

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NET2000 COMMUNICATIONS, INC., et al.,	Case No. 01-11324 (MFW)
Debtors.	Jointly Administered

**ORDER PURSUANT TO SECTIONS 105, 363(b) AND 365
OF THE BANKRUPTCY CODE AND FED. R. BANKR. P.
2002, 6004, 6006, 9006, 9007 AND 9008: (i) APPROVING
FORM OF ASSET PURCHASE AGREEMENT;
(ii) APPROVING A BREAK-UP FEE AND CERTAIN
BIDDING PROCEDURES; (iii) PROVIDING FOR
ADDITIONAL NOTICE AND PROCEDURES RELATED
THERE TO; AND (iv) GRANTING RELATED RELIEF
(REGARDING D.I. 16)**

Upon the Motion (the "Motion") of the above-captioned debtors and debtors-in-possession (the "Debtors") for an order (the "Procedures Order") pursuant to sections 105, 363(b), (f) and (m), 365 and 1146(c) of title 11 of the United States Code (sections 101-1330, as amended, the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), substantially in the form hereof: (a) scheduling an auction and a hearing in connection with the sale of all or substantially all of the Debtors' assets (the "Assets") and the assumption and assignment of certain executory contracts and unexpired leases (the "Executory Contracts") in connection therewith; (b) approving the form of an Asset Purchase Agreement (the "Agreement"); (c) specifying terms and conditions for competing offers (the "Bidding Procedures"); (d) approving a Break-Up Fee as contemplated by the Agreement; (e) designating the form, manner and parties to receive notice with respect to the procedures for submitting Qualifying Bids (as defined below) at the Auction and providing for additional notice; and (f) granting related relief; and the Court having held a

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hearing to consider approval of the Procedures Order (the "Procedures Hearing"); and it appearing that due and timely notice of the Motion has been given to all parties entitled thereto; and upon the record of the Procedures Hearing; and due deliberation having been had, and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED THAT:¹

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. Notice of (a) the Motion and (b) the Procedures Hearing, as contemplated and executed in conjunction with the Order Fixing Dates, Times and Places of Hearings to Consider Motion for Further Orders Pursuant to Sections 105, 363(b), 363(f), 363(m), 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007, and 9008, *Inter Alia*: (A) Authorizing Debtor to Sell Assets Free and Clear of All Liens and Claims to Cavalier East, L.L.C. ("Cavalier" or the "Purchaser") or Any Higher and Better Bidder Pursuant to the Terms of an Asset Purchase Agreement Dated November 15, 2001, (B) Approving a Break Up Fee and Certain Bidding Procedures, (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, (D) Fixing Manner and Extent of Notice of Such Auction and Hearings, and (E) Granting Related Relief (the "Notice Order") was good and sufficient, and no other or further notice shall be required.

C. Based upon the record presented to the Court by the Debtors at the Procedures Hearing, (i) the Purchaser has expended and will continue to expend considerable time, money and energy in connection with the proposed purchase of the Assets, the proposed

¹ 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.

assumption of the Executory Contracts and the negotiation of the Agreement in connection therewith; (ii) the Bidding Procedures, including the Break-Up Fee provision of the Agreement, as amended, and this Order: (a) have been negotiated in good faith and at arms' length between the Debtors and the Purchaser and are necessary to induce the Purchaser to enter into its binding Agreement with the Debtors and (b) absent such provisions, the Purchaser would not have served as a "stalking horse" whose bid is subject to higher and better offers; and (iii) the Bidding Procedures, including the Break-Up Fee provision of the Agreement, as amended, and this Order, are fair and reasonable, reflect the Debtors' exercise of sound business judgment consistent with their fiduciary duties, and, in the case of the Break-Up Fee, (x) are supported by reasonably equivalent value and fair consideration, (y) are actual, necessary costs and expenses of preserving the Debtors' estates, and (z) are reasonable in amount, all within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code.

D. Notice of the Motion has been given to all persons or entities entitled thereto in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and orders of this Court. The form, manner of notice, and timing of the Notice are sufficient and appropriate in the particular circumstances of this case and are hereby approved. Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The form of the Agreement is hereby approved for the purpose of the Debtors' solicitation of bids for the Assets.
2. The Debtors are hereby authorized to conduct an Auction for the Sale of all or substantially all of their Assets as contemplated by the Motion and utilizing the following Bidding Procedures:

- (a) Only qualified bidders (the "Qualified Bidders") may submit bids or otherwise participate in the Auction. A Qualified Bidder is an entity that, on or before the Bidding Deadline, as hereinafter defined, (i) provides the Debtors with evidence that establishes to the Debtors' satisfaction that the prospective bidder has sufficient financial ability to purchase the subject assets and to obtain all necessary licenses, consents, and approvals and (ii) executes a non-disclosure agreement in form and substance satisfactory to the Debtors and which will be included in the solicitation package.
- (b) To be a qualifying bid (a "Qualified Bid"), the bid must: (i) be a bid made by a Qualified Bidder; (ii) be in writing in the form of a mark up of the Agreement; (iii) be accompanied by a refundable, good faith deposit of 10% of the bid (the "Deposit"); (iv) be received by counsel for the Debtors, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19801 (Attn: Robert J. Dehney, Esquire), no later than 4:00 p.m. (Eastern Time) on December 14, 2001 (the "Bidding Deadline"); and (v) clearly identify and describe in writing (A) the assets to be acquired (the "Acquired Assets"), (B) the proposed purchase price for the Acquired Assets (the "Purchase Price"), which must be in an amount not less than \$26,000,000 and (C) the form or forms of consideration to be paid to the Debtors at Closing; and/or (vi) meet such other requirements as the Debtors, in their sole discretion, reasonably determine to warrant qualification of any such bid. Each Deposit shall be held by a third-party escrow agent in a non-interest bearing account until such time as the Debtors, in their sole discretion, have determined that the Qualified Bid to which the Deposit relates is rejected by the Debtors or until such Qualified Bid is properly withdrawn pursuant to these procedures.
- (c) The Agreement with Purchaser for all purposes shall be considered the initial Qualified Bid if, and only if, the Purchaser complies in all material respects with the requirements of subparagraph (b) above except that the consideration provided for in the Agreement shall constitute a sufficient Purchase Price as required by subparagraph (b)(v)(B). If the Debtors receive at least one other Qualified Bid, the Debtors will conduct the Auction at the offices of Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, 18th Floor, Wilmington, Delaware 19801, on December 17, 2001, beginning at 10:00 a.m. (Eastern Time), or such later time or other place as the Debtors shall notify the Purchaser and all Qualified Bidders who have submitted Qualified Bids. The Debtors shall be under no obligation to make public those entities submitting Qualified Bids until the start of the Auction.

- (d) Bidding at the Auction will commence with the highest or otherwise best Qualified Bid and continue in increments of \$100,000, subject to the Debtors' discretion to allow bidding to continue in smaller or higher increments, until all parties have made their final offers. At the conclusion of the bidding, the Debtors shall, if reasonably possible, announce their determination as to the persons or entities (i.e., the Successful Bidder or Bidders) submitting the highest and/or best bid or bids for some, substantially all or all of the Assets (the "Successful Bid(s)"), the persons or entities submitting the second-highest and or best bid (the "Runner-Up Bid") or that no acceptable bids were received. The Debtors shall have the right to continue or adjourn the Auction if, in the Debtors' sole discretion, such continuance or adjournment is in the best interests of the Debtors and their creditors.
- (e) The Debtors may select more than one Successful Bidder so long as the Assets designated by each Successful Bidder are not materially in conflict. In selecting a Successful Bidder or Bidders, the Debtors shall consider, among other things, the total consideration to be received by the Debtors, the net benefit to the Debtors' estates, specifically after giving effect to the Break-Up Fee and timing of the closing and the Bidder's perceived ability to close any such transaction (as well as other factors).
- (f) All Qualified Bids shall remain open and irrevocable until the conclusion of the Sale Hearing and, if one or more Qualified Bids are received, the Qualified Bidder making the Runner-Up Bid with respect to a material portion of the Assets covered by the highest or best bid shall remain open and irrevocable until the earlier to occur of (i) the consummation of a Sale with a Successful Bidder that involves a material portion of the Assets designated by such Runner-Up Bid as Acquired Assets, (ii) three (3) business days after the termination, without the consummation of a Sale, of an agreement with a Successful Bidder or Bidders, as the case may be, entered into between the selling Debtors and a Successful Bidder with respect to a material portion of the Assets designated by such Runner-Up Bid as Acquired Assets and (iii) the thirtieth (30th) day after the date on which the Sale Hearing concludes.
- (g) If the Debtors receive one or more Qualified Bids and the Auction is conducted, the Debtors will notify the Bankruptcy Court of the results of the Auction at the Sale Hearing. The Debtors shall have the right not to proceed with any Sale or Sales if, in their business judgment, such action is in the best interests of the Debtors' creditors and estates.

- (h) The Debtors have accepted a Qualified or Successful Bid only when such bid has been approved by the Bankruptcy Court at the Sale Hearing. Upon failure to consummate a Sale because of a breach or failure on the part of a Successful Bidder, the Debtors may (i) consummate a transaction with the Qualified Bidder submitting the Runner-Up Bid without further order of the Bankruptcy Court, (ii) retain any deposit received from any breaching Successful Bidder and (iii) pursue such other remedies as the Debtors deem appropriate.
- (i) Any Sale shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors, their agents, or their estates, except to the extent otherwise agreed between the Debtors and a Successful Bidder. Except as otherwise provided, all of the Debtors' right, title and interest in and to the assets to be sold, shall be free and clear of all interests, liens, claims and encumbrances (the "Interests"), with such Interests to attach to the proceeds of the sale of such Assets, subject to any claims or defenses the Debtors may possess with respect thereto.
- (j) The Debtors may: (a) determine, in their business judgment, to extend the bid deadline, who is a Qualified Bidder and which Qualified Bid is the highest or otherwise best offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that they believe is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the sale, or (iii) contrary to the best interests of the Debtors, their estates and their creditors.
- (k) The Debtors reserve the right to modify the Bidding Procedures if such modification is in the best interests of their estates and creditors and is consistent with terms of this Order.

3. The Debtors shall have the right to reject any offer which, in their discretion, is deemed inadequate or insufficient or which is contrary to the best interests of the bankruptcy estates and their creditors.

4. No agreement or bid, including the Agreement with Cavalier, is accepted by or binding on the Debtors until such time as the Court has approved such agreement or bid.

5. Except as otherwise set forth in the Agreement or by order of the Court, in the event the Debtors are unable, for any reason, to either consummate the sale approved by the Court at the Sale Hearing or to execute and deliver any and all closing documents, their sole liability to the Successful Bidder shall be limited to return of the Deposit.

6. The Debtors shall not be responsible for any commission or fee owed to any broker with regard to the sale or transfer of the Assets or the Executory Contracts.

7. Each Bidder will be required to satisfy to the Court that it has the financial ability to fulfill its obligations in the event its offer is accepted.

8. No Qualified Bid shall be deemed finally accepted until an order of the Court is entered approving such sale.

9. The Break-Up Fee, as set forth more fully in the Agreement is hereby approved. The Break-Up Fee shall be 3% of the purchase price under the Agreement (\$750,000) if Purchaser is not the Successful Bidder for the Assets. Cavalier shall have the right to seek an additional 2% expense reimbursement (the "Reimbursement") by making a showing to the Court that such amount is justified as an administrative expense of the Debtors' estates pursuant to section 503 of the Bankruptcy Code. Cavalier shall inform the Debtors prior to the commencement of the Auction if it intends to seek such Reimbursement and the amount of such Reimbursement. The Break-Up Fee shall be payable at the closing of the counterbid.

10. The Debtors shall provide notice of the Auction and Sale Hearing by publishing notice, substantially in the form of the Notice Of (i) Auction, (ii) Bidding Procedures, (iii) Proposed Sale Of All Or Substantially All Assets Free And Clear Of All Liens, Claims And Encumbrances, (iv) Sale Hearing And (v) Deadlines For Objections To Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Bidding And Sale attached

to the Motion as Exhibit F (the "Sale Notice"), in the national edition of the *Wall Street Journal* on or before December 10, 2001.

11. The Debtors shall, no later than five (5) business days after the entry of this Order, serve on the non-debtor parties to each of the Executory Contracts a copy substantially in the form of the Notice of Intent to Assume and Assign Unexpired Lease or Executory Contract attached to the Motion as Exhibit E setting forth the amount, if any, the Debtors propose is required to cure any default under each Executory Contract for the purposes of section 365(b) of the Bankruptcy Code.

12. The form of notices set forth above shall constitute good and sufficient notice of the Motion, the Auction, the Debtors' intent to potentially assume and assign the Executory Contracts (including the Debtors' proposed cure amounts with respect thereto) and the Sale Hearing, and any requirements for other notice be, and hereby are, waived and dispensed with pursuant to Rules 2002, 6006, 9006 and 9007 of the Fed. R. Bank. R. and section 105 of the Bankruptcy Code.

13. This Order shall survive entry of an order which may be entered converting this case to chapter 7 or any order confirming a plan of reorganization.

Dated: Wilmington, Delaware

Dec 10, 2001


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:

NET2000 COMMUNICATIONS, INC., et al.,

Debtors.

Chapter 11

Case No. 01-11324 (MFW)

Jointly Administered

MOTION FOR AN ORDER (A) FIXING DATES, TIMES AND PLACE OF HEARINGS TO CONSIDER FURTHER ORDERS PURSUANT TO SECTIONS 105, 363(b), 363(f), 363(m), 365 AND 1146(c) OF THE BANKRUPTCY CODE AND FED. R. BANKR. P. 2002, 6004, 6006, 9006, 9007 AND 9008; (B) AUTHORIZING DEBTORS TO SELL ASSETS FREE AND CLEAR OF ALL LIENS AND CLAIMS TO CAVALIER EAST, L.L.C. OR ANY HIGHER AND OR BETTER BIDDER PURSUANT TO THE TERMS OF AN ASSET PURCHASE AGREEMENT DATED NOVEMBER 15, 2001; (C) APPROVING A BREAK-UP FEE AND CERTAIN BIDDING PROCEDURES; (D) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (E) FIXING MANNER AND EXTENT OF NOTICE OF SUCH AUCTION AND HEARINGS, AND (F) GRANTING RELATED RELIEF

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby move (the "Motion") this Court for the entry of an order (A) fixing dates, times and place of hearings to consider further orders pursuant to sections 105, 363(b), 363(f), 363(m), 365 and 1146(c) of the Bankruptcy Code, 11 U.S.C. §§ 101—1330, as amended (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); (B) authorizing the Debtors to sell all or substantially all of their assets, free and clear of all liens, claims and encumbrances of any kind, to Cavalier East, L.L.C. ("Cavalier" or "Purchaser") pursuant to the terms of an asset purchase agreement dated November 15, 2001 or to the entity that submits a higher and/or better offer for any or all such assets; (C) approving a break-up fee and certain bidding procedures, (D)

approving the assumption and assignment or rejection, as the case may be, of certain executory contracts and unexpired leases in connection with the sale, (E) fixing the manner and extent of notice of such auction and hearings, and (F) granting related relief. In support of this Motion, the Debtors rely upon and incorporate herein by reference the Declaration of Donald E. Clarke in Support of First Day Relief (the "Clarke Declaration") filed contemporaneously herewith.¹ In further support of the Motion, the Debtors respectfully represent as follows:

INTRODUCTION

1. In the first instance, the Debtors request that the Court enter an order substantially in the form annexed hereto as Exhibit "A" (the "Notice Order"), scheduling two hearings and approving the form, manner and sufficiency of notice of those hearings. The Debtors first request that the Court schedule a hearing (the "Procedures Hearing") to consider approval of the form of an asset purchase agreement (the "Agreement")² between the Debtors and Cavalier, pursuant to which, among other things, the Debtors have agreed to sell and Cavalier has agreed to buy, substantially all of the Debtors' operating assets, free and clear of all liens, claims and encumbrances of any kind (the "Assets"). Once approved as to form, the Agreement will serve as a template against which prospective third parties can determine whether to submit competing bids for all of the Debtors' assets, including the Assets. At the Procedures Hearing, the Debtors also will seek the entry of an order substantially in the form annexed hereto as Exhibit "B" (the "Procedures Order"), *inter alia*, approving certain bidding procedures (the "Bidding Procedures") to be used to solicit competing bids for all the Debtors'

¹ Capitalized terms not defined in this motion shall have the meanings ascribed to them in the Clarke Declaration.

² A copy of the Agreement is annexed hereto as Exhibit "C".

assets and approving those portions of the Agreement that provide the Purchaser with a break-up fee (the "Break-Up Fee").

2. The Debtors also request that the Court schedule a second hearing (the "Sale Hearing") on this Motion, pursuant to sections 105, 363, 365 and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, at which the Debtors will request the entry of an order, substantially in the form annexed hereto as Exhibit "D" (as amended, the "Sale Order"): (a) authorizing the Debtors to sell the Assets to Purchaser or to such other entity that submits a higher and/or better offer for their assets (the "Sale") at an auction (the "Auction") to be held in advance of the Sale Hearing, and (b) authorizing the Debtors to assume and assign the Executory Contracts (as defined below). As detailed below, the Debtors have concluded that the expedited sale of their assets will maximize the value of such assets for the benefit of all constituencies. Accordingly, the Debtors urge this Court to grant the relief sought in this Motion, including, *inter alia*, approving the notice of the hearings, approving the Bidding Procedures, approving those portions of the Agreement that provide the Purchaser with the Break-Up Fee and approving a sale of all or substantially all of their assets.

BACKGROUND

A. Jurisdiction and Venue

3. On November 16, 2001, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage their property and operate their businesses as debtors-in-possession in accordance with sections 1107 and 1108 of the Bankruptcy Code. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper in this district in accordance with 28 U.S.C. §§ 1408 and 1409. No trustee or examiner has been appointed in these cases.

4. The statutory predicates for the relief sought herein are sections 105, 363, 365 and 1146 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9002, 9007 and 9008.

B. The Need for an Expedited Sale

5. As set forth more fully in the Clarke Declaration, prior to the Petition Date, the Debtors engaged Jefferies & Company, Inc., to act as their financial advisor for the purpose of effectuating a sale, merger or capital infusion for the Debtors.

6. In connection with Jefferies' retention, the Debtors made substantial non-public information available to Jefferies and allowed Jefferies access to the Debtors' officers, directors, employees, independent accountants and legal counsel. Jefferies invested a considerable amount of time and resources in familiarizing itself with the operations of the Debtors. Jefferies, in consultation with the Debtors, contacted approximately 30 potential acquirors of the Debtors' assets. Jefferies' efforts on the Debtors' behalf generated six formal and informal expressions of interest in the Debtors or their subsidiaries prepetition and resulted in the Agreement with Purchaser.

7. The Debtors' impending liquidity crisis that precipitated the filing of these cases, when taken together with the competitive nature of the industry in which the Debtors operate and the extensive prepetition marketing efforts to sell the Debtors' assets, have lead the Debtors to conclude that a quick sale process is the best way to maximize value of their assets for the benefits of their creditors. The Debtors, in consultation with their advisors, have considered the viability of an alternative restructuring of the Debtors' obligations and businesses on a "stand alone" basis — i.e., a restructuring that would not involve a sale of substantially all of the Debtors' assets. Based upon that analysis, the Debtors have concluded that: (a) a prompt sale of

the Assets is the best way to maximize value for their estates, and (b) the proposed Bidding Procedures described herein are the most effective method of obtaining the highest and best offer for the Assets. Moreover, for the reasons discussed herein, the Debtors believe that the going concern value of their assets and businesses will be seriously jeopardized unless the Sale or an alternative transaction is authorized on an expedited bases.

8. The necessity of an accelerated sale process is primarily predicated upon the Debtors' dwindling cash reserves, the competitive nature of the industry in which they operate, and the need to assure the Debtors' customers that the services the Debtors provide (which are often critical to the customers' business) will not be interrupted as a result of the filing of these cases. The Debtors' customer accounts (the "Customer Accounts") represent an integral component of the Debtors' Assets that contribute significant value to the proposed Sale to Purchaser. The Customer Accounts likely will be attractive assets for an acquiror only so long as the Debtors are able to continue operating their business at an acceptable level. As a result of the Debtors' cash constraints, the Debtors are concerned that their operations could fall below the minimum level necessary to maintain the value of the Customer Accounts by the end of this year.

RELIEF REQUESTED

A. The Procedures Hearing

9. By this Motion, the Debtors request that the Court schedule, as soon as practical, the Procedures Hearing to consider their request for approval of the form of Agreement, the Break-Up Fee and the proposed Bidding Procedures for the sale of all or substantially all of the assets to the Purchaser or to such other buyer as presents a higher and/or

better offer.³ The Debtors submit that the Agreement, the Break-Up Fee and the Bidding Procedures are reasonable and necessary to obtaining the highest and best value for the Assets and are consistent with past practices of both this Court and other bankruptcy courts and within the range of fees, and type of procedures, routinely approved.

(i) The Asset Purchase Agreement

10. Under the Agreement, Cavalier has agreed to buy the Assets for a purchase price of \$25,000,000 consisting of i) a \$15,000,000 cash payment at closing and (ii) a \$10,000,000 promissory note payable with interest at the rate of 4% per annum, to be paid in two equal installments of \$5,000,000 on the sixtieth and ninetieth day after closing less Excluded Accounts, as such term is defined in the Agreement. The Debtors also will retain certain non-operating assets, including but not limited to cash, cash equivalents, deposits and prepayments. Additionally, the Purchaser has agreed to assume certain liabilities of the Debtors. The parties agreed to close the sale transaction by no later than December 31, 2001.

11. The Agreement expressly provides that it is subject to Court approval and that the Debtors may entertain higher and/or better offers in accordance with the procedures order described in this Motion. The terms of the Agreement were negotiated extensively with the Purchaser and its professionals. These negotiations were conducted at arm's-length and in good faith and the Debtors respectfully request that the Court find and determine that the

³ The Debtors propose the following schedule: (i) Procedures Hearing to be held on or about December 4, 2001 at the Court's convenience; (ii) Bid Deadline (as defined below) of December 12, 2001 at 4:00 p.m.; (iii) Auction to be held on December 14, 2001 at 10:00 a.m.; and (iv) Sale Hearing on or about December 19, 2001 at the Court's convenience with objections to the proposed Sale or the assumption and assignment of Executory Contracts due on December 17, 2001.

Purchaser has acted in good faith and is entitled to the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code.

(ii) The Break-Up Fee

12. The Agreement provides for the payment of a Break-Up Fee of 5% of the purchase price under the Agreement if (i) Debtors consummate a sale or other transaction with a party other than Purchaser for substantially all of the Assets (an "Alternative Transaction") and (ii) at the Sale Hearing, the Purchaser demonstrates to the Court that it was otherwise ready, willing and able to close on the transaction contemplated by the Agreement. The proposed Break-Up Fee would be paid from the proceeds of the Successful Bid at the closing of the Alternative Transaction. The Debtors believe that the Break-Up Fee is reasonable in light of the Purchaser's costs, expenses and loss of business opportunity, and is fair consideration to induce it to enter the Agreement. Moreover, while the Break-Up Fee may be on the upper end of fees typically approved by this Court, there is no other agreement for expense reimbursement.

(iii) The Bidding Procedures

13. The Debtors further request that this Court approve the proposed Bidding Procedures, as more fully set forth in the proposed Procedures Order annexed hereto as Exhibit "B." The salient provisions of the Bidding Procedures are as follows:

- (a) Only qualified bidders (the "Qualified Bidders") may submit bids or otherwise participate in the Auction. A Qualified Bidder is an entity that, on or before the Bidding Deadline, as hereinafter defined, (i) provides the Debtors with evidence that establishes to the Debtors' satisfaction that the prospective bidder has sufficient financial ability to purchase the subject assets and to obtain all necessary licenses, consents, and approvals and (ii) executes a non-disclosure agreement in form and substance satisfactory to the Debtors and which will be included in the solicitation package.

- (b) To be a qualifying bid (a "Qualified Bid"), the bid must: (i) be a bid made by a Qualified Bidder; (ii) be in writing in the form of a mark up of the Agreement; (iii) be accompanied by a refundable, good faith deposit of 10% of the bid (the "Deposit"); (iv) be received by counsel for the Debtors, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19801 (Attn: Robert J. Dehney, Esquire), no later than 4:00 p.m. (Eastern Time) on December 12, 2001 (the "Bidding Deadline"); and (v) clearly identify and describe in writing (A) the assets to be acquired (the "Acquired Assets"), (B) the proposed purchase price for the Acquired Assets (the "Purchase Price"), which must be in an amount not less than \$28,875,000 and (C) the form or forms of consideration to be paid to the Debtors at Closing; and/or (vi) meet such other requirements as the Debtors, in their sole discretion, reasonably determine to warrant qualification of any such bid. Each Deposit shall be held by a third-party escrow agent in a non-interest bearing account until such time as the Debtors, in their sole discretion, have determined that the Qualified Bid to which the Deposit relates is rejected by the Debtors or until such Qualified Bid is properly withdrawn pursuant to these procedures.
- (c) The Agreement with Purchaser for all purposes shall be considered the initial Qualified Bid if, and only if, the Purchaser complies in all material respects with the requirements of subparagraph (b) above except that the consideration provided for in the Agreement shall constitute a sufficient Purchase Price as required by subparagraph (b)(v)(B). If the Debtors receive at least one other Qualified Bid, the Debtors will conduct the Auction at the offices of Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, 18th Floor, Wilmington, Delaware 19801, on December 14, 2001, beginning at 10:00 a.m. (Eastern Time), or such later time or other place as the Debtors shall notify the Purchaser and all Qualified Bidders who have submitted Qualified Bids. The Debtors shall be under no obligation to make public those entities submitting Qualified Bids until the start of the Auction.
- (d) Bidding at the Auction will commence with the highest or otherwise best Qualified Bid and continue in increments of \$250,000, subject to the Debtors' discretion to allow bidding to continue in smaller or higher increments, until all parties have made their final offers. At the conclusion of the bidding, the Debtors shall, if reasonably possible, announce their determination as to the persons or entities (i.e., the Successful Bidder or Bidders) submitting the highest and/or best bid or bids for some, substantially all or all of the Assets (the "Successful Bid(s)"), the

persons or entities submitting the second-highest and or best bid (the "Runner-Up Bid") or that no acceptable bids were received. The Debtors shall have the right to continue or adjourn the Auction if, in the Debtors' sole discretion, such continuance or adjournment is in the best interests of the Debtors and their creditors.

- (e) The Debtors may select more than one Successful Bidder so long as the Assets designated by each Successful Bidder are not materially in conflict. In selecting a Successful Bidder or Bidders, the Debtors shall consider, among other things, the total consideration to be received by the Debtors, the net benefit to the Debtors' estates, specifically after giving effect to the Break-Up Fee and timing of the closing and the Bidder's perceived ability to close any such transaction (as well as other factors).
- (f) All Qualified Bids shall remain open and irrevocable until the conclusion of the Sale Hearing and, if one or more Qualified Bids are received, the Qualified Bidder making the Runner-Up Bid with respect to a material portion of the Assets covered by the highest or best bid shall remain open and irrevocable until the earlier to occur of (i) the consummation of a Sale with a Successful Bidder that involves a material portion of the Assets designated by such Runner-Up Bid as Acquired Assets, (ii) three (3) business days after the termination, without the consummation of a Sale, of an agreement with a Successful Bidder or Bidders, as the case may be, entered into between the selling Debtors and a Successful Bidder with respect to a material portion of the Assets designated by such Runner-Up Bid as Acquired Assets and (iii) the thirtieth (30th) day after the date on which the Sale Hearing concludes.
- (g) If the Debtors receive one or more Qualified Bids and the Auction is conducted, the Debtors will notify the Bankruptcy Court of the results of the Auction at the Sale Hearing. The Debtors shall have the right not to proceed with any Sale or Sales if, in their business judgment, such action is in the best interests of the Debtors' creditors and estates.
- (h) The Debtors have accepted a Qualified or Successful Bid only when such bid has been approved by the Bankruptcy Court at the Sale Hearing. Upon failure to consummate a Sale because of a breach or failure on the part of a Successful Bidder, the Debtors may (i) consummate a transaction with the Qualified Bidder submitting the Runner-Up Bid without further order of the Bankruptcy Court, (ii) retain any deposit received from any breaching Successful Bidder and (iii) pursue such other remedies as the Debtors deem appropriate.

- (i) Any Sale shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents, or their estates, except to the extent otherwise agreed between the Debtors and a Successful Bidder. Except as otherwise provided, all of the Debtors’ right, title and interest in and to the assets to be sold, shall be free and clear of all interests, liens, claims and encumbrances (the “Interests”), with such Interests to attach to the proceeds of the sale of such Assets, subject to any claims or defenses the Debtors may possess with respect thereto.
- (j) The Debtors may: (a) determine, in their business judgment, to extend the bid deadline, who is a Qualified Bidder and which Qualified Bid is the highest or otherwise best offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that they believe is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the sale, or (iii) contrary to the best interests of the Debtors, their estates and their creditors.
- (k) The Debtors reserve the right to modify the Bidding Procedures if such modification is in the best interests of their estates and creditors and is consistent with terms of the Procedures Order.

14. The Debtors submit that the proposed Bidding Procedures are reasonable and consistent with past practices in other large Chapter 11 cases in this jurisdiction and are designed to allow the Debtors to obtain the greatest value for their assets. These procedures will ensure an orderly sale that is fair to the Debtors, their creditors, the Purchaser and any third-party entity who wishes to participate in the bidding. At the same time, the Procedures Order will eliminate any entity from bidding that lacks the financial ability to close under the Agreement. These procedures also offer certain protections to the Debtors, such as limiting their liability to any purchaser for any purported representations they claimed to have been made to them by the Debtors, eliminating issues as to payment of brokerage fees, etc.

B. The Proposed Sale of Assets

15. As set forth above, the Debtors, in the sound exercise of their business judgement, and after analyzing potential “stand-alone” restructuring alternatives, have determined that a sale of all or substantially all of their assets as a going-concern is in the best interests of their estates and creditors. To that end, the Debtors engaged Jefferies in October 2001, to act as their investment banker with respect to the sale of their assets or their stock.

16. The Debtors believe that a prompt sale of their assets by auction presents the best opportunity to realize the maximum value of the estate assets for distribution to creditors. The Debtors further believe that the net benefit to their creditors may be adversely affected absent an immediate sale as a result of the continuing costs associated with preserving the value of the Debtors’ business as a going concern, including rent on their sales and operational facilities, headquarters lease, employee overhead, security services, and utilities. In order to yield the greatest possible return for the benefit of creditors and to cut off potential administrative expenses, the Debtors believe that an expedited auction and sale process is warranted and necessary.

C. Assignment of Executory Contracts

17. Pursuant to the Agreement, the Debtors intend to assume and assign certain contracts that are executory contracts under section 365 of the Bankruptcy Code (the “Executory Contracts”). To the best of the Debtors’ knowledge, they are not in default under any of these agreements and no cure amounts are required as a condition of assumption and assignment. The Debtors anticipate that the contracting parties will welcome the assumption and assignment of these agreements to the Purchaser (or if assumption and assignment is not required because the agreements are not executory, the transfer of the Debtors’ rights and obligations),

particularly since the combination of the Debtors with the Purchaser only will serve to provide greater stability and better value to the contracting parties. Accordingly, the other parties to these contracts should not be adversely affected by the assumption and assignment. Nevertheless, the Debtors have established a procedure, contained in the Procedures Order, to provide for the resolution of cure amounts and the provision of adequate assurances of future performance as required by the Bankruptcy Code.

D. Exemption Under Section 1146(c)

18. The Debtors are seeking the Court's approval of a Sale to maximize the realizable value of their estates and thereby facilitate the formulation and ultimate confirmation of a plan that will yield the highest possible returns to the Debtors' creditors and equity holders. The Debtors, therefore, believe that the Sale or Sales contemplated hereby are necessary steps toward a plan and, accordingly, should be exempt from stamp tax or similar taxes under Bankruptcy Code section 1146(c).

E. The Auction and Sale Hearing

19. Finally, the Debtors request that the Court schedule the Auction on or about December 14, 2001, and the Sale Hearing for December 19, 2001, or as soon thereafter as can be accommodated by the Court's calendar. The purpose of the Sale Hearing will be to approve the proposed sale of the Assets to the Purchaser or to such other person or entity submitting the highest and/or best offer for the Assets. These dates will provide parties in interest with ample notice and opportunity to be heard as to the relief requested and also will afford potential competing bidders sufficient time to engage in any due diligence they conclude is necessary to formulate a bid.

BASIS FOR THE RELIEF REQUESTED

A. The Break-Up Fee Should Be Approved

20. Approval of break-up fees and other forms of bidding protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code has become an established practice in Chapter 11 cases. The Break-Up Fee proposed here is fair and reasonable as it enabled the Debtors to induce the Purchaser to submit a bid that otherwise would not have been made. In the Debtors' business judgment, commencing a proceeding with a stalking horse such as Cavalier is well worth the price of the Break-Up Fee. The Debtors' customers and employees will take comfort in knowing that a viable solution to the Debtors' liquidity problems exists in Cavalier. A stalking horse also increases the chances that the Debtors will receive the highest or best price for their assets to the benefit of the Debtors, their estates, their creditors and all parties in interest. Lastly, the Purchaser agreed to accept the Break-Up Fee alone rather than include an expense reimbursement provision.

21. Ample support exists for the Debtors' request. Bankruptcy courts have approved bidding incentives similar to the Break-Up Fee under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See, e.g., In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking" (citation omitted); In re Marrose Corp., Case Nos. 89 B 12171-12179 (CB), 1992 WL 33848 at *5 (Bankr. S.D.N.Y. 1992) (bidding incentives are "meant to compensate the potential acquiror who serves as a catalyst or 'stalking horse' which attracts more favorable offers").

22. Recently, the Third Circuit Court of Appeals established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In Calpine Corporation v. O'Brien Environmental Energy, Inc. (In re O'Brien Environmental Energy, Inc.), 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the debtor's estate. Id. at 533.

23. The O'Brien Court identified at least two instances in which bidding incentive may provide benefit to the estate. First, a benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. Second, where the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum, or floor, bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." Id.

24. Whether evaluated under the "business judgment rule" or the Third Circuit's "administrative expense" standard, the Break-Up Fee will pass muster. The Agreement is the product of extended good faith, arm's-length negotiations between the Debtors and Cavalier. In addition, the Break-Up Fee is fair and reasonable in amount under the circumstances of these cases. See, e.g., In re Worldwide Direct, Inc., Case No. 99-108 (MFW) (Bankr. D. Del., Feb. 26, 1999) (approving break-up fee of 3.1% of proposed purchase price (and 4% of actual purchase price)); In re Montgomery Ward Holding Corp., et al., Case No. 97-1409

(PJW) (Bankr. D. Del., June 15, 1998) (approving 2.7% break-up fee); In re Medlab, Inc., Case No. 97-1893 (PJW) (Bankr. D. Del, April 28, 1998) (break-up fee of 3.12% approved); In re US One Communications Corp., Case No. 97-1196 (PJW) (Bankr. D. Del., Oct. 17, 1997) (approving break-up fee of 3%); In re Edison Brothers Stores, Inc., et al., Case No. 95-1354 (PJW) (Bankr. D. Del., Dec. 29, 1995) (approving break-up fee of 3.5%)

B. The Asset Sale Is Within The Debtors' Sound Business Judgment

25. Bankruptcy Code section 363(b)(1) provides: "The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Bankruptcy Code section 105(a) provides in relevant part: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

26. A sale of substantially all of a debtor's assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for doing so. See, e.g., In re Martin, 91 F.3d 395 (3d Cir. 1996); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983); In re United Healthcare System, Inc., 1997 U.S. Dist. 5090 (D.N.J. 1997); In re Anchor Glass Container Corporation, Case Nos. 96-1434 and 96-1516 (PJW) (Bankr. D. Del. Dec. 20, 1996); In re Titusville Country Club, 128 B.R. 396 (W.D. Pa. 1991); In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15 (E.D. Pa. 1987).

27. Courts have applied four factors in determining whether a sound business justification exists: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is

provided. See, e.g., In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983) (setting forth the “sound business purpose” test); In re Abbotts Dairies, 788 F.2d 143, 147 (3d Cir. 1986) (implicitly adopting the articulated business justification test of the Lionel standard and adding the “good faith” requirement); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (adopting Lionel in this District).

(i) *The Sale Of The Assets Satisfies the Sound Business Purpose Test.*

28. There is more than adequate business justification to sell some, substantially all or all of their assets to the Purchaser or another successful bidder. The immediate consummation of an Asset Sale or Sales is the only way to preserve the enterprise value of their assets and maximize the value of the Debtors’ estates for the benefit of all constituencies. See Clarke Declaration ¶ 57. Delaying the Asset Sale or Sales undoubtedly will cause a loss of value of the Assets. Id. Indeed, the Debtors have very few “hard assets” upon which they could realize significant value in any context other than a Sale or Sales as a going concern. Id. A substantial amount of the Debtors’ value is attributable to their customer relationships, which would likely be significantly impaired barring prompt consummation of a Sale or Sales. The Debtors believe that any outcome other than the prompt consummation of a Sale or Sales will result in far less value for the Debtors’ estates, creditors and parties in interest. Given the Debtors’ precarious financial condition, a Sale or Sales of substantially all of their assets is appropriate and necessary to provide a maximum recovery for the Debtors’ estates and creditors. The Debtors believe that the proposed Sale or Sales in accordance with the Bidding Procedures is the best way to maximize recoveries for the estates. See In re Tempo Technology Corp., 202 B.R. 363 (D. Del. 1996), aff’d, 141 F.3d 1155 (3d Cir. 1998) (sale of substantially all of a Chapter 11 debtor’s assets pursuant to a section 363(b) motion where the debtor “faced a

severe cash shortfall and had no readily available source of investment capital or loans,” and would shortly have run out of cash absent the debtor-in-possession financing provided by the prospective purchaser); see also In re Delaware and Hudson Ry., 124 B.R. at 177 (affirming bankruptcy court’s approval of sale of substantially all assets where debtor would have been “in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan”); Titusville Country Club, 128 B.R. at 400 (bankruptcy court granted expedited hearing on 363(b) motion based on “deterioration” of debtor’s assets); In re Coastal Indus., Inc., 63 B.R. 361, 366-69 (Bankr. N.D. Ohio 1986) (approving expedited 363(b) sale five weeks post-petition to buyer with the name recognition required by [the debtor’s] customers” where debtor was suffering operating losses and lacked financing to continue its operations).

29. Based upon the results of their exhaustive analysis of the Debtors’ ongoing and future business prospects, the Debtors’ management has concluded that, given their continuing liquidity crisis, the best and, indeed, only way to maximize the value of their estates is to sell their assets as a going business concern, thereby preserving the substantial goodwill of the business, maintaining customer relationships and avoiding a liquidation sale of the assets at depressed prices. Furthermore, by selling the assets now, the Debtors will relieve themselves of certain ongoing costs and expenses, thereby minimizing administrative expenses. Accordingly, well-articulated business reasons exist for approving the Sale or Sales, such that the business purpose test under section 363 of the Bankruptcy Code is met. See Lionel, 722 F.2d at 1071 (“most important[] perhaps, [is] whether the asset is increasing or decreasing in value”).

(ii) *The Consideration Will Be Fair And Reasonable Under the Circumstances*

30. The Debtors submit that a Sale to the Purchaser or a Successful Bidder pursuant to the Bidding Procedures and Auction will provide fair and reasonable consideration to the Debtors' estates. The consideration to be received by the Debtors for the Assets will be determined after an extensive, fair and open sale process and, if more than one Qualified Bid is received, an Auction designed to promote competitive bidding. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a market test and bidding process -- the best means for establishing a fair and reasonable price under the circumstances. Accordingly, the Debtors respectfully submit that the consideration they would receive from either the Purchaser or a Successful Bidder or Bidders in exchange for the Assets will be both fair and reasonable and should be entitled to all of the protections of Bankruptcy Code section 363(m).

(iii) *The Agreement Will Have Been Negotiated in Good Faith*

31. The extensive negotiations between the Purchaser and the Debtors coupled with the Bidding Procedures ensure that any purchase agreement will be negotiated at arms'-length. Under the circumstances, this Court should therefore find that (a) a Sale or Sales of the Assets are the result of good faith arms'-length negotiations and (b) either the Purchaser or the Successful Bidder or Bidders are entitled to all of the protections of Bankruptcy Code section 363(m).

(iv) *Adequate Notice of the Asset Sale is Being Provided*

32. The final element for the approval of a sale under Bankruptcy Code section 363 is the requirement that interested parties receive adequate notice. As detailed below, the Debtors will serve notice of the Sale Hearing on all of their known creditors.

C. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and Clear of Liens, Claims, Encumbrances and Interests

33. Under Bankruptcy Code section 363(f), a debtor-in-possession may sell property free and clear of any lien, claim or interest in such property if, among other things:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity [holding a lien] consents;
- (c) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) 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). Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to approve the sale or sales of the Assets free and clear of interests. See 11 U.S.C. § 363(f); see also Michigan Employment Security Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343 (E.D. Pa. 1988) (same).

34. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors submit that they may sell the Assets free and clear of any and all Interests. The proposed Sale satisfies at least one of the five conditions of section 363(f) and Debtors submit that any such Interests will be adequately protected by attachment to the proceeds of the Sale or Sales, subject to any

claims and defenses the Debtors may possess with respect thereto. Accordingly, the Sale or Sales should be approved under section 363(f) of the Bankruptcy Code.

D. The Debtors' Request for Relief from Transfer Taxes Under Bankruptcy Code Section 1146(c) Should Be Granted

35. Bankruptcy Code section 1146(c) provides that "the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." This language has been construed to include transfers pursuant to a sale outside of, but in furtherance of, effectuating a reorganization plan. See In re Jacoby-Bender, Inc., 758 F.2d 840, 842 (2d Cir. 1985) (holding that Bankruptcy Code section 1146(c) applies when the "transfer is necessary to the consummation of a plan"); In re United Press Int'l, Inc., Case No. 91-B-13955 (FSC), 1992 Bankr. LEXIS 842 at *4 (Bankr. S.D.N.Y., May 18, 1992) (Section 1146(c) exemption applied to section 363 sale where "value of debtor's assets . . . likely to deteriorate [during] time necessary to . . . confirm a plan."); City of New York v. Smoss Enters. Corp. (In re Smoss Enters. Corp.), 54 B.R. 950, 951 (E.D.N.Y. 1985) (holding that 1146(c) applied when "the transfer of the property was essential to the confirmation of the plan"); see also In re Permar Provisions, Inc., 79 B.R. 530 (Bankr. E.D.N.Y. 1987) (concluding that even though execution and delivery of deed occurred more than one year prior to confirmation of the plan, the sale was "under a plan" and, thus, exempt from local taxes).

36. The Debtors are seeking this Court's approval of the Sale or Sales to maximize the value of their Assets for the benefit of their estates and to potentially facilitate the formulation and ultimate confirmation of a plan. Therefore, the Debtors respectfully submit that the Sale or Sales are necessary steps toward a plan and, accordingly, should be exempt from stamp tax or similar taxes under Bankruptcy Code section 1146(c).

E. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized

37. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if --

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under Bankruptcy Code section 365(a), a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11

U.S.C. § 365(a). Bankruptcy Code section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

38. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction."

See EBG Midtown South Corp. v. McLaren/Hart Env. Engineering Corp. (In re Sanshoe

Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”); Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

39. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

40. To the extent any defaults exist under any Executory Contract that is assumed and assigned, any such default will be promptly cured or adequate assurance that such default will be cured will be provided prior to the assumption and assignment. The Debtors will adduce facts at the Sale Hearing to show the financial credibility of the Purchaser or the Successful Bidder or Bidders and their willingness and ability to perform under the contracts to be assumed and assigned. The Sale Hearing, therefore, will provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Purchaser or the Successful Bidder or Bidders to provide adequate assurance of future performance under the contracts to be assumed and assigned, as required under section 365(b)(1)(C) of the Bankruptcy Code. The Court should therefore authorize the Debtors to assume and assign contracts as set forth herein.

NOTICE

41. Federal Rule of Bankruptcy Procedure 2002(a) provides, in relevant part that:

- (a) Twenty-day notices to parties in interest. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days notice by mail of . . .
 - (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice

Fed. R. Bankr. P. 2002(a)(2). Bankruptcy Rule 9006(c) provides, in pertinent part that “the court for cause shown may in its discretion with or without motion or notice order the [notice period required by the rules] reduced.” Fed. R. Bankr. P. 9006(c)(1). Because of the necessity for an expedited process regarding the Auction and Sale as set forth above, the Debtors respectfully submit that sufficient cause exists to shorten the notice periods required by the Bankruptcy Rules and the Local Rules of this Court as requested herein.

42. The Debtors propose to provide notice of the Motion, the Procedures Hearing and the Sale Hearing by serving a copy of the Notice Order and this Motion including all exhibits thereto, by overnight delivery, service for next business day receipt or priority mail upon: (a) The United States Trustee; (b) the Debtors’ 20 largest unsecured creditors; (c) all entities known to the Debtors to have expressed an interest in the Assets during the last twelve months; (d) the Purchaser, by its counsel; and (e) all entities who have filed and served upon Debtors’ counsel a notice of appearance and request for papers in these cases.

43. The Debtors also propose to give notice of their intent to possibly assume and assign the Executory Contracts, and the Debtors’ proposed cure amounts, if any (the “Cure

Amount”), in the form of a notice substantially in the form annexed hereto as Exhibit “E” (the “Assignment Notice”) upon all of the non-debtor parties to the Executory Contracts not included in the preceding service provision.

44. The Debtors further propose to publish notice of the Bidding Procedures, Sale Hearing and the Auction, substantially in the form annexed hereto as Exhibit “F” in the national edition of *The Wall Street Journal* prior to the Auction. The Debtors submit that the proposed notice procedures are reasonable and permissible pursuant to sections 102, 105, 363(b), (f) and (m) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9008.

45. The Debtors request that any objection to the assumption and assignment of an Executory Contract or to the Cure Amount be filed and served upon the counsel to the Debtors so as to be received on or before the General Objection Deadline⁴ as set forth in the Procedures Order. Any objection to the Cure Amount must state with specificity what cure the party to the Executory Contract believes is required and attach appropriate documentation in support thereof. If no objection is timely received, (a) the Cure Amount set forth in the Assignment Notice shall be controlling notwithstanding anything to the contrary in any Executory Contract or other document and (b) the non-debtor party to the Executory Contract shall be forever barred from asserting any Interest arising prior to the assignment against the Debtors or the Successful Bidder or Bidders as to such Executory Contract.

⁴ The Debtors propose that the General Objection Deadline be set for December 17, 2001 at 4:00 p.m. This will give the Debtors the opportunity to provide notice of the Successful Bidder at the Auction and will serve to prevent prophylactic objections from non-debtor parties to the Executory Contracts based upon adequate assurance of future performance concerns related to such contracts.

46. The Debtors further propose that objections to the relief sought hereby be in writing, contain the requisite information respecting the objecting party's status and legal and factual basis of the objection and be filed and served such that they are received by the Court and counsel to the Debtors and the Purchaser not later than 12:00 p.m. one business day prior to the Procedures Hearing (the "Procedures Objection Deadline"), if the objection is to the relief sought at that hearing, and not later than 4:00 p.m. on the General Objection Deadline, if the objection pertains to the relief sought at the Sale Hearing or to the potential assignment of any Executory Contract or to any proposed Cure Amount.

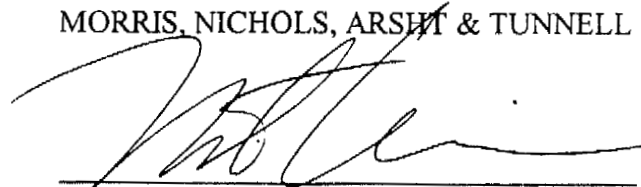
NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Notice Order, substantially in the form annexed hereto as Exhibit "A"; (ii) after the Procedures Hearing, enter the Procedures Order, substantially in the form annexed hereto as Exhibit "B"; (iii) after the Sale Hearing, enter a Sale Order; and (iv) grant such other relief as is just and proper.

Dated: November 19, 2001

MORRIS, NICHOLS, ARSH & TUNNELL



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257606

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NET2000 COMMUNICATIONS, INC., <u>et. al.</u> ,	Case No. 01-00622 (MFW)
Debtors.	Jointly Administered

**ORDER FIXING DATES, TIMES, NOTICE PROCEDURES AND PLACE OF HEARINGS, TO CONSIDER MOTION FOR FURTHER ORDERS:
(A) AUTHORIZING DEBTOR TO SELL ASSETS FREE AND CLEAR OF ALL LIENS AND CLAIMS TO CAVALIER EAST, L.L.C. OR ANY HIGHER AND BETTER BIDDER PURSUANT TO THE TERMS OF AN ASSET PURCHASE AGREEMENT DATED NOVEMBER 15, 2001, (B) APPROVING A BREAK UP FEE AND CERTAIN BIDDING PROCEDURES, (C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE, (D) FIXING MANNER AND EXTENT OF NOTICE OF SUCH AUCTION AND HEARINGS, AND (E) GRANTING RELATED RELIEF**

Upon the motion ("Motion")¹ of the above-captioned debtors and debtors-in-possession (the "Debtors") for an order approving notices and procedures and fixing dates, times and place of hearings to consider a motion for further orders pursuant to Sections 105, 363(b), 363(f), 363(m), 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007 and 9008: (a) authorizing the Debtors to (i) sell all or substantially all of their assets (the "Assets") free and clear of any and all liens and claims (the "Interests"), with such Interests to transfer, affix and attach solely to the proceeds of the sale of the Assets, and (ii) assume and assign certain executory contracts and unexpired leases in connection therewith (the

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion or Asset Purchase Agreement.

“Executory Contracts”); (b) authorizing the Debtors to conduct an auction to sell the Assets and to assume and assign the Executory Contracts (the “Auction”); (c) approving the Asset Purchase Agreement dated November 15, 2001, between the Debtors, as sellers, and Cavalier East, L.L.C., (the “Purchaser”), as purchaser, a copy of which is annexed to the Motion as Exhibit “C” (the “Agreement”) as to form for use as a template for competing bidders at the Auction; (d) approving certain bidding procedures (the “Bidding Procedures”) and a break-up fee (the “Break-Up Fee”); (e) authorizing the Debtors to sell the Assets and to assume and assign the Executory Contracts to Purchaser or to any higher and better third party bidder, such bid having been accepted by the Debtors and approved by the Court at a hearing (the “Sale Hearing”); and (f) fixing the manner and extent of notice of such Auction and hearings; and a hearing having been held to consider the Motion (the “Hearing”); and upon the record of that Hearing; it is hereby

FOUND AND DETERMINED² THAT:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;
- B. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) and (O);
- C. The relief granted herein is in the best interests of the Debtors and their estates and creditors; and

² 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. The legal and factual basis set forth in the Motion, the Declaration of Donald E. Clarke in Support of First Day Relief and the record of the Hearing establish just cause for the relief granted herein.

And after due deliberation on the Motion and sufficient cause appearing therefore; it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. On December 4, 2001 at __: __ .m., or as soon thereafter as counsel can be heard, a hearing (the "Procedures Hearing") will be held before The Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware, to consider the entry of an order, substantially in the form annexed as Exhibit "B" to the Motion (i) approving the form of the Agreement, (ii) specifying the terms and conditions for competing offers (the "Bidding Procedures"), (iii) approving the Break-Up Fee provided for in the Agreement, (iv) approving the manner and extent of additional notice of the Auction and the Sale Hearing (as defined below), and (v) granting related relief (the "Procedures Order").

2. The Debtors shall give notice of the Motion and the Procedures Hearing via overnight delivery service or priority mail, by serving a copy of this Order and the Motion with exhibits thereto on or before November 21, 2001, upon: (i) the Office of the United States Trustee; (ii) the Debtors' twenty (20) largest unsecured creditors; (iii) Purchaser, by its counsel; (iv) all entities known to the Debtors to have expressed an interest in the Assets during the last twelve months; and (v) all parties that have filed with the Clerk of the Court (and served upon Debtors' counsel) a notice of appearance and request for papers in these cases.

3. The Procedures Hearing may be adjourned from time to time by the Court without further notice to creditors or parties in interest other than by an announcement of said adjournment in Court or by notation on the Court's official calendar for the date scheduled for said hearing.

4. Responsive papers or objections to the proposed Procedures Order, if any, must conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the District of Delaware and must be in writing and filed with the Clerk of the Court and a copy served upon: (a) Counsel to the Debtors, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19801, (Attn: Robert J. Dehney, Esq.), (b) Counsel to the Agent for the Debtors' Prepetition and Postpetition Lenders, Paul, Hastings, Janofsky & Walker LLP, 24th Floor, 600 Peachtree Street, N.E., Atlanta, GA 30308-2222 (Attn.: Jesse H. Austin, III, Esq.), and Richards, Layton & Finger, One Rodney Square, P.O. Box 551, Wilmington, Delaware 19899 (Attn: Mark D. Collins, Esq.), (c) counsel for the Official Committee of Unsecured Creditors, if one is appointed, and (d) The United States Trustee, Office of the United States Trustee, 844 King Street, Suite 2313, Lockbox 35, Wilmington, DE 19899; so as to be received by the above parties not later than 12:00 p.m. on December 3, 2001.

5. The Debtors shall provide notice of their intent to potentially assume and assign the Executory Contracts, as such term is defined in the Motion, by serving notice on the non-debtor parties to the Executory Contracts substantially in the form of the Notice of Intent to Assume and Assign Unexpired Lease or Executory Contract attached as to the Motion as Exhibit E (the "Assignment Notice"), together with the amount, if any, the Debtors propose is necessary

to cure any defaults under any of the Executory Contracts within five (5) business days from the date hereof.

6. The form of notice set forth above with respect to the Procedures Hearing and the Assignment Notice shall constitute good and sufficient notice of the Motion, the Procedures Hearing and the Debtors intention to assume and assign the Executory Contracts, and any requirements for other notice be, and hereby are, waived and dispensed with pursuant to Rules 2002, 6006, 9006 and 9007 of the Fed. R. Bank. R. and section 105 of the Bankruptcy Code.

Dated: Wilmington, Delaware
_____, 2001

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NET2000 COMMUNICATIONS, INC., <u>et al.</u> ,	Case No. 01-11324 (MFW)
Debtors.	Jointly Administered

**ORDER PURSUANT TO SECTIONS 105, 363(b) AND 365
OF THE BANKRUPTCY CODE AND FED. R. BANKR. P.
2002, 6004, 6006, 9006, 9007 AND 9008: (i) APPROVING
FORM OF ASSET PURCHASE AGREEMENT;
(ii) APPROVING A BREAK-UP FEE AND CERTAIN
BIDDING PROCEDURES; (iii) PROVIDING FOR
ADDITIONAL NOTICE AND PROCEDURES RELATED
THERE TO; AND (iv) GRANTING RELATED RELIEF**

Upon the Motion (the "Motion") of the above-captioned debtors and debtors-in-possession (the "Debtors") for an order (the "Procedures Order") pursuant to sections 105, 363(b), (f) and (m), 365 and 1146(c) of title 11 of the United States Code (sections 101-1330, as amended, the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), substantially in the form hereof: (a) scheduling an auction and a hearing in connection with the sale of all or substantially all of the Debtors' assets (the "Assets") and the assumption and assignment of certain executory contracts and unexpired leases (the "Executory Contracts") in connection therewith; (b) approving the form of an Asset Purchase Agreement (the "Agreement"); (c) specifying terms and conditions for competing offers (the "Bidding Procedures"); (d) approving a Break-Up Fee as contemplated by the Agreement; (e) designating the form, manner and parties to receive notice with respect to the procedures for submitting Qualifying Bids (as defined below) at the Auction and providing for additional notice; and (f) granting related relief; and the Court having held a

hearing to consider approval of the Procedures Order (the "Procedures Hearing"); and it appearing that due and timely notice of the Motion has been given to all parties entitled thereto; and upon the record of the Procedures Hearing; and due deliberation having been had, and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED¹ THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. Notice of (a) the Motion and (b) the Procedures Hearing, as contemplated and executed in conjunction with the Order Fixing Dates, Times and Places of Hearings to Consider Motion for Further Orders Pursuant to Sections 105, 363(b), 363(f), 363(m), 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007, and 9008, *Inter Alia*: (A) Authorizing Debtor to Sell Assets Free and Clear of All Liens and Claims to Cavalier East, L.L.C. ("Cavalier" or the "Purchaser") or Any Higher and Better Bidder Pursuant to the Terms of an Asset Purchase Agreement Dated November 15, 2001, (B) Approving a Break Up Fee and Certain Bidding Procedures, (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, (D) Fixing Manner and Extent of Notice of Such Auction and Hearings, and (E) Granting Related Relief (the "Notice Order") was good and sufficient, and no other or further notice shall be required.

C. Based upon the record presented to the Court by the Debtors at the Procedures Hearing, (i) the Purchaser has expended and will continue to expend considerable time, money and energy in connection with the proposed purchase of the Assets, the proposed

¹ 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.

assumption of the Executory Contracts and the negotiation of the Agreement in connection therewith; (ii) the Bidding Procedures, including the Break-Up Fee provision of the Agreement, as amended, and this Order: (a) have been negotiated in good faith and at arms' length between the Debtors and the Purchaser and are necessary to induce the Purchaser to enter into its binding Agreement with the Debtors and (b) absent such provisions, the Purchaser would not have served as a "stalking horse" whose bid is subject to higher and better offers; and (iii) the Bidding Procedures, including the Break-Up Fee provision of the Agreement, as amended, and this Order, are fair and reasonable, reflect the Debtors' exercise of sound business judgment consistent with their fiduciary duties, and, in the case of the Break-Up Fee, (x) are supported by reasonably equivalent value and fair consideration, (y) are actual, necessary costs and expenses of preserving the Debtors' estates, and (z) are reasonable in amount, all within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code.

D. Notice of the Motion has been given to all persons or entities entitled thereto in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and orders of this Court. The form, manner of notice, and timing of the Notice are sufficient and appropriate in the particular circumstances of this case and are hereby approved. Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The form of the Agreement is hereby approved for the purpose of the Debtors' solicitation of bids for the Assets.

2. The Debtors are hereby authorized to conduct an Auction for the Sale of all or substantially all of their Assets as contemplated by the Motion and utilizing the following Bidding Procedures:

- (a) Only qualified bidders (the "Qualified Bidders") may submit bids or otherwise participate in the Auction. A Qualified Bidder is an entity that, on or before the Bidding Deadline, as hereinafter defined, (i) provides the Debtors with evidence that establishes to the Debtors' satisfaction that the prospective bidder has sufficient financial ability to purchase the subject assets and to obtain all necessary licenses, consents, and approvals and (ii) executes a non-disclosure agreement in form and substance satisfactory to the Debtors and which will be included in the solicitation package.
- (b) To be a qualifying bid (a "Qualified Bid"), the bid must: (i) be a bid made by a Qualified Bidder; (ii) be in writing in the form of a mark up of the Agreement; (iii) be accompanied by a refundable, good faith deposit of 10% of the bid (the "Deposit"); (iv) be received by counsel for the Debtors, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19801 (Attn: Robert J. Dehney, Esquire), no later than 4:00 p.m. (Eastern Time) on December 12, 2001 (the "Bidding Deadline"); and (v) clearly identify and describe in writing (A) the assets to be acquired (the "Acquired Assets"), (B) the proposed purchase price for the Acquired Assets (the "Purchase Price"), which must be in an amount not less than \$28,875,000 and (C) the form or forms of consideration to be paid to the Debtors at Closing; and/or (vi) meet such other requirements as the Debtors, in their sole discretion, reasonably determine to warrant qualification of any such bid. Each Deposit shall be held by a third-party escrow agent in a non-interest bearing account until such time as the Debtors, in their sole discretion, have determined that the Qualified Bid to which the Deposit relates is rejected by the Debtors or until such Qualified Bid is properly withdrawn pursuant to these procedures.
- (c) The Agreement with Purchaser for all purposes shall be considered the initial Qualified Bid if, and only if, the Purchaser complies in all material respects with the requirements of subparagraph (b) above except that the consideration provided for in the Agreement shall constitute a sufficient Purchase Price as required by subparagraph (b)(v)(B). If the Debtors receive at least one other Qualified Bid, the Debtors will conduct the Auction at the offices of Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, 18th Floor, Wilmington, Delaware 19801, on December 14, 2001, beginning at 10:00 a.m. (Eastern Time), or such later time or other place as the Debtors shall notify the Purchaser and all Qualified Bidders who have submitted Qualified Bids. The Debtors shall be under no obligation to make public those entities submitting Qualified Bids until the start of the Auction.

- (d) Bidding at the Auction will commence with the highest or otherwise best Qualified Bid and continue in increments of \$250,000, subject to the Debtors' discretion to allow bidding to continue in smaller or higher increments, until all parties have made their final offers. At the conclusion of the bidding, the Debtors shall, if reasonably possible, announce their determination as to the persons or entities (i.e., the Successful Bidder or Bidders) submitting the highest and/or best bid or bids for some, substantially all or all of the Assets (the "Successful Bid(s)"), the persons or entities submitting the second-highest and or best bid (the "Runner-Up Bid") or that no acceptable bids were received. The Debtors shall have the right to continue or adjourn the Auction if, in the Debtors' sole discretion, such continuance or adjournment is in the best interests of the Debtors and their creditors.
- (e) The Debtors may select more than one Successful Bidder so long as the Assets designated by each Successful Bidder are not materially in conflict. In selecting a Successful Bidder or Bidders, the Debtors shall consider, among other things, the total consideration to be received by the Debtors, the net benefit to the Debtors' estates, specifically after giving effect to the Break-Up Fee and timing of the closing and the Bidder's perceived ability to close any such transaction (as well as other factors).
- (f) All Qualified Bids shall remain open and irrevocable until the conclusion of the Sale Hearing and, if one or more Qualified Bids are received, the Qualified Bidder making the Runner-Up Bid with respect to a material portion of the Assets covered by the highest or best bid shall remain open and irrevocable until the earlier to occur of (i) the consummation of a Sale with a Successful Bidder that involves a material portion of the Assets designated by such Runner-Up Bid as Acquired Assets, (ii) three (3) business days after the termination, without the consummation of a Sale, of an agreement with a Successful Bidder or Bidders, as the case may be, entered into between the selling Debtors and a Successful Bidder with respect to a material portion of the Assets designated by such Runner-Up Bid as Acquired Assets and (iii) the thirtieth (30th) day after the date on which the Sale Hearing concludes.
- (g) If the Debtors receive one or more Qualified Bids and the Auction is conducted, the Debtors will notify the Bankruptcy Court of the results of the Auction at the Sale Hearing. The Debtors shall have the right not to proceed with any Sale or Sales if, in their business judgment, such action is in the best interests of the Debtors' creditors and estates.

- (h) The Debtors have accepted a Qualified or Successful Bid only when such bid has been approved by the Bankruptcy Court at the Sale Hearing. Upon failure to consummate a Sale because of a breach or failure on the part of a Successful Bidder, the Debtors may (i) consummate a transaction with the Qualified Bidder submitting the Runner-Up Bid without further order of the Bankruptcy Court, (ii) retain any deposit received from any breaching Successful Bidder and (iii) pursue such other remedies as the Debtors deem appropriate.
- (i) Any Sale shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors, their agents, or their estates, except to the extent otherwise agreed between the Debtors and a Successful Bidder. Except as otherwise provided, all of the Debtors' right, title and interest in and to the assets to be sold, shall be free and clear of all interests, liens, claims and encumbrances (the "Interests"), with such Interests to attach to the proceeds of the sale of such Assets, subject to any claims or defenses the Debtors may possess with respect thereto.
- (j) The Debtors may: (a) determine, in their business judgment, to extend the bid deadline, who is a Qualified Bidder and which Qualified Bid is the highest or otherwise best offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that they believe is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the sale, or (iii) contrary to the best interests of the Debtors, their estates and their creditors.
- (k) The Debtors reserve the right to modify the Bidding Procedures if such modification is in the best interests of their estates and creditors and is consistent with terms of this Order.

3. The Debtors shall have the right to reject any offer which, in their discretion, is deemed inadequate or insufficient or which is contrary to the best interests of the bankruptcy estates and their creditors.

4. No agreement or bid, including the Agreement with Cavalier, is accepted by or binding on the Debtors until such time as the Court has approved such agreement or bid.

5. Except as otherwise set forth in the Agreement or by order of the Court, in the event the Debtors are unable, for any reason, to either consummate the sale approved by the Court at the Sale Hearing or to execute and deliver any and all closing documents, its sole liability to the Successful Bidder shall be limited to return of the Deposit.

6. The Debtors shall not be responsible for any commission or fee owed to any broker with regard to the sale or transfer of the Assets or the Executory Contracts.

7. Each Bidder will be required to satisfy to the Court that it has the financial ability to fulfill its obligations in the event its offer is accepted.

8. No Qualified Bid shall be deemed finally accepted until an order of the Court is entered approving such sale.

9. The Break-Up Fee, as set forth more fully in the Agreement is hereby approved. The Break-Up Fee shall be 5% of the purchase price under the Agreement (\$1.25 million) if Purchaser is not the Successful Bidder for the Assets. The Break-Up Fee shall be payable at the closing of the counterbid.

10. The Debtors shall provide notice of the Auction and Sale Hearing by publishing notice, substantially in the form of the Notice Of (i) Auction, (ii) Bidding Procedures, (iii) Proposed Sale Of All Or Substantially All Assets Free And Clear Of All Liens, Claims And Encumbrances, (iv) Sale Hearing And (v) Deadlines For Objections To Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, Bidding And Sale attached hereto as Exhibit 1 (the "Sale Notice"), in the national edition of the *Wall Street Journal* on or before December 7, 2001.

11. The form of notice set forth above shall constitute good and sufficient notice of the Motion, the Auction, and the Sale Hearing, and any requirements for other notice

be, and hereby are, waived and dispensed with pursuant to Rules 2002, 6006, 9006 and 9007 of the Fed. R. Bank. R. and section 105 of the Bankruptcy Code.

12. This Order shall survive entry of an order which may be entered converting this case to chapter 7 or any order confirming a plan of reorganization.

Dated: Wilmington, Delaware
_____, 2001

UNITED STATES BANKRUPTCY JUDGE

257023

EXHIBIT C

ASSET PURCHASE AGREEMENT

BY AND AMONG

**CAVALIER EAST, L.L.C.
CAVALIER TELEPHONE, LLC**

AND

**NET2000 COMMUNICATIONS, INC.
NET2000 COMMUNICATIONS HOLDINGS, INC.
NET2000 COMMUNICATIONS GROUP, INC.
NET2000 INVESTMENTS, INC.
NET2000 COMMUNICATIONS OPERATIONS, INC.
NET2000 COMMUNICATIONS CAPITAL EQUIPMENT, INC.
NET2000 COMMUNICATIONS SERVICES, INC.
NET2000 COMMUNICATIONS REAL ESTATE, INC.
NET2000 COMMUNICATIONS OF VIRGINIA, LLC
FREBON INTERNATIONAL CORPORATION AND
VISION IT**

November 15, 2001

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EXHIBITS

Exhibit A	Master Services Agreement
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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made as of November 15, 2001 by and among Cavalier East, L.L.C., a Delaware limited liability company ("*Buyer*"); Cavalier Telephone, LLC a Delaware limited liability company (with respect to Section 7(k), only)("Cavalier"); and Net2000 Communications, Inc., a Delaware corporation; Net2000 Communications Holdings, Inc., a Delaware corporation; Net2000 Communications Group, Inc., a Delaware corporation; Net2000 Investments, Inc., a Delaware corporation; Net2000 Communications Operations, Inc., a Delaware corporation; Net2000 Communications Capital Equipment, Inc., a Delaware corporation; Net2000 Communications Services, Inc., a Delaware corporation; Net2000 Communications Real Estate, Inc., a Delaware corporation; Net2000 Communications of Virginia, LLC, a Virginia limited liability company; FreBon International Corporation, a Virginia corporation; and Vision IT, a California corporation (collectively, "*Sellers*").

RECITALS

A. Sellers desire to sell to Buyer, and Buyer desires to purchase and acquire from Sellers, substantially all of the assets used or held for use in connection with the Business (as defined below) in accordance with and subject to the terms and conditions set forth in this Agreement.

B. Following the execution of this Agreement, Seller plans to file a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (as defined below) (the "*Bankruptcy Case*") in accordance with the United States Bankruptcy Court for the District of Delaware (the "*Court*").

C. The Acquired Assets (as defined below) will be sold pursuant to the terms and conditions of this Agreement and an order of the Court approving such sale under Sections 105, 363, 365 and 1146 of the United States Bankruptcy Code (11 U.S.C. § 101 *et. seq.* (the "*Bankruptcy Code*"), and such sale will include the assumption and assignment of certain executory contracts and unexpired leases and liabilities in accordance with Section 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. DEFINITIONS; INTERPRETATION.

(a) Definitions.

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the respective meanings specified below:

"*Accounts Receivable*" means all rights to payment for goods sold, licensed or leased or for services rendered, all sums of money or other proceeds due or becoming due thereon and all instruments pertaining thereto.

"*Acquired Assets*" has the meaning set forth in Section 2(a) hereof.

“**Affiliate**” means, with respect to any Person, (i) a spouse or member of the immediate family of such Person, (ii) any member, manager, director, officer or partner of such Person, (iii) any corporation, partnership, business, association, limited liability company, firm or other entity of which such Person is a member, manager, director, officer or partner or owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock or other equity interests and (iv) any other Person that directly or indirectly controls, is controlled by or is under direct or indirect common control with such first Person.

“**Assumed Contracts**” has the meaning set forth in Section 2(a)(iii).

“**Assumed Liabilities**” has the meaning set forth in Section 2(b).

“**Assumption Agreement**” means that certain assignment and assumption agreement to be executed and delivered by the parties at Closing in form and substance satisfactory to Buyer.

“**Bankruptcy Case**” has the meaning set forth in the preamble to this Agreement.

“**Bankruptcy Code**” means Title 11 of the United States Code, 11 U.S.C. §§ 1.01 *et. seq.*, as in effect on the date Sellers file their voluntary petitions for relief with the Court as set forth in the preamble to this Agreement.

“**Bid Procedures Order**” has the meaning set forth in Section 7(f).

“**Bill of Sale**” has the meaning set forth in Section 4(b).

“**Breakup Fee**” shall be a payment to be made subject to the Breakup Fee Order in the amount of 5% of the Purchase Price of the Acquired Assets if an alternative transaction is approved by the Court and provided Buyer is ready, willing and able to close at the time of the Sale Order hearing, or any substitution therefore or alternative thereto approved by the Court at or in connection with the hearing on the Sale Option, which amount shall be payable at the closing of the counterbid.

“**Breakup Fee Order**” shall mean the order approving the Breakup Fee that shall provide the Breakup Fee shall be payable at the closing of the counterbid which order shall be in form acceptable to Buyer in its reasonable discretion.

“**Business**” means the Sellers’ United States network operations business, which business consists of the provision of state-of-the-art broadband telecommunications services, including a bundled package of high-speed data services, internet services, local telephone services and long distance telephone services, through a single broadband connection.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in Washington, D.C., are authorized or required by Law to be closed.

“**Buyer**” has the meaning set forth in the preface above.

“**Buyer Closing Documents**” has the meaning set forth in Section 4(c).

“**Claim**” means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“**Closing**” has the meaning set forth in Section 4(a).

“**Closing Date**” has the meaning set forth in Section 4(a).

“**Code**” means the Internal Revenue Code of 1986, any amendments thereto, any successor statutes and any regulations promulgated thereunder.

“**Confidential Information**” means all trade secrets and all proprietary and confidential information concerning the businesses and affairs of Sellers and their Affiliates, the Acquired Assets or the Business that are not already generally available to the public.

“**Court**” has the meaning set forth in the preamble to this Agreement.

“**Deferred Purchase Price**” has the meaning set forth in Section 3(a).

“**Deferred Purchase Price Documents**” has the meaning set forth in Section 4(c).

“**Disclosure Letter**” has the meaning set forth in Section 5.

“**Effective Time**” has the meaning set forth in Section 4(a).

“**Employees**” has the meaning set forth in Section 5(g).

“**Escrow Agent**” has the meaning set forth in Section 10.

“**Escrow Agreement**” has the meaning set forth in Section 10.

“**Excluded Accounts**” means the accounts of the Sellers’ pending or existing customers in the New Jersey, New York, Rhode Island and Massachusetts markets.

“**Excluded Accounts Agreement**” has the meaning set forth in Section 2(f).

“**Excluded Accounts Amount**” has the meaning set forth in Section 2(f).

“**Excluded Assets**” has the meaning set forth in Section 2(b).

“**Excluded Liabilities**” has the meaning set forth in Section 2(c).

“**Financial Statements**” means Seller’s audited financial statements for the Business for the fiscal year ended December 31, 2000 and unaudited financial statements for the six (6) months ended June 30, 2001, copies of which have been provided to Buyer by Seller.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Authority" means any agency, board, bureau, executive, court, commission, department, legislature, tribunal, instrumentality, telecom regulatory authorities, or administration of the United States, a foreign country or any state, provincial, territorial, municipal, county, local or other governmental entity in the United States or a foreign country.

"Governmental Permits" means all licenses, permits, approvals, consents, certificates, waivers, exemptions, orders, registrations, variances and other authorizations from any and all Governmental Authorities, including any state sales tax numbers, used or held for use solely or primarily in connection with the conduct of the Business.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, any amendments thereto, any successor statutes and any regulations promulgated thereunder.

"HSR Filing" means any filings required to be made under the HSR Act by either of the parties hereto in connection with this Agreement and the consummation of the transactions described herein.

"Intellectual Property" means all U.S. and foreign, whether proprietary or pursuant to license, as the case may be: (a) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) registered and unregistered trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) registered and unregistered copyrightable works and copyrights, and all applications, registrations, and renewals in connection therewith; (d) mask works and all applications, registrations, and renewals in connection therewith; (e) trade secrets and confidential business information (including research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer lists, pricing and cost information, and business and marketing plans and proposals to the extent that any of the foregoing constitute trade secrets or confidential information used in connection with the operation of the Business); (f) computer software programs (including data and related documentation); and (g) copies and tangible embodiments thereof (in whatever form or medium).

"Inventories" means all inventories of raw materials, work in process, finished products, goods, spare parts, replacement and component parts, and office and other supplies.

"Knowledge of Sellers" means the actual knowledge of Clayton A. Thomas, Jr.; Donald Clarke and Duane Albro.

"Law" means any law, statute, regulation, rule, code, ordinance or court order enacted, adopted, issued or promulgated by any Governmental Authority.

“Leased Real Property,” means all leased real property and improvements.

“Liability” or **“Liabilities”** means any and all liabilities, obligations, judgments, damages, charges, costs, debts and indebtedness of any and every kind and nature whatsoever, absolute or contingent, liquidated or unliquidated, in Law, equity or otherwise.

“Lien” means, with respect to any asset or property of any character, any mortgage, pledge, security interest, lien (including any mechanics or materialmen lien, tax lien, shipper or warehousemen lien or customs lien), right of first refusal, option or other right to acquire, transfer for security, charge, Claim, easement, conditional sale agreement, title retention agreement, defect in title, or other encumbrance or adverse Claim of any nature pertaining to or affecting such asset or property, whether voluntary or involuntary and whether arising by Law, contract or otherwise.

“Master Services Agreement” has the meaning set forth in Section 2(g).

“Material Adverse Effect” means any event, occurrence, fact, condition, change or effect, that is materially adverse to the business, assets or results of operations of the Business, taken as a whole, taking into account the operation of the Sellers as distressed companies prior to and following the commencement of the Bankruptcy Case provided, that: (i) commencement and conduct of the Bankruptcy Case as referenced in and contemplated by this Agreement; (ii) defaults under Governmental Permits, real property leases and personal property leases including the Acquired Assets, or contracts (including the Assumed Contracts) occasioned solely by the commencement of the Bankruptcy Case; and (iii) the insufficiency of working capital of the Business occasioned by the inability to obtain additional funding, shall not, individually or in the aggregate, be deemed to constitute a Material Adverse Effect.

“Motion to Approve Master Services Agreement” has the meaning set forth in Section 7(e).

“Motion to Approve Sale” has the meaning set forth in Section 7(e).

“Ordinary Course of Business” means the ordinary course of business of Seller and consistent with Sellers’ past customs and practices (including with respect to quantity and frequency), taking into account the commencement of the Bankruptcy Case and the operation of the Sellers as distressed companies prior to and following the commencement of the Bankruptcy Case including the occurrence of the following events: (i) defaults under Governmental Permits, real property leases and personal property leases including the Acquired Assets, or contracts (including the Assumed Contracts) occasioned solely by the commencement of the Bankruptcy Case; and (ii) the insufficiency of working capital of the Business occasioned by the inability to obtain additional funding.

“Permitted Encumbrances” means the following: (i) Liens that constitute Assumed Liabilities pursuant to the terms of this Agreement; (ii) easements, leases, reservations or other rights of others in, or minor defects and irregularities in title to, property or assets of Sellers or their Subsidiaries, provided that such easements, leases, reservations, rights, defects or irregularities do not materially detract from the value of or impair the use of such property or assets for the purposes for which they are held; (iii) any Lien or privilege vested in any lessor,

licensor or permittor for rent or other obligations with respect to property or assets of Sellers [or their Subsidiaries] so long as the payment of such rent or the performance of such obligations is not delinquent; and (iv) until, but not following, the Effective Time, Liens on Acquired Assets granted as security for the Toronto Dominion Credit Agreement.

“**Person**” means any individual, corporation, partnership, proprietorship, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, Governmental Authority, or other entity, organization or institution of any type whatsoever.

“**Purchase Price**” has the meaning set forth in Section 3(a).

“**Rejected Contracts**” has the meaning set forth in Section 7(b).

“**Sale Order**” means an order entered by the Court pursuant to Sections 105, 363, 365 and 1146 of the Code approving this Agreement and the Assumption Agreement and the transactions provided for herein and therein, which order shall be in form acceptable to Buyer in its reasonable discretion.

“**Sellers**” has the meaning set forth in the preface above.

“**Sellers’ Closing Documents**” has the meaning set forth in Section 4(b).

“**Subsidiary**” means any corporation with respect to which a specified Person (or a Subsidiary thereof), directly or indirectly, owns a majority of the common stock or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors.

“**Tax**” means any federal, state, provincial, local, foreign or other income, alternative, minimum, inheritance, accumulated earnings, personal holding company, corporation, franchise, capital stock, net worth, capital, profits, windfall profits, capital gain, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not).

“**Tax Return**” means any return, report, declaration, form, Claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Toronto Dominion Credit Agreement**” means that certain Third Amended and Restated Credit Agreement dated as of April 12, 2001 by and among Net2000 Communications Group, Inc., Toronto Dominion (Texas), Inc., as Administrative Agent, TD Securities (USA) Inc., as Lead Arranger and Book Manager, Royal Bank of Canada as Syndication Agent, Goldman Sachs Credit Partners, L.P., as Co-Documentation Agent, First Union Securities, Inc., as Documentation Agent, and the Lenders named therein, and any of the Loan Documents referred to therein (as in effect from time to time) necessary to consummate the transactions contemplated herein, shall have been obtained and shall be in full force and effect.

“*Transaction Documents*” means, collectively, Sellers’ Closing Documents and Buyer Closing Documents.

(b) Interpretation.

Words used herein, regardless of the number and gender used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires and, as used herein, unless the context otherwise requires, the words “hereof,” “herein” and “hereunder,” and words of similar import, shall refer to this Agreement as a whole and not to any particular provision hereof. The term “including” shall be deemed to mean “including, without limitation.” Accounting terms used herein shall have the meanings given to them by GAAP applied on a consistent basis by the Person to which they relate. References to any Law shall be construed as a reference to the same as in effect on the date of this Agreement. Unless otherwise expressly stated, all dollar amounts stated herein are in United States currency.

2. SALE AND PURCHASE OF ACQUIRED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES.

(a) Purchase and Sale of Acquired Assets.

Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Sellers shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, accept and acquire from Sellers, free and clear of any and all Liens and Claims (other than Permitted Encumbrances), all of Sellers’ right, title and interest as of the Effective Time in and to the properties and assets of Sellers that are used or held for use in connection with the conduct of the Business, of every kind, nature, character and description, tangible or intangible, personal or mixed, whether accrued, contingent or otherwise, wherever located and whether or not specifically referred to, listed or described on Section 2(a) of the Disclosure Letter, including all such assets and properties acquired by Sellers or arising between the date hereof and the Closing Date, but excluding the Excluded Assets (collectively, the “*Acquired Assets*”), including all those items in the following categories that conform to the definition of the term Acquired Assets:

(i) All telecommunications and computer equipment, furniture, furnishings, automobiles, tools, parts and similar property (including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person) including those assets set forth on Section 2(a)(i) of the Disclosure Letter;

(ii) all Inventories held at any location controlled by Sellers and Inventories previously purchased and in transit to Sellers at such locations;

(iii) all of the contracts, agreements, and leases (including all personal property leases and real property leases) of the Sellers arising solely or primarily relating to the conduct of the Business as specified on Section 2(a)(iii) of the Disclosure Letter and such other contracts specifically disclosed in this Agreement which are entered into between the date hereof and the Closing Date, which Buyer may, in its sole discretion, agree in writing to assume, pertaining to all periods from and after the Effective Time, including any right (A) to

receive payment for products sold or services rendered after the Effective Time and (B) to assert claims and take other rightful actions in respect of breaches, defaults and other violations of such contracts, arrangements, licenses, leases and other agreements to the extent such violations occur following the Effective Time (collectively, the "**Assumed Contracts**");

(iv) all Intellectual Property to the extent permitted by Law, and except to the extent that it is employed solely in connection with Excluded Assets, goodwill and contact telephone numbers associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against infringement thereto and rights to protection of interest therein under the laws of all jurisdictions, including any Intellectual Property arising after the date hereof;

(v) all real estate owned by the Sellers, including all buildings, fixtures and improvements thereon as specified on Section 2(a)(v) of the Disclosure Letter;

(vi) all books, records, manuals and other materials (in any form or medium) solely or primarily relating to the Business, including advertising matter, catalogues, price lists, correspondence, mailing lists, lists of customers, distribution lists, photographs, production data, sales and promotional materials and records, purchasing materials and records, {personnel records (subject to any necessary employee consents)}, manufacturing and quality control records and procedures, blueprints, research and development files, records, data books, Intellectual Property disclosures, media materials and plates, accounting records, sales order files and litigation files;

(vii) to the extent their transfer is permitted by law, all Governmental Permits, including all applications therefor;

(viii) all manufacturer warranties and similar rights in favor of Sellers with respect to any Acquired Asset; and

(ix) all accounts (other than Excluded Accounts), Accounts Receivable, notes and notes receivable which are payable to Sellers or their Affiliates, all guaranties and security therefor, and all goods and services giving rise thereto and the rights pertaining to such goods and services.

(b) Excluded Assets. Notwithstanding anything to the contrary contained in Section 2(a) or any other provision of this Agreement, the Acquired Assets shall not include the following properties and assets of Sellers (collectively, the "**Excluded Assets**");

(i) all cash and cash equivalents, all bank, custody and investment accounts, all marketable securities;

(ii) all deposits, withholdings, prepayments, credits and refunds of Sellers or their Affiliates; all security deposits and prepayments, prepaid expenses, deposits and advances, whether or not reflected on Sellers' books and records relating to the Assumed Contracts.

(iii) Excluded Accounts;

(iv) all claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment (y) relating to the Excluded Assets, or (z) that have accrued, arisen or been asserted against any Person or that relate to any period before the Effective Time, in each case which do not relate primarily to the Acquired Assets (including fiduciary duty claims, tort claims and claims against current and former employees of the Sellers that accrued prior to Closing), all rights and powers of a trustee and debtor-in-possession against any Person whatsoever, including all avoidance powers granted to Seller under the bankruptcy Code and all causes of action and remedies granted pursuant to or incorporated in Sections 502, 510, 541, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

(v) all rights of Sellers and their Affiliates in, to and under any agreement, lease or other contract other than Assumed Contracts;

(vi) all capital stock of Sellers and Sellers' Subsidiaries;

(vii) the certificate of incorporation, qualifications to conduct business as a foreign corporation, taxpayer and other identification numbers, seals, minute books, stock transfer books, blank stock certificates, and other corporate documents and records relating to the organization or maintenance of the corporate existence of Sellers;

(viii) all assets held by or for the account of Sellers or their Affiliates pursuant to the terms of any deferred compensation, incentive compensation, welfare or other employee benefit plan, or the assets of any related trust described in Section 401 of the Code;

(ix) all insurance policies of Sellers or their Affiliates and any proceeds received thereunder;

(x) all rights that accrue to Sellers under this Agreement;

(xi) all assets of Sellers' Video Services Group, consisting of (i) sales of interactive video communications equipment, (ii) installations, maintenance and training services, and (iii) the circuits listed on Section 2(b)(x) of the Disclosure Letter;

(xii) any Governmental Permit or similar right that by its terms or applicable Law is not transferable to Buyer; and

(xiii) all tangible and intangible properties and assets of Sellers not used or held for use primarily in connection with the conduct of the Business.

(c) Assumption of Liabilities.

As additional consideration for the Acquired Assets, Buyer agrees to assume, pay, perform and discharge the Assumed Contracts (other than, in each case, any Liability accruing prior to the Effective Time or with respect to any matters occurring prior to the Effective Time) provided that (x) Sellers shall have satisfied their obligations to cure under Section 365 of the Bankruptcy Code and (y) all parties to such Assumed Contracts shall have reasonable prior notice of the Motion to Approve Sale (collectively, the "*Assumed Liabilities*").

(d) Excluded Liabilities.

Notwithstanding the provisions of Section 2(b) or any other provision hereof, the Disclosure Letter or any other schedule or exhibit hereto and regardless of any disclosure to Buyer, other than the Assumed Liabilities, Buyer shall not assume or be obligated or be responsible to pay, perform, satisfy or otherwise discharge any Liabilities whatsoever whether or not such Liabilities arise in connection with or under the Assumed Contracts (collectively, the "*Excluded Liabilities*").

(e) Cure of Defaults.

With respect to each and all defaults, arrearages, or other obligations arising under or with respect to Assumed Contracts, whether arising before or after the filing of the Bankruptcy Case that are Acquired Assets, Sellers shall have satisfied their obligations to cure under Section 365 of the Bankruptcy Code.

(f) Excluded Accounts Agreement.

Subject to approval of the Court and state regulatory agencies (if applicable), Sellers and Buyer shall enter into the Excluded Accounts Agreement in form and substance satisfactory to the parties (the "*Excluded Accounts Salvage Agreement*") pursuant to which Sellers grant to Buyer the right to salvage by sale the Excluded Accounts to third party providers commencing on the date of this Agreement. In the event that Buyer is not the successful bidder of the Acquired Assets, all proceeds derived from the sale of Excluded Accounts (collectively, the "*Excluded Accounts Amount*") shall be paid to the Sellers net of any expenses incurred by Buyer in connection with selling such Excluded Accounts. In the event that Buyer is the successful bidder of the Acquired Assets, the Excluded Accounts Amount shall be deducted from the Purchase Price paid by the Buyer for the Acquired Assets. Notwithstanding the foregoing, in no event shall Buyer have any Liability whatsoever, directly or indirectly, for the cost of servicing the customers representing the Excluded Accounts pending disposition by salvage or otherwise.

(g) Master Services Agreement.

Simultaneously with the execution of this Agreement, Net2000 Communications, Inc., a Delaware corporation ("*Net2000*") and Buyer shall enter into the Master Services Agreement in the form of Exhibit A hereto (the "*Master Services Agreement*") pursuant to which Buyer agrees to provide certain telecommunications services to Net2000 in accordance with the terms set forth therein. In the event that Buyer is not the successful bidder at the hearing on the Sale Order, then, notwithstanding Section 2(c) of this Agreement, the successful bidder shall agree to assume all Liabilities of Net2000 under the Master Services Agreement.

3. PURCHASE PRICE.

(a) Purchase Price.

The purchase price for the Acquired Assets shall be Twenty Five Million and 00/100 Dollars (\$25,000,000.00) consisting of (i) a cash payment equal to Fifteen Million and 00/100 Dollars (\$15,000,000) payable at Closing (the "*Cash Purchase Price*") and (ii) a cash

payment of Ten Million and 00/100 Dollars (\$10,000,000) payable with interest at the rate of 4% per annum, in two (2) equal installments of Five Million and 00/100 Dollars (\$5,000,000.00) on the 60th and 90th day after the Closing)(the "**Deferred Purchase Price**", together with the Cash Purchase Price, the "**Purchase Price**") less the Excluded Accounts Amount, if applicable, pursuant to Section 2(f). At Closing, Buyer shall pay the Cash Purchase Price, less the Deposit as provided in Section 10, to Sellers by wire transfer in immediately available funds to such account or accounts as shall have been designated by Sellers. Buyer's obligation to pay the Deferred Purchase Price shall be secured by a security interest granted in favor of the Sellers on the Accounts Receivable that are being purchased by the Buyer pursuant to this Agreement. The security interest will be effected and perfected by a lock box mechanism in form and substance satisfactory to Sellers' lenders.

(b) Allocation.

The parties agree to allocate the Purchase Price (and other capitalizable costs) among the Acquired Assets for all purposes (including financial accounting and tax purposes) within thirty (30) days following the Closing.

4. CLOSING; CLOSING DOCUMENTS.

(a) Closing.

The closing ("**Closing**") of the transactions contemplated hereby shall take place as soon as practicable following the earliest of: (i) the date that is eleven days after the entry by the Court of the Sale Order in the Bankruptcy Case (provided that the Sale Order states that it shall not be subject to any stay), and (ii) December 31, 2001 (such date, the "**Closing Date**"), at the offices of Piper Marbury Rudnick & Wolfe, LLP, 1775 Wiehle Avenue, Reston, Virginia (or such other place as may be mutually agreeable to the parties). Closing shall be effective as of 12:01 a.m. on the Closing Date (the "**Effective Time**").

(b) Deliveries by Sellers.

Subject to the fulfillment or waiver of the conditions set forth in Section 8(b), at Closing, Sellers shall deliver, or cause to be delivered, to Buyer the following (the "**Seller's Closing Documents**"):

- (i) a Bill of Sale and Assignment for the tangible assets to be conveyed to Buyer hereunder in form and substance satisfactory to Buyer (the "**Bill of Sale**");
- (ii) such Deferred Purchase Price Documents to which Sellers are a party;
- (iii) the Assumption Agreement;
- (iv) a certified copy of the Sale Order;
- (v) a certificate of Sellers, duly executed by Sellers, dated the Closing Date, certifying that Sellers' representations and warranties contained in this Agreement shall

be true and correct in all material respects on the Closing Date and that Sellers have performed in all material respects all of their covenants and obligations hereunder which by the terms hereof are to be performed on or before the Closing Date;

(vi) title certificates for all vehicles owned by Sellers and conveyed to Buyer hereunder;

(vii) originals of all delivery receipts contemplated by Section 7(e)(ii);

(viii) such other endorsements, assignments and instruments as are contemplated by this Agreement or as are reasonably deemed necessary by Buyer or Buyer's legal counsel to consummate the sale transactions (as contemplated in the Sale Order).

(c) Deliveries by Buyer.

Subject to the fulfillment or waiver of the conditions set forth in Section 8(a), at Closing, Buyer shall deliver to Sellers the following (the "**Buyer Closing Documents**");

(i) the Cash Purchase Price;

(ii) the secured promissory note, security agreement, financing statements and other agreements reasonably necessary to evidence Sellers' security interest in the Accounts Receivable and the lockbox mechanism in accordance with Section 3(a)(collectively, the "**Deferred Purchase Price Documents**");

(iii) the Assumption Agreement;

(iv) a certificate of Buyer, duly executed by Buyer, dated the Closing Date, certifying that each of the Buyer's representations and warranties contained in this Agreement shall be true and correct in all material respects on the Closing Date and that Buyer has performed in all material respects all of its covenants and obligations hereunder which by the terms hereof are to be performed on or before the Closing Date; and

(v) such other instruments as are contemplated by this Agreement or as are reasonably deemed necessary by Seller or Sellers' legal counsel to consummate the sale transactions, duly executed by Buyer as appropriate.

5. REPRESENTATIONS AND WARRANTIES OF SELLERS.

Sellers represent and warrant to Buyer that the statements contained in this Article 5 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 5), except as set forth in the disclosure letter accompanying this Agreement and initialed by the Parties (the "*Disclosure Letter*"). The Disclosure Letter will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this Agreement

(a) Organization, Qualification and Authority.

Subject to the entry of a Sale Order by the Court, Sellers have requisite corporate power and authority (i) to own or lease and to operate their properties and assets (including the Acquired Assets) and to carry on the Business as it is now being conducted and (ii) to enter into this Agreement and each of the Transaction Documents to be entered into by Sellers and to carry out their obligations hereunder and thereunder. The execution, delivery and performance by Sellers of this Agreement and of each Transaction Document to be entered into by Sellers, and the consummation by Sellers of the transactions contemplated hereby and thereby, have been approved by all necessary corporate action on the part of Sellers. This Agreement has been duly executed and delivered by Sellers and upon approval of the Court will constitute the legal, valid and binding agreement of Sellers, enforceable against Sellers in accordance with its terms.

(b) No Approvals; Conflict.

Except for (and subject to obtaining) the approval of the Court and any other approvals of Governmental Authorities identified in Section 5(b) of the Disclosure Letter, and except for (and subject to obtaining) any consents required in connection with the assignment to Buyer of the Assumed Contracts (which consents are identified in Section 5(b) of the Disclosure Letter), the execution, delivery and performance by Sellers of this Agreement and the Transaction Documents, the fulfillment of and compliance with the respective terms and provisions hereof and thereof by Sellers and the consummation of the transactions contemplated hereby and thereby by Sellers do not and will not (i) require any consent, authorization or approval of or any filing or registration with any Governmental Authority or other Person; (ii) result in a breach of any material obligation; (iii) constitute a material default or an event creating rights of acceleration, termination or cancellation or a loss of material rights; or (iv) result in the creation or imposition of any material Lien upon any of the Acquired Assets, in each case under any provision of (A) and of the certificates of incorporation or by-laws of Sellers; or (B) any material contract, lease or agreement to which any of the Sellers is a party.

(c) Litigation.

Except as set forth on Section 5(c) of the Disclosure Letter and except for the Bankruptcy Case, there is no litigation, action, lawsuit, Claim, audit, review, examination, inquiry, proceeding or investigation pending or, to the Knowledge of Sellers, threatened against Sellers: (i) which relates to the Acquired Assets or the Business, (ii) in which any of the Sellers is the plaintiff or claimant, which in any such case, is material to the Business; and (iii) which questions the legality or propriety of the transactions contemplated by this Agreement or any of

the Transaction Documents. Except as set forth in Section 5(c) of the Disclosure Letter, there is no outstanding order, writ, injunction, or decree of any Governmental Authority against or affecting the Acquired Assets or the Business.

(d) Financial Statements.

The Financial Statements (i) were derived from Sellers' historical records relating to the Business and were prepared in accordance with GAAP (ii) fairly present in all material respects the items contained thereon, including the assets and liabilities of the Sellers for the respective periods covered thereby. The Financial Statements do not reflect the operations of any entity or business not intended to constitute a part of the Business after giving effect to the transactions contemplated by this Agreement, reflect all material costs that historically have been incurred by the Business (other than the Excluded Liabilities) and present fairly the results of operations of the Business for the periods indicated.

(e) Title to Acquired Assets.

Except for Permitted Encumbrances, Sellers have title to, or a valid license or leasehold interest in, all of the Acquired Assets free and clear of all Liens other than Permitted Encumbrances, except as set forth on Section 5(e) of the Disclosure Letter. Upon the execution and delivery to Buyer on the Closing Date of the Bill of Sale, the Assumption Agreement and any other instruments of transfer and assignment contemplated by this Agreement, and subject to the entry of a Sale Order by the Court, Sellers will transfer to Buyer all of its interest in and to the Acquired Assets, in each case free and clear of all Liens (other than Permitted Encumbrances).

(f) Assumed Contracts.

Section 2(a)(iii) of the Disclosure Letter contains a true and complete list of all Assumed Contracts. Sellers have delivered to Buyer complete and correct copies of all Assumed Contracts listed on Section 2(a)(iii) of the Disclosure Letter (including all amendments and modifications thereof). Except for the Assumed Contracts, Sellers are not a party to any contract or agreement, written or oral, that is material to the operation of the Business. Except as set forth in Section 5(f) of the Disclosure Letter, Sellers have not assigned, transferred, pledged or otherwise conveyed their rights under any of the Assumed Contracts.

(g) Employees.

Section 5(g) of the Disclosure Letter lists or contains (i) all current employees of Sellers or their Subsidiaries working in the Business (the "**Employees**"), (ii) each Employee's current salary, and accrued but unused vacation, personal or sick time; and (iii) all employment agreements between Sellers and the Employees.

(h) Brokers' Fees.

Except for any obligations Sellers may have to Jefferies & Co., Inc. (as previously disclosed by Sellers to Buyer), Sellers have no liability or obligation to pay any fees or commissions to any broker or finder with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

(i) Intellectual Property.

Except as set forth in Section 5(i) of the Disclosure Letter, Sellers own or is licensed to use the Intellectual Property used by Seller in connection with the Business. Section 5(i)(1) of the Disclosure Letter identifies each patent or registration which has been issued to Sellers with respect to any of their respective Intellectual Property, identifies each pending patent application or pending application for registration which Sellers have made with respect to any of its Intellectual Property, and identifies each license or sublicense which Sellers have granted to any third party with respect to any of its Intellectual Property. Section 5(i)(2) of the Disclosure Letter identifies each item of Intellectual Property that any third party owns and that Sellers use pursuant to license or, sublicense, other than "shrink-wrap" or "off the shelf" software.

(j) Disclaimer of other Representations and Warranties.

Buyer has conducted a thorough review and analysis of the Business, assets (including the Acquired Assets and Assumed Contracts), liabilities, results of operations, financial condition, Intellectual Property and prospects of the Sellers and acknowledges that Buyer has been provided access to the personnel, properties, premises and records of the Sellers for such purpose. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES OR OPERATIONS, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. Buyer hereby acknowledges and agrees that, except to the extent specifically set forth in this Section 5, Buyer is purchasing the Acquired Assets on an "as-is, where-is" basis. Without limiting the generality of the foregoing, Sellers make no representation or warranty regarding any assets other than the Acquired Assets, and none shall be implied at law or in equity.

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to each of the Sellers that the statements contained in this Article 6 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 6), except as set forth in the Disclosure Letter.

(a) Organization, Qualification and Authority.

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has requisite corporate power and authority to enter into this Agreement and each of the Transaction Documents to be entered into by Buyer and to carry out its obligations hereunder and thereunder. The execution, delivery and performance by Buyer of this Agreement and of each Transaction Document to be entered into by Buyer, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been approved by all necessary corporate action on the part of Buyer. This Agreement has been duly

executed and delivered by Buyer and constitutes the legal, valid and binding agreement of Buyer, enforceable against it in accordance with its terms.

(b) No Approvals; Conflict.

Except for the approval of the Court, and the Federal Trade Commission and Justice Department in connection with the HSR Filing, the execution, delivery and performance by Buyer of this Agreement and the Transaction Documents, the fulfillment of and compliance with the respective terms and provisions hereof and thereof by Buyer and the consummation of the transactions contemplated hereby and thereby by Buyer do not and will not (i) require any consent, authorization or approval of or any filing or registration with any Governmental Authority or other Person, (ii) result in a breach of any material obligation, (iii) constitute a material default or an event creating rights of acceleration, termination or cancellation or a loss of material rights or (iv) result in the creation or imposition of any material Lien upon any of the Acquired Assets, in each case under any provision of (A) the certificate of incorporation or by-laws of Buyer, (B) any material contract, lease or agreement to which Buyer is a party or (C) any Law to which Buyer or any of the Acquired Assets is or are subject.

(c) Litigation.

There is no litigation, action, lawsuit, Claim, audit, review, examination, inquiry, proceeding or investigation involving Buyer pending or, to Buyer's knowledge, threatened which questions the legality or propriety of the transactions contemplated by this Agreement or any of the Transaction Documents.

(d) Brokers' Fees.

Buyer has no liability or obligation to pay any fees or commissions to any broker or finder with respect to the transactions contemplated by this Agreement for which Sellers could become liable or obligated.

(e) Financing Contingencies.

Buyer's ability to consummate Closing hereunder is not subject to any financing contingency.

(f) Confidentiality.

Buyer acknowledges that its undertakings pursuant to the Confidentiality Agreement dated October 26, 2001 entered into between Buyer and Sellers (the "**Confidentiality Agreement**") remain in full force and effect and Buyer represents and warrants that Buyer and its officers, directors, employees, agents, contractors and consultants, as applicable, are, and at all relevant times have been, in compliance in all material respects with the terms and conditions of the Confidentiality Agreement.

(g) Employees.

The Sellers will cooperate with the Buyer in connection with the retention of Employees. Buyer shall have the right, but not the obligation, to include any employment

contract with any Employee among those subject to the Assumption Agreement, and Sellers shall cooperate with the Buyers in the retention of Employees deemed by the Buyer to be necessary or helpful to the Business.

7. COVENANTS.

(a) General.

Subject to Section 7(f), below and the procedures set forth in the Bid Procedures Order, each of the Parties will use its commercially reasonable efforts to take all actions and do all things reasonably necessary, proper or advisable in order to consummate and make effective the transactions contemplated by this Agreement, including satisfaction, but not waiver, of the closing conditions set forth in Article 9 8, below.

(b) Operation of Business.

Except as otherwise contemplated by this Agreement, Sellers will not engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business, except that Sellers may (i) reject any executory contracts listed on Schedule 7(b) of the Disclosure Letter ("**Rejected Contracts**") and (ii) take other actions permitted under the Bankruptcy Code that are deemed beneficial to Sellers, provided that (x) such actions will not affect or impair the Acquired Assets (y) such actions will not have a Material Adverse Effect upon the Acquired Assets and (z) Sellers notify Buyer prior to taking such action, and will refrain from taking such action upon reasonable request of the Buyer. Notwithstanding the foregoing, in no event shall Sellers reject any executory contract (other than Rejected Contracts) without the Buyer's consent, which shall not be unreasonably withheld and be given within five days of the Seller's written request, provided that Buyer agrees (in writing), after receiving notice from Sellers and denying the Seller's request to reject an executory contract, to pay to the Sellers any amounts accruing on or after the Effective Time deemed reasonably necessary by the Court to preserve Sellers' right to utilize the beneficial interest in such contracts while preserving the right to reject such contracts or such other amounts mutually agreed upon between Buyer and the third parties of such contracts.

(c) Reasonable Access.

Prior to Closing, Sellers will use their commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to permit representatives of Buyer to have access, at all reasonable times and in a manner so as not to interfere with the normal business operations of Sellers, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to Sellers related to the Business and the Acquired Assets. Buyer will treat and hold as such any Confidential Information it receives from Sellers in the course of the reviews contemplated by this Section 7(C), will not use any of the Confidential Information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, will return to Sellers all tangible embodiments (and all copies) of the Confidential Information which are in its possession.

(d) Notice of Developments.

At any time prior to Closing, Sellers shall provide Buyer due and sufficient notice of material developments relating to the Business, including any development causing a material breach of any of their representations and warranties hereunder. In addition, Sellers shall, prior to Closing, supplement the Disclosure Letter hereto with respect to any matter coming to the Knowledge of Sellers that, if existing or known as of the date hereof, would have been required to have been set forth or described in the Disclosure Letter. Any such supplemental disclosure shall not be deemed to cure any material breach of any representation or warranty made herein as of the date hereof, nor shall it be deemed to have been disclosed to Buyer as of the date hereof for the purposes of determining whether or not Buyer has any further obligation to consummate the transactions contemplated hereby.

(e) Bankruptcy Court Approval.

(i) Within two (2) business days of filing the Bankruptcy Case, Sellers shall file a motion to approve the Master Services Agreement ("***Motion to Approve Master Services Agreement***"), in form satisfactory to the Buyer in its reasonable discretion. Promptly after filing the Motion to Approve Master Services Agreement, Sellers shall use reasonable efforts to obtain a hearing thereon at the earliest available date.

(ii) Within twenty (20) calendar days after the date hereof, Sellers shall file with the Court (i) a motion with the Court (the "***Motion to Approve Sale***") seeking among other things, the entry of the Bid Procedures Order, the Breakup Fee Order and the Sale Order substantially in the forms as attached hereto as Exhibits B, C and D, respectively. Promptly after the filing of the Motion to Approve Sale, Sellers shall use reasonable efforts to obtain a hearing thereon at the earliest available date. After filing the Motion to Approve Sale, Sellers shall not (without prior written consent of Buyer which consent shall not be unreasonably withheld) amend, modify or withdraw such motion. Sellers shall use its best efforts to obtain, promptly, entry of a the Bid Procedures Order, the Breakup Order and the Sale Order, and Sellers shall take all necessary actions in connection therewith. Sellers shall provide due and sufficient notice of the hearing to be held in the Court regarding the Motion to Approve Sale to: (i) each person or entity that has filed a notice of appearance, or that has otherwise filed a written request to receive copies of pleadings, in the Bankruptcy Case, (ii) the Securities and Exchange Commission, (iii) the Internal Revenue Service, (iv) the Office of the United States Trustee, (v) the taxing authorities for each of the States of Maryland, New York, New Jersey, the Commonwealths of Virginia, Pennsylvania and Massachusetts and the District of Columbia and any appropriate political subdivisions of any thereof, (vi) counsel to any statutory committee of creditors appointed by the Office of the United States Trustee in the Bankruptcy Case, (vii) Buyer and its counsel, (viii) the employment agencies for each of the States of Maryland, New York, New Jersey, the Commonwealths of Virginia, Pennsylvania and Massachusetts and the District of Columbia, (ix) each party (other than Seller) to each Assumed Contract, (x) each Person that has asserted a Lien on, or in, any of the Acquired Assets, as to whom service shall be made and (xi) any other Person that Buyer reasonably requests in writing be served, in each case, by United States mail, postage prepaid, or courier in Sellers' reasonable discretion; provided that, with respect to any Persons designated in paragraphs (ix) and (x) of this Section 7 (e)(ii) and other Persons designated by Buyer in its reasonable discretion, service shall be made by United

States certified mail, return receipt requested (or the substantial equivalent as to any such Person beyond areas served by the U.S. Postal Service).

(f) Order Approving Notices Procedures.

Buyer and its legal counsel have read and understand the order of the Bankruptcy Court approving the global bid procedures substantially in form and substance satisfactory to Buyer in its reasonable discretion (the "***Bid Procedures Order***") which order will be filed with the Court after the date hereof. The Bid Procedures Order shall require any Person bidding on the Acquired Asset to (i) make a counterbid of not less than \$28,875,000 and (ii) to accompany such counterbid with a deposit in an amount equal to \$1,000,000 payable in cash or certified funds. Buyer agrees and understands this Agreement is subject to the Bid Procedures Order and any other applicable order or act of the Court.

(g) Post-Closing Access to Records.

Following Closing and subject to the execution of a post-Closing confidentiality agreement, Buyer agrees to permit representatives of Sellers to have access, at reasonable times and in a manner so as not to interfere with the normal business operations of Buyer, to the books and records of Buyer (including all books and records acquired from Sellers hereunder) relating to the Acquired Assets or the conduct of the Business prior to the Closing Date so as to enable Sellers to prepare tax, financial or court filings or reports, to respond to court orders, subpoenas, or inquiries, investigations, audits or other proceedings of Governmental Authorities, to prosecute or defend legal actions or for other like proper purposes. Buyer agrees to preserve such records in its possession for a period of at least five years from the Closing Date.

(h) Further Actions.

Sellers and Buyer agree to use commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the Closing Date.

(i) Sellers and Buyer will, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by any of them pursuant to applicable Law in connection with this Agreement and the Transaction Documents, the sale and transfer of the Acquired Assets pursuant to this Agreement and the consummation of the other transactions contemplated thereby, including the HSR Filings.

(ii) Sellers and Buyer, as promptly as practicable, will use all commercially reasonable efforts to obtain, or cause to be obtained, all material Consents (including consents to assignment of Governmental Permits and any Consents required under any Contract) necessary to be obtained by any of them in order to consummate the sale and transfer of the Acquired Assets pursuant to this Agreement.

(iii) Sellers and Buyer will, and will cause each of their Affiliates to, coordinate and cooperate with each of the other parties in exchanging such information and

supplying such assistance as may be reasonably requested by Sellers or Buyer in connection with the filings and other actions contemplated by this Section 7(h).

(iv) At all times prior to the Closing, each party shall promptly notify the other in writing of any fact, condition, event or occurrence that will or may likely result in the failure of any of the conditions contained in Section 8 to be satisfied, promptly upon becoming aware of the same.

(i) Disclosure Letter.

Except for Sections 2(a)(iii), 2(b)(iii) and 7(b) of the Disclosure Letter attached hereto, the Disclosure Letter has not been finalized as of the date of execution of this Agreement. Sellers agree to deliver the proposed draft of the Disclosure Letter to Buyer on November 20, 2001. The Buyer shall notify Sellers in writing of any discrepancies between the due diligence and other information and documentation pertaining to the Sellers and the Business and the proposed Disclosure Letter by November 26, 2001. If by November 29, 2001, Buyers and Sellers are unable to agree on the final form of the Disclosure Letter, then the matter shall be submitted to the Bankruptcy Court for final determination. After the date hereof and until the Closing, Sellers shall supplement the Disclosure Letter with respect to any matter coming to their knowledge that, if existing or known as of the date of this Agreement, or if the Disclosure Letter had otherwise been completed as of the date hereof, would have been required to be set forth or described in any such Section of the Disclosure Letter. No such supplemental disclosure shall be deemed to have been disclosed as of the date of this Agreement for purposes of determining whether or not the conditions to Closing set forth in Section 8(a) have been satisfied (but such supplemental disclosure will be deemed to have amended the Disclosure Letter and to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder in the absence of such supplemental disclosure).

(j) Capitalization.

No later than forty-eight (48) hours prior to the date of the auction, Buyer shall provide Sellers evidence that establishes, to Sellers' satisfaction, that Buyer has sufficient financial ability to purchase the Acquired Assets and otherwise consummate the transactions contemplated herein.

(k) Assignment to Cavalier.

No later than December 6, 2001, Buyer and Cavalier shall deliver to Sellers an executed agreement pursuant to which (i) Buyer shall assign to Cavalier, and Cavalier shall accept the assignment of, all of Buyer's right title and interest in and to this Agreement and (ii) Cavalier shall assume all of Buyer's obligations under this Agreement including, without limitation, Buyer's obligations under Section 10, below.

8. CONDITIONS TO CLOSING.

(a) Conditions to Obligation of Buyer.

The obligation of Buyer to pay the Purchase Price and consummate the transactions to be performed by it in connection with Closing is subject to satisfaction of the following conditions:

(i) the representations and warranties of Sellers set forth in Section 5 above shall be true and correct in all material respects as of the date made and as if made on the Closing Date;

(ii) Sellers shall have performed and complied with all of their covenants hereunder in all material respects through Closing;

(iii) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement;

(iv) Sellers shall have delivered to Buyer all of Sellers' Closing Documents, duly executed by Sellers as applicable;

(v) [Intentionally Omitted]

(vi) from and after the date of this Agreement, with the exception of the filing with the Bankruptcy Court, (A) there shall have been no material adverse change in or to the Acquired Assets, Assumed Liabilities, or the Seller's rights and interests therein, nor shall any other fact or circumstances then exist that diminishes the value of the Acquired Assets or Buyer's reasonable expectation of benefit therein; and (B) there shall have arisen no Material Adverse Effect;

(vii) Sellers shall have satisfied their obligations to cure under Section 365 of the Bankruptcy Code.

(b) Conditions to Obligation of Sellers.

The obligation of Sellers to consummate the transactions to be performed by it in connection with Closing is subject to satisfaction of the following conditions:

(i) the representations and warranties of Buyer set forth in Section 6 above shall be true and correct in all material respects as of the date made and as if made on the Closing Date;

(ii) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through Closing;

(iii) The Cash Purchase Price shall have been paid by Buyer via wire transfer of immediately available funds, in U.S. currency, to an account designated by Sellers;

(iv) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement;

(v) Buyer shall have delivered to Sellers all of Buyer's Closing Documents, duly executed by Buyer as applicable; and

(vi) all actions, consents or approvals required to be obtained from Governmental Authorities in connection with the consummation of the transactions contemplated by this Agreement or by the Transaction Documents shall have been obtained (copies of which shall have been delivered to Sellers) and be in full force and effect, including the Sale Order from the Court provided that the Sale Order states that it shall not be subject to any stay).

9. EXPENSES AND FEES.

Except to the extent that Buyer may be entitled to the Breakup Fee, each party shall pay its own costs and expenses incident to the preparation and negotiation of this Agreement and the Transaction Documents, the consummation of the transactions contemplated hereby and thereby and its compliance with all its agreements and conditions contained herein or therein, including all legal and accounting fees and disbursements and all costs of obtaining necessary consents.

10. DEPOSIT AND LIQUIDATED DAMAGES.

Within two (2) business days of the execution of this Agreement, the Buyer shall deposit the sum of One Million and 00/100 Dollars (\$1,000,000.00) (the "Deposit") with Wilmington Trust Company (the "Escrow Agent"). The Escrow Agent shall perform its services pursuant to the Escrow Agreement substantially in the form as attached as Exhibit E (the "*Escrow Agreement*"). If the Buyer is the successful bidder at the hearing on the Sale Order, at the Closing, the Deposit (and earnings thereon) shall be delivered to the Sellers pursuant to the Escrow Agreement and credited toward the Cash Purchase Price.

(i) Except as set forth in Sections 10 (ii) and (iii), below, if the Closing does not occur and this Agreement is terminated, whether pursuant to Section 11 or otherwise, then the Deposit (and earnings thereon) shall be immediately delivered to the Buyer in accordance with the Escrow Agreement; provided, however, that if this Agreement is terminated by Sellers because Buyer is not the successful bidder at the hearing on the Sale Order (nor the second highest bidder at the hearing on the Sale Order), then the Deposit (and earnings thereon) shall be paid to the Buyer at the closing of the counterbid.

(ii) If the Buyer is in material breach or provides written repudiation of this Agreement (provided that Sellers are not in material breach of this Agreement) on or before December 6, 2001, Sellers' remedies against Buyer shall be limited to retention of the Deposit as liquidated damages pursuant to the terms of the Escrow Agreement, which shall be sole remedy of Sellers for such breach, and Sellers shall have no other recourse against Buyer, Cavalier or any of their respective affiliates on account of this Agreement nor otherwise.

(iii) If the Buyer is in material breach of this Agreement (provided that Sellers

are not in material breach of this Agreement) after December 6, 2001, Sellers shall have full recourse against the Buyer and the Deposit shall secure Sellers' claim against the Buyer pending liquidation of such claim.

11. TERMINATION. This Agreement shall terminate as provided below:

(a) Mutual Agreement.

Buyer and Sellers may terminate this Agreement by mutual written consent at any time prior to Closing.

(b) Termination by Buyer.

Buyer may terminate this Agreement by giving written notice to Sellers on or prior to Closing (i) in the event of a Material Adverse Effect effecting the Acquired Assets and such Material Adverse Effect shall have continued without cure for a period of ten (10) Business Days after the date the notice of such was received by Sellers, (ii) for failure of the Court to enter each of the Bid Procedure Order on or before December 15, 2001, the Breakup Fee Order on or before December 31, 2001 and the Sale Order on or before January 15, 2002, (iii) if the Closing does not occur on or prior to February 15, 2002, or (iv) if the Court approves a purchaser other than the Buyer at the hearing on the Sale Order.

(c) Termination by Sellers.

Sellers may terminate this Agreement by giving written notice to Buyer on or prior to the Closing (i) in the event that the Court does not approve the Bidding Procedures Order and the Breakup Fee Order, or (ii) if the Court approves a purchaser other than the Buyer at the hearing on the Sale Order, provided that Sellers pay the Breakup Fee to the Buyer at the closing of the counterbid.

(d) Effect of Termination.

In the event of the termination of this Agreement pursuant to this Section 11, this Agreement, except for the provisions of Sections 9, 12(d) and 12(k) shall forthwith become null and void and have no effect. Nothing in this Section 12 shall, however, relieve any party to this Agreement of liability for breach of this Agreement occurring prior to such termination, or for breach of any provision of this Agreement which specifically survives termination.

12. MISCELLANEOUS.

(a) Survival of Representations and Warranties.

None of the representations and warranties of the parties hereto contained in this Agreement or in any of the Transaction Documents shall survive Closing hereunder

(b) Transfer Taxes.

Any federal, state, provincial or local transfer Taxes, including gains, transfer, conveyance, sales, documentary stamp and similar Taxes, payable as a result of the purchase and

sale of the Acquired Assets, the assignment of Assumed Contracts or any other action contemplated by this Agreement will be paid by Buyer. Buyer and Sellers will cooperate in the preparation, execution and filing of all Tax Returns, questionnaires, applications or other like documents regarding any such Taxes.

(c) Waiver.

No terms or provisions hereof, including the terms and provisions contained in this sentence, shall be waived, modified or altered so as to impose any additional obligations or liability or grant any additional right or remedy, and no custom, payment, act, knowledge, extension of time, favor or indulgence, gratuitous or otherwise, or words or silence at any time, shall impose any additional obligation or liability or grant any additional right or remedy or be deemed a waiver or release of any obligation, liability, right or remedy except as set forth in a written instrument properly executed and delivered by the party sought to be charged, expressly stating that it is, and the extent to which it is, intended to be so effective. No assent, express or implied, by either party, or waiver by either party, to or of any breach of any term or provision of this Agreement or of the Schedules shall be deemed to be an assent or waiver to or of such or any succeeding breach of the same or any other such term or provision.

(d) Press Releases and Public Announcements.

No party shall issue any press release or make any public announcement relating to the subject matter of this Agreement prior to entry of a Sale Order without the prior written approval of the other party; provided, however, that any party may make any public disclosure it believes in good faith is required by applicable Law or any listing or trading agreement concerning its publicly-traded securities.

(e) No Third-Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the parties and their respective successors and permitted assigns.

(f) Entire Agreement; Amendment.

This Agreement, the Disclosure Letter referred to herein and the Transaction Documents contain the entire understanding of the parties with respect to the subject matter contained herein or therein and supersede in their entirety all prior or concurrent oral or written agreements, offers, proposals and understandings between the parties with respect to such subject matter; provided, however, that the Confidentiality Agreement remains in full force and effect. This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties; provided, however, that (ii) this Agreement may not be amended in any material manner after entry of a Sale Order without Court approval, and (ii) the Disclosure Letter may be amended at any time prior to the Effective Time to the extent that such amendments are not material.

(g) Succession and Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either

this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party; provided, however, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (ii) designate one or more of its Affiliates to perform its obligations hereunder, in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder. In the event Buyer assigns or delegates any of its rights hereunder as provided in the foregoing sentence. Buyer shall cause such Affiliate to be capitalized, or shall guarantee or otherwise provide financial support for the obligations of any such Affiliate to the extent such capitalization or financial support may be required in order to avoid objection to the assignment of the Assumed Contracts to such Affiliate under the provision of Section 365 of the Bankruptcy Code.

(h) Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(i) Headings.

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(j) Notices.

All notices, requests, demands or other communications required or permitted by this Agreement: (i) shall be in writing; (ii) shall be deemed to have been given, forwarded, made or delivered: (A) if delivered in person or by overnight courier service, when so delivered, (B) if sent by facsimile transmission, when received, or (C) if sent by registered, certified or express mail, return receipt requested and postage prepaid, on the date of receipt (or on the date of attempted delivery if delivery is refused); and (iii) shall be addressed as follows:

If to Buyer:

Cavalier East, LLC and/or Cavalier Telephone, LLC
2134 West Laburnum Avenue
Richmond, Virginia 23227
Attn: Brad Evans
Phone: (804) 422-4502
Facsimile: (804) 422-4599

with a copy to:

Edwards & Angell LLP
101 Federal Street
Boston, MA 02110
Attn: James D. McGinley, Esq.
Phone: (617) 951-2219 (direct line)

Facsimile: (617) 439-4170
Cellular: (617) 645-1124

If to Sellers:

Net2000 Communications, Inc.
2180 Fox Mill Road
Herndon, VA 20171
Attn: General Counsel
Telephone: (703) 654-2000
Facsimile: (703) 654-2049

with copies to:

Piper Marbury Rudnick & Wolfe, LLP
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412
Attention: Edwin M. Martin, Jr., Esq.
Telephone: (202) 861-6315
Facsimile: (202) 223-2085

Morris Nichols Arsht & Tunnell
1201 North Market Street
Wilmington, Delaware 19899-1347
Attention: Robert J. Dehney
Telephone: (302) 658-9200
Facsimile: (302) 425-4673

Each party may designate by notice in writing a new or additional address to which any notice, request, demand or communication may thereafter be so given, served or sent. Notices, requests, demands and other communications hereunder may be given by the attorney of any party.

(k) Governing Law; Jurisdiction.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE STATE AND FEDERAL COURTS OF THE STATE OF DELAWARE SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR TO ANY MATTER ARISING HEREUNDER OR RELATED HERETO.

(l) Severability.

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms

and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(m) Incorporation of Disclosure Letter.

The Disclosure Letter identified in this Agreement is incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

CAVALIER EAST, LLC

By: Brad Evans
Name: Brad Evans
Title: President

CAVALIER TELEPHONE, LLC

(with respect to Section 7(k), only)

By: Brad Evans
Name: Brad Evans
Title: President

NET2000 COMMUNICATIONS, INC.

By: _____
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS HOLDINGS, INC.

By: _____
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS GROUP, INC.

By: _____
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 INVESTMENTS, INC.

By: _____
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS OPERATIONS, INC.

By: _____
Name: Donald E. Clarke
Title: Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

CAVALIER EAST, LLC

By: _____
Name: Brad Evans
Title: President

CAVALIER TELEPHONE, LLC
(with respect to Section 7(k), only)

By: _____
Name: Brad Evans
Title: President

NET2000 COMMUNICATIONS, INC.

By: Donald E. Clarke
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS HOLDINGS, INC.

By: Donald E. Clarke
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS GROUP, INC.

By: Donald E. Clarke
Name: Donald E. Clarke
Title: Chief Financial Officer

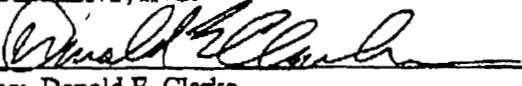
NET2000 INVESTMENTS, INC.

By: Donald E. Clarke
Name: Donald E. Clarke
Title: Chief Financial Officer

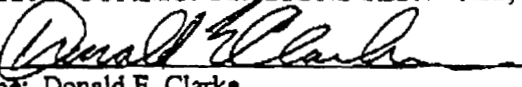
NET2000 COMMUNICATIONS OPERATIONS, INC.

By: Donald E. Clarke
Name: Donald E. Clarke
Title: Chief Financial Officer

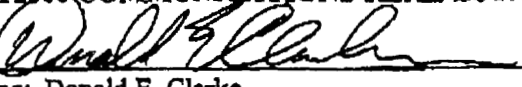
**NET2000 COMMUNICATIONS CAPITAL
EQUIPMENT, INC.**

By: 
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS SERVICES, INC.

By: 
Name: Donald E. Clarke
Title: Chief Financial Officer

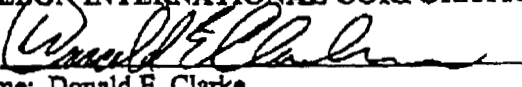
NET2000 COMMUNICATIONS REAL ESTATE, INC.

By: 
Name: Donald E. Clarke
Title: Chief Financial Officer

NET2000 COMMUNICATIONS OF VIRGINIA, LLC

By: 
Name: Donald E. Clarke
Title: Chief Financial Officer

FREBON INTERNATIONAL CORPORATION

By: 
Name: Donald E. Clarke
Title: Chief Financial Officer

VISION I.T.

By: 
Name: Donald E. Clarke
Title: Chief Financial Officer

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

NET2000 COMMUNICATIONS, INC., et al.,
Debtors.

Chapter 11

Case No. 01-11324 (MFW)

Jointly Administered

ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), (f) AND (m), 365(a) AND 1146(c), AND FED. R. BANKR. P. 2002 AND 6004: (A) APPROVING PURCHASE AGREEMENT BETWEEN THE DEBTORS AND CAVALIER EAST, L.L.C. OR ANY HIGHER AND BETTER BIDDER; (B) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND (D) GRANTING RELATED RELIEF

UPON CONSIDERATION of the above-captioned debtors and debtors in possession's (the "Debtors") Motion for an Order (A) Fixing Dates, Times and Place of Hearings to Consider Further Orders Pursuant to Sections 105, 363(b), 363(f), 363(m), 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007 and 9008; (B) Authorizing Debtors to Sell (the "Asset Sale" or "Sale") Assets (the "Sale Assets") Free and Clear of All Liens and Claims to Cavalier East, L.L.C. ("Cavalier") or any Higher and Better Bidder Pursuant to the Terms of an Asset Purchase Agreement Dated November 15, 2001; (C) Approving a Break-Up Fee and Certain Bidding Procedures; (D) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "Executory Contracts") in Connection with the Sale, (E) Fixing Manner and Extent of Notice of Such Auction and Hearings; and (F) Granting Related Relief (the "Motion"); and the Court having held a hearing on the Motion on December 19, 2001 (the "Hearing"); and it appearing that the relief requested

by the Motion is in the best interests of the Debtors and their estates; and good cause appearing therefor:

IT IS HEREBY FOUND and CONCLUDED THAT:

A. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

C. Adequate and sufficient notice of the Motion, the Hearing, the Asset Sale, and the assumption and assignment of the Executory Contracts has been provided in accordance with 11 U.S.C. §§ 102(l) and 363 and Bankruptcy Rules 2002 and 6004; such notice was good and sufficient and appropriate under the circumstances; and no other or further notice of the Motion, the Hearing, the Asset Sale or the assumption and assignment of the Executory Contracts is or shall be required.

D. Upon entry of this Order, each selling Debtor (i) has full corporate power and authority to execute the Asset Purchase Agreement dated November 15, 2001 (the "Agreement"), by and among the Debtors and Cavalier or any higher and better bidder (the "Purchaser") and all other documents contemplated thereby, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement and (iii) has taken all corporate action necessary to authorize and approve the Agreement and the consummation by such selling Debtor of the transactions contemplated thereby. No other consents or approvals are required for the Debtors to consummate such transactions.

E. Approval of the Agreement and consummation of the Asset Sale at this time are in the best interests of the Debtors, their creditors, their estates, and other parties in interest.

F. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Asset Sale pursuant to 11 U.S.C. § 363(b) prior to, and outside of, a plan of reorganization in that, among other things, the prompt consummation of the Asset Sale is the only way to maximize the value of the Sale Assets for the Debtors' estates and creditors and other parties in interest.

G. The Agreement was negotiated, proposed and entered into by the Debtors and the Purchaser without collusion, in good faith, and from arm's - length bargaining positions. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Agreement to be avoided under 11 U.S.C. § 363(n).

H. The Purchaser 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 Purchaser 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 any time after the entry of this Sale Order.

I. The consideration provided by the Purchaser for the Sale Assets pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Sale Assets, (iii) will provide a greater recovery for 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.

J. The Asset Sale must be approved and consummated promptly in order to preserve the value of the Sale Assets as a going concern.

K. The transfer of the Sale Assets to the Purchaser will be a legal, valid and effective transfer of the Sale Assets and will vest the Purchaser with all right, title and interest of the Debtors to the Sale Assets free and clear of all (i) mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, claims, judgments, demands, easements, charges, encumbrances, defects, security interests, options, rights of first refusal, and restrictions of all kind (collectively, "Interests") and (ii) all debts arising under or out of, in connection with, or in any way relating to, any acts of the Debtors, claims (as that term is defined in section 101 (5) of the Bankruptcy Code), rights or causes of action (whether in law or in equity, including, but not limited to, any rights or causes of action based on theories of transferee or successor liability under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof), obligations, demands, guaranties, rights, contractual commitments, restrictions, interests and matters of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively, "Claims"), other than as set forth in the Agreement.

L. The Purchaser 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 Sale Assets to the Purchaser and the assignment of the Executory Contracts to the Purchaser were not free and clear of all Claims and Interests of any kind or nature whatsoever (other than as set forth in the Agreement), or if the Purchaser would, or in the future could, be liable for any of the Claims and Interests, other than as set forth in the Agreement.

M. The Debtors may sell the Sale Assets free and clear of all Claims and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those (i) holders of Claims and Interests and (ii) non-debtor parties to Executory Contracts and unexpired leases who did not object to the Asset Sale or the Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Those (i) holders of Claims and Interests and (ii) non-debtor parties to Executory Contracts who did object, if any, fall within one or more of the other subsections of 11 U.S.C. § 363(f) and are adequately protected by having their Claims or Interests, if any, attach to the cash proceeds of the Asset Sale ultimately attributable to the property against or in which they assert a Claim or Interest.

N. Except as set forth on the record at the Hearing on the Motion and in the Agreement and this Order, the (i) transfer of the Sale Assets to the Purchaser and (ii) assumption and assignment of the Executory Contracts will not subject the Purchaser to any liability whatsoever with respect to the operation of the business prior to the Closing Date. The Asset Sale is a sale in contemplation of a plan and, accordingly, a transfer pursuant to 11 U.S.C. § 1146(c), which shall not be taxed under any law imposing a stamp tax or similar tax.

O. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Executory Contracts to the Purchaser in connection with the consummation of the Asset Sale, and the assumption and assignment of the Executory Contracts is in the best interests of the Debtors, their estates and creditors. The Executory Contracts being assigned to the Purchaser are an integral part of the business being purchased by the Purchaser and, accordingly, such assumption and assignment of Executory Contracts are reasonable, enhance the value of the Debtors' estates and do not constitute unfair discrimination.

P. The Purchaser has provided adequate assurance to any objecting party of (i) its ability to cure any default existing prior to the date hereof under any of the Executory Contracts within the meaning of 11 U.S.C. § 365(b)(1)(A), (ii) its ability to compensate any party other than the Debtors for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Executory Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B) and (iii) adequate assurance of future performance of and under the Executory Contracts within the meaning of 11 U.S.C. § 365(b)(1)(C).

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

1. The Motion is GRANTED.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, if any, hereby are overruled on the merits.
3. The Agreement and all of the terms and conditions thereof, except as set forth on the record, are hereby approved.
4. Pursuant to 11 U.S.C. § 363(b), the Debtors are authorized to consummate the Asset Sale, pursuant to and in accordance with the approved terms and conditions of the Agreement.
5. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate and implement, the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to

possession, the Sale Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement.

6. Pursuant to 11 U.S.C. §§ 105(a) and 363(f), the Sale Assets shall be transferred to the Purchaser, and upon consummation of the Agreement (the "Closing") shall be, free and clear of all Claims and Interests of any kind or nature whatsoever, other than as set forth in the Agreement, with all such Claims and Interests of any kind or nature whatsoever to attach to the net proceeds of the Asset Sale in the order of their priority, with the same validity, force and effect which they now have as against the Sale Assets, subject to any claim and defenses the Debtors may possess with respect thereto.

7. Except as expressly permitted or otherwise specifically provided by the Agreement or 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 and other creditors, holding Claims and Interests of any kind or nature whatsoever against or in the Debtors or the Sale 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 Debtors, the Sale Assets, or the transfer of the Sale Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Sale Assets, such persons' or entities' Claims and Interests.

8. The transfer of the Sale Assets to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of the Sale Assets, and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Sale Assets free and clear of

all Claims and Interests of any kind or nature whatsoever, other than as set forth in the Agreement.

9. Pursuant to 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Asset Sale, the Debtors' assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the Agreement, of the Executory Contracts is hereby approved, and the requirements of 11 U.S.C. § 365(b)(1) with respect thereto are hereby deemed satisfied.

10. The Debtors are hereby authorized and directed in accordance with 11 U.S.C. §§ 105(a) and 365 to (a) assume and assign to the Purchaser, effective upon the Closing of the Asset Sale, the Executory Contracts free and clear of all Claims and Interests of any kind or nature whatsoever and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Executory Contracts to the Purchaser.

11. The Executory Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to 11 U.S.C. § 365(k), the Debtors shall be relieved from any further liability with respect to the Executory Contracts after such assignment to and assumption by the Purchaser.

12. All defaults or other obligations of the Debtors under the Executory Contracts arising or accruing prior to the date of this Sale Order (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured at the Closing of the Asset Sale. The counterparties to

such Executory Contracts shall only be entitled to (i) the cure payment set forth in the Notice of Debtors Intent to Potentially Assume and Assign Unexpired Lease or Executory Contract and Proposed Cure Amounts (the "Assignment Notice") filed contemporaneously with the Motion or (ii) if a counterparty has filed a timely objection to the cure amount proposed in the Assignment Notice, such cure amount as may be agreed to among the Debtors, the Purchaser and the objecting counterparty or if no such agreement can be reached, a cure payment as set forth in a final and nonappealable order of this Court.

13. Each non-Debtor party to an Assumed Contract is forever barred, estopped, and permanently enjoined from asserting against the Debtors or the Purchaser, or the property of either of them, any default existing as of the date of the Hearing if such default was not raised or asserted prior to or at the Hearing.

14. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtors' and Purchaser's rights to enforce every term and condition of the Executory Contracts.

15. The consideration provided by the Purchaser for the Sale Assets under the Agreement shall be deemed to constitute reasonably equivalent value and fair consideration.

16. The consideration provided by the Purchaser for the Sale Assets under the Agreement is fair and reasonable and may not be avoided under § 363(n) of the Bankruptcy Code.

17. On the date of the Closing of the Sale (the "Closing Date"), each of the Debtors' creditors is authorized and directed to execute such documents and take all other

actions as may be necessary to release its Claim against or Interests in the Sale Assets, if any, as such Claims or Interests may have been recorded or may otherwise exist.

18. This Sale Order (a) shall be effective as a determination that, on the Closing Date, all Claims and Interests of any kind or nature whatsoever existing as to the Sale Assets prior to the Closing have been unconditionally released, discharged and terminated (other than as set forth in the Agreement), and that the conveyance described in decretal paragraph 6 hereof has 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 Sale Assets.

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

20. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Claims against or Interests in the Sale Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims or Interests which the person or entity has with respect to the Debtors or the Sale Assets or otherwise, then (a) the Debtors are 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 Sale Assets and (b) the Purchaser 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 Claims against or Interests in the Sale Assets of any kind or nature whatsoever.

21. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Sale Assets are hereby directed to surrender possession of such Sale Assets to the Purchaser on the Closing Date.

22. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Sale Assets other than as set forth in the Agreement. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Agreement, the Purchaser shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing 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 business prior to the Closing Date.

23. Under no circumstances shall the Purchaser be deemed a successor of or to the Debtors for any Claim or Interest against or in the Debtors or the Sale Assets of any kind or nature whatsoever. All persons holding Claims or Interests against or in the Debtors or the Sale Assets of any kind or nature whatsoever shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Claims or Interests of any kind or nature whatsoever against the Purchaser, its property, its successors and assigns, or the Sale

Assets with respect to any Claim or Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders or the Sale Assets. Following the Closing Date, no holder of a Claim against or Interest in the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Sale Assets based on or related to such Claim or Interest, or any actions that the Debtors may take in their Chapter 11 cases.

24. This Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection with them in all respects, including but not limited to, retaining jurisdiction to (a) compel delivery of the Sale Assets to the Purchaser, (b) resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Sale Order and (d) protect the Purchaser against any Claims against or Interests in the Debtors or the Sale Assets, of any kind or nature whatsoever.

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

26. The approved terms and provisions of the Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates,

and their creditors, the Purchaser, and their respective affiliates, successors and assigns and any affected third parties including, but not limited to, all persons asserting a Claim against or Interest in the Sale Assets to be sold to the Purchaser pursuant to the Agreement notwithstanding any subsequent appointment of any trustee, responsible person, estate administrator, representative or similar person (a "Responsible Person") for or in connection with any of the Debtors' estates or affairs in these cases or in any subsequent case(s) under the Bankruptcy Code involving any of the Debtors, as to which Responsible Person(s) such terms and provisions likewise shall be binding in all respects.

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

28. 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 both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or does not conflict with the Bankruptcy Code.

29. The transfer of the Sale Assets pursuant to the Asset Sale is a transfer pursuant to section 1146(c) of the Bankruptcy Code, and accordingly shall not be taxed under any law imposing a stamp tax or similar tax.

30. The ten day stay of this Sale Order under Federal Rule of Bankruptcy Procedure 6004(g) is hereby abrogated in accordance with such Rule and this Sale Order shall be effective and enforceable immediately upon entry.

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

Dated: Wilmington, Delaware
_____, 2001

JUDGE

257058

EXHIBIT E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

NET2000 COMMUNICATIONS, INC., et al.,
Debtors.

Chapter 11

Case No. 01-11324 (MFW)

Jointly Administered

Hearing Date: December 19, 2001 at ___:___ .m.

Response Date: December 17, 2001 at 4:00 p.m.

**NOTICE OF INTENT TO ASSUME AND ASSIGN
UNEXPIRED LEASE OR EXECUTORY CONTRACT**

PLEASE TAKE NOTICE THAT: On November 16, 2001, the above-captioned debtors and debtors (the "Debtors") in possession each filed for voluntary relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

Asset Sale. Pursuant to the Order (the "Procedures Order") entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), the Debtors are conducting a sale (the "Sale") of all or substantially all of their assets (the "Assets") free and clear of all liens, claims and encumbrances. A hearing on the motion to approve the sale of the Assets (the "Sale Hearing") is scheduled for **December 19, 2001 at ___: 0 __.m.**, before The Honorable Mary F. Walrath, United States Bankruptcy Judge, 824 Market Street, 6th Floor, Wilmington, Delaware 19801. In conjunction with that sale, the Debtors hereby provide notice of their intent to potentially assume, assign and sell pursuant to sections 363 and 365 of the Bankruptcy Code, the executory contract and/or unexpired lease to which both you and the Debtors are party (the "Executory Contract(s)").

Cure. The Debtors does not believe that any amounts are outstanding or required to cure any default under the Executory Contract(s) (the "Cure Amounts").

Objections. Objections ("Objections") to the assumption or assignment of any Executory Contract, including, without limitation, objections to the Debtors' proposed Cure Amount, if any, must be (a) filed with the Clerk of the Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, and (b) served on (i) counsel to the Debtors, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19801, (Attn: Robert J. Dehney, Esq.), (ii) counsel to the Purchaser, Edwards & Angell LLP, 101 Federal Street, Boston, Massachusetts 02110 (Attn: James D. McGinley, Esq.) and (iii) the United States Trustee (the "Notice Parties") so as to be received by no later than **4:00 p.m. on December 17, 2001 (Eastern Time)** (the "General Objection Deadline"). If no Objection is timely filed with the Court and served on the Notice Parties by the General Objection Deadline, the Cure Amount set forth above shall be controlling notwithstanding anything to the contrary in any Assigned Contract or other document and you shall be forever barred from objecting to the assumption and assignment of the Executory Contract or asserting any other claim arising prior to the assignment of such Executory Contract against the Debtors, the Purchaser or the Successful Bidder or Bidders if it is an Assigned Contract. If an Objection is timely and properly filed, the Bankruptcy Court will consider such Objection at the Sale Hearing, or as soon thereafter as counsel can be heard.

Modifications. The Debtors reserve the right, in their sole and absolute discretion to (a) at any time prior to the Closing Date, to amend their decision with respect to the assumption and assignment of any executory contract or unexpired lease and provide you with a new notice amending the information provided in this notice.

Dated: November __, 2001

BY ORDER OF THE COURT

EXHIBIT F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

NET2000 COMMUNICATIONS, INC., et al.,

Debtors.

Chapter 11

Case No. 01-11324 (MFW)

Jointly Administered

Hearing Date: December 19, 2001 at __:__.m.

Response Date: December 17, 2001 at 4:00 p.m.

**NOTICE OF (I) AUCTION, (II) BIDDING PROCEDURES, (III)
PROPOSED SALE OF ALL OR SUBSTANTIALLY ALL
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES,
(IV) SALE HEARING AND (V) DEADLINES FOR OBJECTIONS
TO ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, BIDDING AND SALE**

PLEASE TAKE NOTICE THAT:

Under the authority of the Order Fixing Dates, Times, Notice Procedures And Place Of Hearings, To Consider Motion For Further Orders Pursuant To Sections 105, 363(b), 363(f), 363(m), 365 And 1146(c) Of The Bankruptcy Code And Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007 And 9008, Inter Alia: (A) Authorizing Debtor To Sell Assets Free And Clear Of All Liens And Claims To Cavalier East, L.L.C. Or Any Higher And Better Bidder Pursuant To The Terms Of An Asset Purchase Agreement Dated November 15, 2001, (B) Approving A Break Up Fee And Certain Bidding Procedures, (C) Approving The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases In Connection With The Sale, (D) Fixing Manner And Extent Of Notice Of Such Auction And Hearings, And (E) Granting Related Relief (the "Procedures Order") entered by the United States Bankruptcy Court for the District of Delaware (the "Court") on [_____,] 2001, the captioned debtors and debtors in possession (collectively, the "Debtors") are seeking to sell all or substantially all of their assets (the "Assets") free and clear of all liens, claims, encumbrances, pledges, security interests, charges, hypothecations, options, setoffs, recoupment rights and other interests (collectively, the "Interests") to Cavalier East, L.L.C., or such other or higher bidder as the Debtors may determine after an auction.

The Auction. The Debtors will conduct an auction of the Assets (the "Auction") beginning on **December 14, 2001 at 10:00 a.m.** at the offices of Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, 18th Floor, Wilmington, Delaware 19801. Participation in the Auction is subject to certain procedures approved by the Court (the "Bidding Procedures") and set forth in the Procedures Order.

Objection Deadline. Objections (the "Objections"), if any, to the Auction, the Asset Sale or Sales or the assumption or assignment of any executory contract or unexpired lease of the Debtors (collectively, the "Executory Contracts"), including, without limitation, objections to the

amount proposed by the Debtors as necessary to cure any defaults under such Executory Contracts (the "Cure Amount"), must (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware; (c) set forth the name and address of the objector and contain requisite information respecting the objecting party's status; (d) state with particularity the legal and factual basis of the objection and specific grounds therefor; (e) in the case of an objection to the Cure Amount proposed by the Debtors, state with specificity what cure the party to the Executory Contract believes is required; and (f) no later than **4:00 p.m. on December 17, 2001** (the "General Objection Deadline"), be (i) filed with the Clerk of Court for the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, and (ii) served so as to be received on such date by the Notice Parties (as defined below). The Notice Parties are (i) counsel for the Debtors, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19801, (Attn: Robert J. Dehney, Esq.), (ii) counsel to Cavalier East, L.L.C., Edwards & Angell LLP, 101 Federal Street, Boston, Massachusetts 02110 (Attn: James D. McGinley, Esq.), (iii) counsel to the Official Committee of Unsecured Creditors, if appointed, and (iv) the United States Trustee. The failure of any objecting person or entity to timely file and serve its Objection shall be a bar to the assertion, at the Sale Hearing (as defined below) or thereafter, of any objection to the Motion, the Auction, the Asset Sale or Sales, the assumption and assignment of the Executory Contracts or any claim for cure associated therewith or the Debtors' consummation and performance of an Agreement or Modified Agreement (including the transfer of the Assets and assumption and assignment of the Assigned Contracts free and clear of all Interests), if authorized by the Court.

Sale Hearing. A hearing to approve the Sale of the Assets to the highest and best bidder will commence on **December 19, 2001 at 10:00 a.m.** at the United States Bankruptcy Court for the District of Delaware, before the Honorable Mary F. Walrath, United States Bankruptcy Judge, located at 824 Market Street, 6th Floor, Wilmington, Delaware 19801.

This notice is qualified in its entirety by the Procedures Order. Copies of the Motion, the Agreement and the Procedures Order are available at the Debtors' expense from IKON Office Solutions, 901 Market Street, Suite 718, Wilmington, Delaware, 19801, Telephone No. (302) 777-4500 (Attn: John Trickey).

Dated: _____, 2001

BY ORDER OF THE COURT