

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Bank of America		03/06/2008	National Banking Association: MASSACHUSETTS

**RECEIVING PARTY DATA**

Name:	Fortunoff Fine Jewelry & Silverware, LLC
Street Address:	70 Charles Lindbergh Blvd.
City:	Uniondale
State/Country:	NEW YORK
Postal Code:	11553
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE

**PROPERTY NUMBERS Total: 7**

Property Type	Number	Word Mark
Registration Number:	1634537	FORTUNOFF
Registration Number:	1519572	AVIGNON
Registration Number:	1420819	FORTUNOFF
Registration Number:	1246875	F
Registration Number:	1065966	THE SOURCE
Registration Number:	1044488	FORTUNOFF, THE SOURCE
Registration Number:	0881240	FSS

**CORRESPONDENCE DATA**

Fax Number: (214)981-3400  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 214-981-3308  
 Email: jchester@sidley.com  
 Correspondent Name: Julia M. Chester  
 Address Line 1: 717 N. Harwood

CH \$190.00 1634537

Address Line 2: Suite 3400  
Address Line 4: Dallas, TEXAS 75201

ATTORNEY DOCKET NUMBER:	38207-30020
NAME OF SUBMITTER:	Julia M. Chester
Signature:	/Julia M. Chester/
Date:	03/10/2008

**Total Attachments: 24**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
FORTUNOFF FINE JEWELRY AND : Case No. 08-10353 (JMP)  
SILVERWARE, LLC, et al. : :  
: :  
Debtors. : Jointly Administered  
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**ORDER UNDER 11 U.S.C. §§ 105(a), 363 AND 365 AND  
FED. R. BANKR. P. 2002, 6004 AND 6006 AUTHORIZING AND APPROVING (A) THE  
SALE OF ASSETS FREE AND CLEAR OF LIENS AND OTHER INTERESTS AND (B)  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES TO SUCCESSFUL BIDDER(S) AT AUCTION**

Upon the motion (the "Motion")<sup>1</sup> of the Debtors for an order, under Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006, authorizing and approving the proposed sale of substantially all of the assets (the "Assets") of Fortunoff Fine Jewelry and Silverware, LLC, a Delaware limited liability company ("FFJS"), M. Fortunoff of Westbury, LLC, a Delaware limited liability company ("MFW"), and Source Financing Corp., a Delaware corporation (the "SFC", and together with FFJS and MFW, the "Sellers" or the "Debtors"), to H Acquisition, LLC, a Delaware limited liability company (the "Buyer"), pursuant to that certain Asset Purchase Agreement, dated February 4, 2008, by and among the Sellers, a copy of which is attached hereto as Exhibit A (as amended on February 20, 2008<sup>2</sup> and on March 3, 2008<sup>3</sup>) (the "Agreement"); the Court having considered the Motion and the Agreement, objections thereto, the statements of counsel and any testimony or offer of proof as to testimony on the record at the hearing on February 28, 2008 (the "Sale Hearing"), at which time all

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Agreement.

<sup>2</sup> The amendment dated February 20, 2008 is attached as Exhibit B.

<sup>3</sup> The amendment dated March 3, 2008 (the "Second Amendment") is attached as Exhibit C.

interested parties were offered an opportunity to be heard with respect to the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Sellers, their bankruptcy estates, their creditors and other parties-in-interest; and after due deliberation and good cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:<sup>4</sup>

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

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006.

C. **Notice.** As evidenced by the affidavits of service filed with this Court and based upon the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing and the transactions set forth in the Agreement (the "Transaction"), including the assumption and assignment of the Assumed Contracts and Cure Amounts with respect thereto, has been provided in accordance with Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006; (ii) it appearing that no other or further notice need be provided; (iii) such notice was and is good, sufficient and appropriate under the circumstances; and (iv) no other or further notice of the Motion, the Auction, the Sale Hearing or the Transaction (including the assumption and assignment of the Assumed Contracts), is or shall be required.

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<sup>4</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

D. **Opportunity to Object.** A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been given, in light of the circumstances, to all interested persons and entities, including the following: (a) the U.S. Trustee; (b) counsel for the agents under the Debtors' prepetition credit facilities; (c) counsel for the agent under the Debtors' proposed postpetition credit facility; (d) the parties included on the Debtors' list of thirty (30) largest unsecured creditors; (e) the members of the official committee of unsecured creditors (the "Creditors' Committee"), as well as counsel for the Creditors' Committee; (f) all parties known to be asserting a lien on any of the Debtors' Assets; (g) all counterparties to unexpired real property leases and executory contracts potentially to be assumed and assigned; (h) all entities known to have expressed an interest in acquiring any of the Assets; (i) the United States Attorney's office; (j) all state attorney generals in states in which it does business; (k) various federal and state tax and environmental authorities, including the Internal Revenue Service and the Environmental Protection Agency; (l) the Buyer and its counsel; and (m) all other parties that have filed a notice of appearance and demand for service of papers in the Debtors' chapter 11 cases under Bankruptcy Rule 2002 as of February 5, 2008. A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been given.

E. **Corporate Authority.** The Debtors (i) have full corporate power and authority to execute the Agreement and all other documents contemplated thereby and the Debtors' sale of the Assets has been duly and validly authorized by all necessary corporate action, (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement, (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated

thereby, and (iv) no consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate such transactions.

F. **Sale in Best Interests.** Good and sufficient reasons for approval of the Agreement and the Transaction have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

G. **Business Justification.** The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the Transaction other than in the ordinary course of business under Bankruptcy Code section 363(b) before, and outside of, a plan of reorganization in that, among other things, the immediate consummation of the Transaction with the Buyer is necessary and appropriate to maximize the value of the Debtors' estates. Entry of an order approving the Agreement and all the provisions thereof is a necessary condition precedent to the Buyer's consummating the transactions set forth in the Agreement.

H. **Arm's-Length Sale.** The Agreement was negotiated, proposed and entered into by the Debtors and the Buyer without collusion, in good faith and from arm's-length bargaining positions. The Buyer is not an "insider" of the Debtors, as that term is defined in Bankruptcy Code section 101(31). Neither the Debtors, nor the Buyer have engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). Specifically, the Buyer has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders.

I. **Good Faith Purchaser.** The Buyer is a good faith purchaser of the Assets within the meaning of Bankruptcy Code section 363(m) and, is therefore entitled to all of the protections afforded thereby. The Buyer has proceeded in good faith in all respects in connection with this proceeding in that: (a) Buyer recognized that the Debtors were free to deal

with any other party interested in acquiring the Assets; (b) Buyer complied with the provisions in the Bidding Procedures Order; (c) Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; and (d) all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Transaction have been disclosed.

J. **Highest and Best Offer.** The Debtors conducted the Auction in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The Auction established in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity was given to any interested party to make a higher and better offer for the Assets. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

K. **Consideration.** The consideration constitutes reasonably equivalent value or fair consideration, as the case may be (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code), 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 Agreement represents a fair and reasonable offer to purchase the Assets under the circumstances of these chapter 11 cases. No other person or entity or group of entities, other than the Buyer, has offered to purchase the Assets for an amount that would give greater economic value to the Debtors'

estates. Approval of the Motion and the Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors, their estates and all other parties in interest.

L. **Free and Clear.** The Debtors are the sole and lawful owner of the Assets. The transfer of the Assets to the Buyer under the Agreement will be a legal, valid, and effective transfer of the Assets, and vests or will vest the Buyer with all right, title, and interest of the Debtors to the Assets free and clear of all liens, claims (as defined in Section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature whatsoever (collectively, the "Interests"), including, but not limited to, (i) those that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtors' interests in the Assets, or any similar rights and (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing Date. For avoidance of doubt, all Interests shall attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

M. **Free and Clear Findings Needed by Buyer and Its Lenders.** The Buyer has obtained a commitment letter for financing from Wells Fargo Retail Finance, LLC, UBS Loan Finance, LLC and certain other Lenders (collectively, "Buyer's Lenders"). Buyer and Buyer's Lenders assert that they would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Assets to the Buyer and the assumption and assignment of the



Assumed Contracts to the Buyer was not free and clear of all Interests of any kind or nature whatsoever, or if the Buyer would, or in the future could, be liable for any of the Interests.

N. No Liability Findings Needed by Buyer and Its Lenders. Buyer and Buyer's Lenders assert that they will not consummate the transactions contemplated by the Agreement unless the Agreement specifically provides, and the Bankruptcy Court specifically orders, that none of Buyer or its affiliates, members or shareholders or the Assets will have any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien or Excluded Liability.

O. Satisfaction of 363(f) Standards. The Debtors may sell the Assets free and clear of any 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. Each entity with an Interest in the Assets to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Order, consented to the Transaction or is deemed to have consented to the Transaction; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests who did not object to the Motion are deemed, subject to the terms of this Order, to have consented pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

P. No Fraudulent Transfer. The Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither Debtors nor Buyer is entering into the transactions contemplated by the Agreement fraudulently.

Q. Not a Successor. Buyer does not have a common identity of incorporators, directors or equity holders with any of the Debtors. The (i) transfer of the Assets to Buyer and (ii) assumption and assignment to Buyer of the Assumed Contracts, do not and will not subject Buyer to any liability with respect to the operation of the Debtors' businesses before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia. Buyer shall not have any liability to cure any default of the Debtors related to the Assets or Assumed Contracts.

R. Cure/Adequate Assurance. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtors and their estates, creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors. The Debtors have (i) to the extent necessary, cured or provided adequate assurance of cure, of any default existing prior to the date hereof with respect to the Assumed Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, 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 with respect to the Assumed Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B) and 365(f)(2)(A). The Buyer's promise to perform the obligations under the Assumed Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of 11 U.S.C. §§ 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B).

S. **Prompt Consummation.** The Transaction must be approved and consummated promptly in order to preserve the viability of the business subject to the sale as going concerns, to maximize the value of the Debtors' estates. Time is of the essence in consummating the Transaction.

T. **Personally Identifiable Information.** The Transaction may include the transfer of Personally Identifiable Information, as defined in Bankruptcy Code section 101(41A). No Consumer Privacy Ombudsman need be appointed under Code section 363(b)(1) because Buyer has agreed to adhere to any privacy policies applicable to the Debtors.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted.** The Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein.
2. **Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.
3. **Approval.** The Agreement and all of the terms and conditions thereto are hereby approved. The Debtors are hereby authorized and directed to (1) execute the Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Agreement, provided that such additional documents do not materially change its terms; (2) consummate the Transaction in accordance with the terms and conditions of the Agreement and the instruments to the Agreement contemplated thereby; and (3) take all other and further actions as may be reasonably necessary to implement the transactions contemplated by the Agreement.

4. **Free and Clear.** Except as expressly permitted or otherwise specifically provided for in the Agreement or this Order, pursuant to Bankruptcy Code sections 105(a) and 363(f), the Debtors' are authorized and directed to transfer the Assets to the Buyer and, as of the Closing Date, the Buyer shall take title to and possession of the Assets free and clear of all Interests of any kind or nature whatsoever, including but not limited to the Liens and Excluded Liabilities, with all such Interests to attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

5. **Valid Transfer.** As of the Closing Date, (a) the transactions contemplated by the Agreement effect a legal, valid, enforceable and effective sale and transfer of the Assets to Buyer, and shall vest Buyer with title to such assets free and clear of all Liens and Excluded Liabilities and (b) this Agreement and the transactions and instruments contemplated hereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any chapter 11 trustee of the Debtors and their applicable estates.

6. **General Assignment.** On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

7. **Injunction.** Except as expressly permitted by the Agreement or by this Order, all persons and entities, including, but not limited to, the Debtors, employees, former employees, all debt security holders, equity security holders, administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, lessors, warehousemen, customs brokers, freight forwarders, carriers and other parties in possession of any of the Assets at any time, trade creditors and all other creditors, holding Interests of any kind or nature whatsoever against or in the Debtors or in the Debtors' interests in the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Debtors' business before the Closing Date or with respect to any Interests arising out of or related to the Transaction, shall be and hereby are forever barred, estopped and permanently enjoined from commencing, prosecuting or continuing in any manner any action or other proceeding of any kind against Buyer, their property, their successors and assigns, alleged or otherwise, their affiliates or such Assets. Following the Closing Date, no holder of an Interest in the Debtors shall interfere with Buyer's title to or use and enjoyment of the Assets or the Buyer's Lenders' liens on such Assets based on or related to such Interest, or any actions that the Debtors may take in their chapter 11 case.

8. **Release of Interests.** Subject to Paragraphs 4 and 29 of this Order, this Order (a) shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Debtors or the Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) 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 Assets.

9. **Direction to Release Interests.** On the Closing Date and subject to the Interests attaching to the proceeds of the Sale as provided for in Paragraphs 4 and 29 of this Order, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist.

10. **No Successor Liability.** Neither Buyer nor its affiliates, successors or assigns shall, as a result of the consummation of the transaction contemplated by the Agreement, (a) be a successor to the Debtors or their estates; (b) have, de facto or otherwise, merged or consolidated with or into the Debtors or their estates; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Except for the Assumed Liabilities, the transfer of the Assets to Buyer under the Agreement shall not result in (i) Buyer, its affiliates, members, or shareholders, or the Assets, having any liability or responsibility for any claim against the Debtors or against an insider of the Debtors, (ii) Buyer, its affiliates, members, or shareholders, or the Assets, having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien or Excluded Liability, or (iii) Buyer, its affiliates, members, or shareholders, or the Assets, having any liability or responsibility to the Debtors except as is expressly set forth in the Agreement.

11. **Examples of No Successor Liability.** Without limiting the effect or scope of the foregoing, as a result of the closing of the transaction contemplated by the Agreement, the Buyer shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, 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 Acquired Assets prior to the Closing.

12. **Paymentech, LLC Agreement.** The agreement between M. Fortunoff of Westbury, LLC, Fortunoff Fine Jewelry & Silverware, LLC and Paymentech, LLC is an Assumed Contract with a Cure Amount of \$0. Paymentech has waived by an email to the Debtors its right to receive notice of the proposed assumption and assignment before the Sale Hearing.

13. **Assumption and Assignment of Assumed Contracts.** Under 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Transaction, the Debtors' assumption and assignment of the Assumed Contracts to the Buyer free and clear of all Interests pursuant to the terms set forth in the Agreement, as modified by the terms of any lease amendments reached with the respective counterparty, is hereby approved, and the requirements of 11 U.S.C. §§ 365(b)(1), 365(b)(3) and 365(f)(2) with respect thereto are hereby deemed satisfied. Each counterparty to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from raising or asserting against the Debtors, Buyer or Buyer's Lenders, or the property of any of them, any assignment fee, default, breach, claim, pecuniary loss, liability

or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing; provided, however, that the Buyer will be responsible for payment of, or receive the benefit of, all 2008 year end adjustments for common area maintenance, taxes, insurance and similar charges due in the ordinary course of business under the Leases to be assumed.

14. No Fees. There shall be no rent accelerations, assignment fees, increases (including advertising rates) or any other fees charged to the Buyer or the Debtor as a result of the assumption and assignment of the Assumed Contracts.

15. Anti-Assignment Provisions Unenforceable. Any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract (including, without limitation, the granting of a lien therein to Buyer's Lenders) or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect.

16. Adequate Assurance. The Buyer has provided adequate assurance of its future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor, and assignment to the Buyer of the Assumed Contracts have been satisfied.



17. Buyer and Assumed Contracts. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assumed Contracts.

18. Adjourned Leases. Consistent with the record of the Sale Hearing, the portion of the Motion relating to the assumption or rejection of the leases with El-Kam Realty Co. and Century Plaza LLC (together, the "Adjourned Leases") has been adjourned for 14 and 40 days, respectively, during which time the Buyer shall have the use of the respective premises subject to the payment of rent; provided, that such adjournment shall not apply to the leases with El-Kam Realty Co. for the premises commonly known as the 11<sup>th</sup> Floor of 3 W. 57<sup>th</sup> St., New York, New York, which lease, consistent with the record of the Sale Hearing, is an "Other Lease" being rejected pursuant to separate order of the Bankruptcy Court to be entered in these Cases.

19. Licenses and Permits. To the extent any license or permit is necessary for the operation of the business is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, Buyer shall apply for and obtain any necessary license or permit promptly after the Closing and such licenses or permits of the Debtors shall remain in place for the Buyer's benefit until new licenses and permits are obtained.

20. Cure. Pursuant to the Agreement, the Buyer is obligated to pay, to the extent set forth in the Agreement, all Cure Amounts relative to the contracts to be assigned on the Closing Date and the Debtors shall not have any obligation to pay, or any liability for, any such Cure Amounts. Cure Amounts payable by the Buyer under the Leases to be assumed shall be paid as promptly as possible after closing, but in no event later than 20 Business Days after the Closing Date. The payment of the applicable Cure Amounts (if any) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary

loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Contracts by the Debtor, constitute adequate assurance of future performance thereof. Except as set forth in paragraph 14, the non-Debtor party or parties to each Assumed Contract which is to be assigned on the Closing Date are enjoined and forever barred from asserting against Buyer, any of its affiliates or any of the Assets: (i) any fee, default, breach, claim or pecuniary loss arising under or related to the Assumed Contract existing as of the Closing Date or arising by reason of the Closing, and (ii) any objection to the assumption and assignment of such non-Debtor party's Assumed Contracts.

21. **Assumption of Welfare Claims.** Buyer shall assume liability for all claims under any Welfare Plan sponsored or maintained by the Company or any of its subsidiaries which are incurred by any Transferred Employees prior to or on the date that such Transferred Employee becomes a Transferred Employee and any other current or former employee of the Company (and covered dependents and COBRA beneficiaries).

22. **Binding Effect of Order.** This Order 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 Assets.

23. **Binding on Successors.** The terms and provisions of the Agreement and this Order shall be binding in all respects upon the Debtors, their estates, all creditors of (whether known or unknown) and holders of equity interests in, any Debtor, Buyer and its respective

affiliates, successors and assigns, and any affected third parties, including, but not limited to, all persons asserting Interests in the Assets and all non-Debtor counterparties to the Assumed Contracts, notwithstanding any subsequent appointment of any trustee of the Debtors under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. This Order and the Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Buyer, Buyer's Lenders and their respective successors and assigns.

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

25. **Good Faith**. The transactions contemplated by the Agreement are undertaken by Buyer without collusion and in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction (including the assumption and assignment of the Assumed Contracts) with Buyer, unless such authorization is duly stayed pending such appeal. Buyer is a good faith purchaser of the Assets, and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

26. **Fair Consideration**. The consideration provided by the Buyer to the Debtors pursuant to the Agreement for its purchase of the Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and under the laws of the United States, any state, territory, possession or the District of Columbia.

27. **Retention of Jurisdiction**. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and

enforce the terms and provisions of this Order and the Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to Buyer; (b) compel delivery of the Purchase Price or performance of other obligations owed to the Debtors; (c) interpret, implement and enforce the provisions of this Order and the Agreement; (d) to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transaction; and (e) protect Buyer against any Interests in the Debtors or the Assets of any kind or nature whatsoever, attaching to the proceeds of the Transaction.

28. **Surrender of Possession.** All entities that are presently, or on the Closing Date may be, in possession of some or all of the Assets in which the Debtors hold an interest hereby are directed to surrender possession of the Assets either to (i) the Debtors before the Closing Date, or (ii) to Buyer on the Closing Date.

29. **Fees and Expenses.** Any amounts payable by the Debtors under the Agreement or any of the documents delivered by the Debtors in connection with the Agreement, including, but not limited to the Breakup Fee or Expense Reimbursement, shall be paid in the manner provided in the Agreement without further order of this Court, shall be an allowed administrative claim in an amount equal to such payments in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code, and shall not be discharged, modified or otherwise affected by any reorganization plan for the Debtors, except by agreement with Buyer, its successors, or assigns.

30. **Sale Proceeds.** Any and all valid and perfected Interests in Assets of the Debtors shall attach to any proceeds of such Assets immediately upon receipt of such proceeds by the Debtors (or any party acting on the Debtors' behalf) in the order of priority, and with the same validity, force and effect which they now have against such Assets, subject to any rights,

claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto, and, in addition to any limitations on the use of such proceeds pursuant to any provision of this Order, except as required by this Order or the Agreement, no proceeds subject to an asserted Interest shall be used or disbursed by the Debtors without the express consent of the party or parties asserting an Interest therein or further order of the Court after notice (to all parties who have asserted an Interest in such proceeds) and a hearing, consistent with the requirements of the Bankruptcy Code.

31. **Use of Proceeds.**<sup>5</sup> The Purchase Price for the Assets under the Agreement shall be paid by Buyer as follows: (i) a portion of the Purchase Price in an amount set forth on a statement to be provided to Buyer prior to Closing shall be paid directly to Bank of America, N.A., in its capacity as the DIP Lender and as agent to the lenders under the Pre-Petition Credit Agreement, on behalf of the Sellers in repayment of outstanding principal, accrued and unpaid interest, fees and costs under the DIP Facility (including all Credit Support Obligations, as defined in the Credit Support Agreement) and under the Pre-Petition Credit Agreement; (ii) the balance of the Purchase Price shall be paid to the Sellers.

32. **Cancellation of Credit Support.** At the Closing, upon: (x) receipt by Bank of America, N.A. of the amount referred to in clause (i) and (y) Buyer having provided to Bank of America, N.A. cash collateral in an amount equal to 103% of the aggregate undrawn face amount of any issued and outstanding letters of credit under the DIP Facility or the Pre-Petition Credit Agreement, in each case as set forth on a statement to be provided to Buyer prior to Closing, or having provided back-to-back letters of credit in support of such outstanding letters

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<sup>5</sup> All capitalized terms not otherwise defined shall have the meanings ascribed to such terms in the Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363 And 364 (1) Approving Post-Petition Financing, (2) Authorizing Use Of Cash Collateral, (3) Granting Liens And Providing Superpriority Administrative Expense Status, (4) Authorizing Payment Of Claims Of Pre-Petition Secured Lenders, (5) Modifying Automatic Stay, And (6) Setting Final Hearing Pursuant To Federal Rule Of Bankruptcy Procedure 4001, entered on February 5, 2008.

of credit issued by a financial institution and on terms reasonably satisfactory to Bank of America, N.A., Bank of America, N.A., as Administrative Agent and Collateral Agent under the Credit Support Agreement, shall immediately, without further order of the Court, cancel the Credit Support L/C and return the Credit Support L/C undrawn to Lord & Taylor LLC or its counsel at Closing and a notice of such cancellation shall be provided to the Issuer (as defined in the Credit Support Agreement) (or to Lord & Taylor LLC or its counsel at Closing) together with such other documents reasonably requested by the Issuer (as defined in the Credit Support Agreement) to evidence such cancellation.

33. Termination Procedures for Credit Support. Simultaneously with the Closing, the Credit Support Agreement shall be terminated and of no further force or effect, and neither Lord & Taylor LLC nor Bank of America, N.A., as Administrative Agent and Collateral Agent shall have any further obligations thereunder. All cash collateral or back-to-back letters of credit provided pursuant to clause (y) above shall not be assets of the Sellers or their estates, it being the intent that Bank of America, N.A. shall return all such cash collateral or back-to-back letters of credit to the Buyer at such time as such cash collateral or back-to-back letters of credit are no longer required to support the obligations under the issued and outstanding letters of credit under the DIP Facility or the Pre-Petition Credit Agreement and, if such cash collateral or back-to-back letters of credit are returned to the Sellers, the Sellers shall immediately turn over such cash collateral or back-to-back letters of credit to the Buyer.

34. Non-material Modifications. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such 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.

35. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtors' case or any order confirming any such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agreement or this Order.

36. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreement be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any inconsistency between the Agreement (including all ancillary documents executed in connection therewith) and this Order. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

37. **No Stay of Order.** Notwithstanding the provisions of Interim Bankruptcy Rule 6004(h) and Bankruptcy Rule 6006(d), this Order shall not be stayed for ten days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtors and Buyer intend to close the Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

38. **Preservation of Certain Records.** The Debtors will retain or have reasonable access to their books and records to administer their bankruptcy cases.

39. **Cooperation with Administration of the Estate.** The Buyer and any transferred employees shall cooperate with all reasonable requests of the Debtors and provide

any information or documentation reasonably necessary to enable the Debtors to administer their estates and to reconcile claims. Following the Closing Date, the Buyer shall make available to the Debtors (i) an office at 70 Charles Lindbergh Boulevard, Uniondale, NY 11553, (ii) limited clerical assistance, (iii) technology support, (iv) all reasonably necessary electronic equipment, including a telephone line, and (v) other reasonable supplies, in each case to the extent reasonably requested in connection with the Debtors' administration and wind down of their estates. Except for the foregoing, Buyer shall not be liable for any costs, fees and/or expenses associated with the administration of the Debtors' estates and/or reconciliation of claims, including, but not limited to, (i) any administrative fees and expenses, including, without limitation, allowed administrative expenses under section 503(b) of the Bankruptcy Code; (ii) any transaction costs, fees and expenses in connection with the Debtors' obligations under the Agreement or this Order; and (iii) any rejection damages claimed in the Debtors' chapter 11 cases.

40. **Professional and Wind-down Expenses.** The \$2.6 million in additional consideration payable by NRDC shall be held by the Debtors in a segregated trust account with (i) \$2.1 million solely for the payment of (1) professional fees and expenses as allowed by the court by subsequent orders, and (2) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6); and (ii) \$500,000 for professional fees and expenses and other wind down costs associated with the final administration of the Debtors' estates.

41. **Confidentiality Agreements.** The Debtors are authorized and directed to enforce their rights under any confidentiality agreements they entered into with other potential bidders with respect to the Assets for the benefit of the Buyer for the term of each respective confidentiality agreement.



42. **Compliance with Certain State and Local Laws**. The Buyer is authorized to serve as agent in any liquidation of the Debtors' inventory. Further, the requirement that the Debtors and/or the Buyer comply with state and local laws, statutes, rules and ordinances regulating going out of business sales, bulk sale laws or other laws not related to public health and safety or consumer protection is hereby waived.

43. **No Restrictions on Store Closing Sales**. To the extent any provisions or restrictions prohibiting the Debtors from conducting store closing, liquidation or similar sales exist in the Debtors' leases, the lessors party to such leases are prohibited from interfering or otherwise seeking to restrict the Debtors and/or its liquidating agent(s) (including the Buyer, if applicable) from conducting any going out of business sales.

44. **Memo Goods Objections**. Buyer has reached agreement with certain jewelry diamond and diamond jewelry vendors that filed objections to the Motion, the general terms of which were stated on the record at the Sale Hearing. Exhibit D sets forth the specific terms and conditions of the agreement reached with the vendors identified on Exhibit D; provided, that such terms do not affect the agreements reached with Martin Flyer, Inc. or Lazare Kaplan, which agreements were stated on the record at the Sale Hearing.

45. **Further Assurances**. From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Agreement including, at the Buyer's expense, such actions as may be necessary to vest, perfect or confirm, of record or otherwise, in Buyer its right, title and interest in and to the Acquired Assets, including, without limitation, any foreign or domestic rights in the

Fortunoff Marks and all other rights in Intellectual Property.

Dated: New York, New York  
March 6, 2008

*s/ James M. Peck*  
HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE