L. The transfer of the Assets to the Buyers will be a legal, valid, and effective transfer of the Assets, and will vest the Buyer with all right, title, and interest of the Debtor to the Assets free and clear of all Interests including any that:

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- (a) Purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor's or the Buyer's interest in the Assets, or any similar rights,
 - (b) Give rise to successor liability, and
 - (c) Relate to taxes or any other liabilities arising under or out of, in connection with, or in any way relating to, the Assets, the Debtor or its operations or activities prior to the Closing Date.
- M. The Debtor may sell the Assets free and clear of all Interests because one or more of the standards set forth in 11 U.S.C. § 363(f) has been satisfied.
- (a) Those holders of liens, claims or encumbrances who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2).
 - (b) Those holders of liens, claims or encumbrances and the non-debtor parties to the Assumed Contracts and Unexpired Leases could be forced, in a legal or equitable proceeding, to accept money satisfaction of such interest within the meaning of 11 U.S.C. § 363(f)(5).
 - (c) The construction lien rights of Weitz, if any, shall be deemed to attach to the proceeds from the Sale of Assets held by Bank as provided in this Order.
- N. The claim of Weitz is adequately protected by having its interest, if any, attach to the cash proceeds of the Sale as provided in Section 6 below. Any other holder of a lien claim or encumbrance against the Assets, has not sought to enforce such interest

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through an adversary proceeding, did not object to the sale or to the disposition of the proceeds of the sale and has no claim to the proceeds of the sale.

O. On June 8, 2007, an adversary proceeding was filed in this matter by Weitz against Bank to determine priority of liens and for equitable subordination (the "Adversary Proceeding"). Pursuant to the Adversary Proceeding Weitz, on behalf of itself and all its subcontractors, asserts a priority lien against the proceeds from the Sale of the Assets or, in the alternative, seeks to have any lien interest of the Bank equitably subordinated to the lien rights of Weitz and construction lienholders pursuant to 11 USC § 510(c). Until such time as the Adversary Proceeding has been determined by final order of this Court, disputes exist with respect to the priority of liens claimed against the Assets and the proceeds from the Sale of Assets (the "Proceeds"). The Bank and Weitz have agreed that the Sale can proceed and those Proceeds that are received by the Bank, or credited against the Bank's claim against the Debtor as hereinafter provided, other than those proceeds received or credited in payment of the DIP Loans, are subject to the lien rights, if any, of Weitz to be determined in the Adversary Proceeding.

P. In that the Bank will be providing interim financing for the Buyer for the purchase, the Proceeds of the Sale, other than the items to be paid from the Proceeds as referenced in Section 4 (a), (b) and (c) below, may be credited by Bank against the amount owed to the Bank on the DIP Loans and the upon Bank's other claims against Debtor without such Proceeds having to be paid into Court. Sufficient Proceeds will be paid into the Debtor-in-Possession bank account to satisfy the amounts due under Section 4 (c).

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Q. Counsel for the Bank has acknowledged that the Proceeds to be received by the Bank from the Sale, other than those proceeds received or credited in payment of the DIP Loans, shall be subject to the lien rights, if any, of Weitz as asserted in the Adversary Proceeding the same as if such Proceeds were paid into the Court subject to the lien rights of Weitz and the Bank. In the event a final non-appealable order is entered in favor of Weitz in the Adversary Proceeding and against the Bank, the Bank shall be obligated to pay to Weitz from the Proceeds the amount sufficient to satisfy the judgment of the Weitz lien which is found by the Court to have priority over the lien of the Bank's deed of trust but in no event shall the liability of the Bank exceed the amount of Proceeds received by the Bank, after payment of the DIP Loan. The closing and sale of Assets to the purchaser and the payment or credit of Proceeds to the Bank shall not in any manner adversely affect, impair or waive any defense or right of recovery on the part of either Weitz or the Bank.

R. The Bank shall not be required to segregate or escrow the Proceeds from the Sale of Assets. However, the fact that Proceeds are commingled with the general assets of the Bank shall not in any manner impact, impair, release or impede the lien rights, if any, of Weitz to such Proceeds as asserted in the Adversary Proceeding.

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted subject to the terms of this Order. Any and all objections to the Motion or the relief requested therein that have not been withdrawn, waived, overruled, or settled, and all reservations of rights included therein, are hereby overruled on the

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merits. The Objection of Weitz has been resolved as provided in this Order. The Objection of Maxcom Real Estate Services, LLC is overruled.

Authorization to Perform

2. The Debtor is authorized and directed to perform its obligations and to take all necessary and appropriate actions to consummate the Sale of its Assets pursuant to the Agreement and the terms and conditions thereof.
3. The Debtor is authorized and directed to execute and deliver, and empowered to perform under, consummate and implement the sale of its Assets pursuant to the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the terms of the Agreement, and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to Buyer or reducing to possession, the Assets, or as may be necessary or appropriate to the performance of the obligations under the Agreement, including the payment by Debtor from the sale proceeds of any cure amounts due to other parties under the Assumed Contracts, without further order of the Court.

Transfer of Assets

4. At closing of the Sale under the Agreement shall be conducted by the title company as escrow agent ("Escrow Agent") and the following payments shall be made, in the order presented, from the Sale Proceeds, to the extent thereof:

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(a) Commissions payable to NP Dodge Co. as the broker pursuant to a listing agreement previously approved by Order of the Court shall be paid directly by the Escrow Agent to NP Dodge Co. at the Closing of the Sale;

(b) Closing costs, cure amounts and prortations of Debtor as the seller pursuant to the Agreement shall be paid directly by Escrow Agent at the Closing of the Sale to the entities entitled to such payments;

(c) Administrative Expenses as of the Closing Date by check or wire transfer from Escrow Agent to the Debtor in Possession bank account;

(d) All unpaid DIP Loan balances as of the Closing date shall be paid to Bank by wire transfer from Escrow Agent or shall be satisfied by Bank credit if Bank provides the financing to Buyer for the Sale;

(e) All remaining Proceeds shall be paid to Bank by wire transfer from Escrow Agent or shall be paid by Bank credit to be applied against Bank Loan balance as of the Closing Date if Bank provides the financing to Buyer for the Sale. These Proceeds paid to or credited to the Bank shall remain subject to the lien interest and claims of Weitz as asserted in the Adversary Proceeding and shall be subject to payment by the Bank in the event the Adversary Proceeding is determined in favor of Weitz by a final, non-appealable order.

In that the Bank is providing interim financing for the purchase of the Assets, payment of the amounts referred to in subsection 4(d) and (e) above may be made by the Bank crediting its claim against the Debtor for the DIP Loan Balance and the Bank Loan

Balance

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5. Pursuant to 11 U.S.C. §363(f), the Assets shall be transferred to the Buyer, and upon consummation of the sale of the Assets pursuant to the Agreement (the "Closing"), shall be free and clear of all Interests, except as expressly provided herein. The amount to be paid by the Buyer under the Agreement at Closing shall be paid and disbursed in accordance with the requirements of Section 4 above, and at once following Closing, Buyer is absolved of all further responsibility with respect to the payment and application of such funds. Buyer shall have no responsibility to Debtor or its creditors following Closing. Debtor is authorized and directed to, upon the Closing of the Sale of the Assets, to pay, or to authorize payment of, the Proceeds of the Sale in the manner specified above, subject to the lien rights, if any, of Weitz to the Proceeds to be received or credited by the Bank (other than in payment of the DIP Loans) pending resolution of the claims asserted by Weitz in the Adversary Proceeding.
6. Upon completion of the Sale the lien rights of the Bank and Weitz shall attach to the Proceeds of the Sale paid to or credited by Bank, other than those proceeds received or credited in payment of the DIP Loans. Such portion of the Proceeds from the Sale of Assets received by or payable to Bank, or credited by Bank, shall remain subject to the lien rights, if any, of Weitz as asserted in the Adversary Proceeding the same as if the Proceeds had been paid into the Court or placed into escrow subject to the lien rights of Weitz and the Bank. Such portion of the Proceeds received by the Bank shall remain subject to the lien rights of Weitz, if any, until such time as a final Order has been entered determining the respective rights of Weitz and the Bank to that portion of the Proceeds in the Adversary Proceeding.

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7. Except as otherwise specifically provided by this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade, construction and other creditors, holding claims or interests of any kind or nature whatsoever against or in the Debtor or holding any Interest in the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Assets, the Debtor or its operations or activities prior to the Closing, or the transfer of the Assets to the Buyer, hereby are forever barred and estopped from asserting against the Buyer, its successors or assigns, its property, or the Assets, such persons' or entities' claims or interests.
8. Notwithstanding any provisions or applicable law to the contrary, concurrently with the closing of the Sale of Assets, the Tax Increment Note (the "TIF Note") executed by the City of Omaha (the "City") and held by the Debtor evidencing the City's obligations under the Tax Increment Financing Redevelopment Agreement between the City and the Debtor is forever transferred and assigned to the Buyer, along with any rights and obligations therewith, and such assignment shall be binding on the City and Buyer, their agents, transferees, assigns, officers, attorneys, affiliates and successors in interest.
9. Notwithstanding any conflicting provisions hereof, the sale of the assets to buyer shall be deemed to be WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND OR NATURE, except as set forth in the Agreement.

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Assumption and Assignment of Executory
Contracts and Unexpired Leases

10. This Sale Order shall operate as a determination that the provisions and requirements of 11 U.S.C. §365 with respect to Assumed Contracts have been satisfied and that the Debtor, having provided this Court with a list of the Assumed Contracts at the Sale Hearing, is hereby authorized to assume the same pursuant to 11 U.S.C. §365(a), which assumption shall be binding on any non-debtor party to the Assumed Contract, their insurers, agents, employees, representatives, assigns, past, present and future officers, members of the board of directors, stockholders, attorneys, subsidiaries, affiliates, predecessors in interest, and successors in interest.
11. Notwithstanding any provision in the Assumed Contracts, or in applicable law that prohibits, restricts, or conditions the assignment of the same, the Assumed Contracts are hereby forever transferred and assigned to the Buyer, having presented sufficient and adequate assurance of future performance of the Assumed Contracts to this Court at the Sale Hearing and such assignment shall be binding on any non-debtor party to the Assumed Contracts, its, agents, employees, representatives, assigns, transferees, past, present and future officers, members of the board of directors, stockholders, attorneys, subsidiaries, affiliates, predecessors in interest, and successors in interest.
12. Notwithstanding any provision in an Assumed Contract, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such Assumed Contract or a right or obligation under such Assumed Contract of an assignment, such Assumed Contract right, or obligation may not be terminated or

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modified under such provision because of the assumption or assignment of such contract or lease by the Debtor.

13. Each Assumed Contract assigned hereunder, and the rights and obligations thereof, shall remain in full force and effect and shall inure to the benefit of the Buyer any non-debtor party to the Assumed Contracts and shall be binding on the non-debtor party, its insures, agents, employees, representatives, assigns, transferees, past, present and future offices, members of the board of directors, stockholders, attorneys, subsidiaries, affiliates, predecessors in interest, and successors in interest not withstanding any provision of the Assumed Contracts to the contrary.

14. As of the date of this Order, the assumption and assignment of the Assumed Contracts authorized hereunder relieves the Debtor, its, agents, employees, representatives, assigns, transferees, past, present and future offices, members of the board of directors, stockholders, attorneys, subsidiaries, affiliates, predecessors in interest, successors in interest and the estate from any liability whatsoever arising from any breach of an Assumed Contract occurring after the entry of this Order pursuant to 11 U.S.C. §365(k).

Additional Provisions

15. The consideration provided by the Buyer shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The

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consideration provided by the Buyer for the Assets is fair and reasonable and may not be avoided under Section 363(n) of the Bankruptcy Code.

16. On the Closing Date of the Sale, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its liens, claims or other interests in the Assets, if any, as such liens, claims or other interests may have been recorded or may otherwise exist and to execute and deliver any documents to facilitate the assignment of the Assumed Contracts and TIF

Note as needed or required.

17. This Sale Order: (i) shall be effective as a determination that, as of the Closing, all Interests of any kind or nature whatsoever existing as to the 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, registrars of internet domain names 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 Assets; and (iii) shall be effective as a determination that the lien rights, if any, of Weitz shall continue in the Proceeds from the Sale of Assets until final Order in

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the Adversary Proceeding which determines the rights and lien priority between Weitz and Bank.

18. Each and every federal, state, and local governmental agency or department, registrar of internet domain names and any other person or entity is hereby requested to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

19. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing liens, claims or other interests in the Debtor or the Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims or other interests which the person or entity has with respect to the Debtor or the Assets or otherwise: (i) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets; and (ii) the Buyer is hereby authorized 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 Assets of any kind or nature whatsoever.

20. All entities who are presently, or at the time of the Closing may be, in possession of some or all of the Assets are hereby directed to surrender possession of the Assets to the Buyer on the Closing Date.

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21. The Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Assets or otherwise. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein, the Buyer shall not be liable for any claim against the Debtor or any of its predecessors or affiliates, and the Buyer shall have no transferee liabilities of any kind or character whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor 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 Assets, the Debtor or its operations or activities prior to the Closing, other than real estate taxes becoming delinquent in the year Closing of the Sale occurs, which will be prorated between Debtor and Buyer as of the date of Closing.

22. Under no circumstances shall the Buyer be deemed a successor of or to the Debtor for any claims or interest against or in the Debtor or to any of the Interests in the Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets shall not be subject to any claims or any of the Interests, and any such claims or Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtor. All persons holding claims or interests against or in the Debtor or holding any of the Interests in the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, enjoined and estopped from asserting, prosecuting, or otherwise pursuing such claims against or interests of any kind or nature whatsoever against the Buyer, its property, its successors and assigns, or the

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Assets with respect to any claims or interest of any kind or nature whatsoever that such person or entity had, has, or may have against or in the Debtor, its estate, officers, directors, shareholders, or the Assets. Following the Closing Date, no holder of a claim or interest in the Debtor shall interfere with the Buyer's title to or use and enjoyment of the Assets based on or related to such claim or interest, or any actions that the Debtor may take in its Chapter 11 case.

23. This Court retains jurisdiction to:

- (a) Compel delivery of the Assets to the Buyer
- (b) Resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein,
- (c) Interpret, implement, and enforce the provisions of this Sale Order, and
- (d) Protect the Buyer against any claims and interests in the Debtor or against any claim or interest in the Assets, of any kind or nature whatsoever, attaching to the proceeds of the Sale, and
- (e) Resolve the Adversary Proceeding and determine the rights and priority claims to those Proceeds from the Sale of Assets received by the Bank (other than the Proceeds paid or credited on the DIP Loans) as asserted in the Adversary Proceeding between Weitz and the Bank and to enforce any judgment that may be rendered.

24. Nothing contained in any plan of reorganization or liquidation confirmed in this case or any order of this Court confirming such plan shall conflict with or derogate from the Agreement or the terms of this Sale Order.

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25. The transfer of the Assets to Buyer shall not subject the Buyer to any liability with respect to the Assets, the Debtor or its operations or activities prior to the Closing or by reason of such transfer under the law's of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability. Buyer's obligation, if any, under the so-called "bulk-sale" laws, whether established under local, state or federal law or regulation, is hereby waived.
26. The transactions contemplated by the Agreement are undertaken by the Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, any reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyer, unless such authorization is duly stayed pending such appeal. In the absence of a stay pending appeal, if the Buyer elects to close at any time after entry of this Sale Order, then, with respect to the Sale, the Buyer is a purchaser in good faith of the Assets, and is entitled to all of the protections of § 363(m) of the Bankruptcy Code if this Sale Order or any authorization contained herein is reversed or modified on appeal.
27. The terms and provisions of this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, and its creditors, the Buyer, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting claims against or interests in the Assets to be sold to the Buyer pursuant to the Agreement, notwithstanding any subsequent

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appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

28. The Agreement and any related agreements, documents or other instruments, including the list of Assumed Contracts, 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 Debtor's estate.

29. This Sale Order shall be effective and enforceable immediately upon entry. The stay otherwise imposed by Federal Rule of Bankruptcy Procedure 6004(g) is waived. Time is of the essence in closing the transaction and the Debtor and the Buyer intend to close the Sale as soon as possible. Therefore, any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay or risk their appeal being foreclosed as moot.

30. The provisions of this Sale Order are nonseverable and mutually dependent.

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Dated this 17th day of January, 2008.

s/ Thomas L. Saladino
United States Bankruptcy Judge

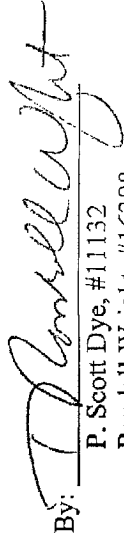
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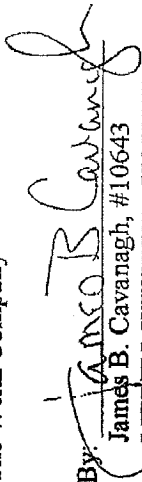
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