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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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In re	: (Jointly Administered
	: Under Case No. 02-35895)
VELOCITA CORP., et al.,	:
	: Chapter 11 Case Nos.
Debtors.	: 02-35894 (DHS)
	: through 02-35905 (DHS)
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**NOTICE OF AUCTION PROCEDURES,
AUCTION DATE AND SALE HEARING**

PLEASE TAKE NOTICE THAT, on October 17, 2002, Velocita Corp. and its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "Debtors") will conduct an auction ("Auction") for the sale of all or substantially all of the assets (the "Assets") or select Assets of the Debtors, which consist of telecommunications equipment, real estate assets, and other property .

PLEASE TAKE FURTHER NOTICE THAT, the Auction will be conducted in accordance with the auction procedures annexed hereto as Exhibit "A" (the "Auction Procedures") that were approved by order of the United States Bankruptcy Court for the District of New Jersey dated September 24, 2002.

PLEASE TAKE FURTHER NOTICE THAT, in accordance with the Auction Procedures (a) interested parties will have the opportunity to make competing offers and (b) the Debtors will select the highest or best bid for the sale of the Debtors or the Assets and thereafter seek Bankruptcy Court approval of such bid.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, any bidder desiring to submit a bid at the Auction (a "Bid") shall send a letter

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indicating its interest in bidding addressed to the Debtors, the Debtors' counsel and the Debtors' financial advisors, as set forth in the Auction Procedures. The Debtors will qualify interested parties that (1) sign a confidentiality agreement, and (2) provide the requisite financial and other information (a "Qualified Bidder"). A Qualified Bidder may make a "Qualified Bid" by delivering a bid in writing to the Debtors, together with a certified check or wire transfer payable to Velocita Corp. in the amount equal to 5% of the total proposed purchase price, and by delivering a copy of such bid to (i) the attorneys and advisors for the Debtors; and (ii) the attorneys and advisors for the Committees, as set forth in the Auction Procedures, so that such Bid and copies thereof are actually received by no later than 12:00 noon (New York time) on October 15, 2002.

THE AUCTION PROCEDURES CONTAIN DETAILED REQUIREMENTS FOR THE SUBMISSION OF ALL BIDS AND SHOULD BE REVIEWED CAREFULLY

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, the Auction will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, 25th Floor, New York, New York 10153, on October 17, 2002 at 11:00 a.m. Any person seeking to participate as a Qualified Bidder at the Auction must comply with the Auction Procedures.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, objections to any relief requested by the Sale Motion, including objections relating to the assumption and assignment of executory contracts and unexpired leases under section 365 of the Bankruptcy Code, shall be set forth in writing and state with particularity the grounds for such objections or other statements of position and shall be served so as to be actually received by 4:00 p.m. on October 21, 2002.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, objections relating solely to the adequate assurance of future performance of any unexpired leases to be assumed and assigned under section 365 of the Bankruptcy Code and any cure amounts thereunder shall be served and filed within 10 days after receiving notice of the identity the purchaser of the Debtors or its Assets.

PLEASE TAKE FURTHER NOTICE THAT, the Bankruptcy Court will hold a hearing on October 25, 2002 at 10:00 a.m. to consider and approve the Debtors' selection of the highest or best bid for the sale of the Debtors or its Assets. The hearing may be adjourned from time to time without further notice except by announcement of the adjourned date or dates at the hearing or any adjournment thereof.

PLEASE TAKE FURTHER NOTICE THAT, that all requests for information concerning the Debtors or its Assets should be in writing directed to: Peter Keenoy at Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Telephone No.: (203) 956-6565, Facsimile: (203) 956-9546.

Dated: September 25, 2002

WEIL, GOTSHAL & MANGES LLP
Co-Attorneys for the Debtors
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-and-

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Howard S. Greenberg, Esq. (HSG 8559)

EXHIBIT A

AUCTION PROCEDURES

The following procedures (the "Auction Procedures") shall govern the sale or other disposition at auction (the "Auction") of all or substantially all of the Debtors' Assets (the "Assets") pursuant to the Motion of Debtors dated September 13, 2002 for an Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code Approving, among other things, the Sale of All or Substantially All of the Debtors' Assets (the "Sale Motion"). These Auction Procedures have been approved and authorized by order dated September 24, 2002 (the "Bidding Procedures Order") of the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") in the chapter 11 cases of Velocita Corp. and certain of its subsidiaries and affiliates (collectively, the "Debtors").

1. Assets to be Sold

The Debtors shall consider bids for (i) a sale of the Company or all or substantially all of the assets (the "Assets") of the Company or (ii) a sale of select assets of the Company, and thereafter to sell all or substantially all of their Assets as a whole to one bidder or in parts to more than one bidder.¹

2. Mailing the Auction and Hearing Notice

On a date no later than three (3) business days following entry of the Bidding Procedures Order, the Debtors shall mail the Auction and Hearing Notice by first class mail, postage prepaid, to (a) all potential interested parties identified by the Debtors or their agent, (b) the Office of the United States Trustee, (c) counsel to the agent for the Debtors' prepetition institutional lenders and the statutory committees of general unsecured creditors and bondholders appointed in these cases (collectively, the "Committees"), (d) the parties in interest who have requested notice pursuant to Bankruptcy Rule 2002, (e) all known entities holding a security interest in or lien against any of the Assets, (f) the parties to the Debtors' executory contracts and unexpired leases that the Debtors believe may be subject to assumption and assignment (or rejection), (g) all taxing authorities whose rights may be affected by the sale of the Assets, and (h) all government agencies required to receive notice of proceedings under the Bankruptcy Rules and other regulatory rules. All other creditors of the Debtors and shareholders will receive notice by publication in the Wall Street Journal, National Edition.

¹ The Debtors reserve the right to discontinue the sale process and adjourn the auction if the Debtors determine such action is in the best interests of their estates and parties in interest.

3. Indication of Interest

The Debtors shall send a form of confidentiality agreement to any person indicating an interest in participating in the Auction and requesting information about the Company or its Assets who has not previously signed a confidentiality agreement.

4. Selection of Qualified Bidders

Potential purchasers shall be required to complete and execute the confidentiality agreement and provide the Debtors with their financial qualifications and such other information the Debtors may reasonably request. Prior to the Auction, the Debtors must qualify potential bidders according to their financial qualifications which includes, *inter alia*, an examination of potential bidders' current financial statements and their ability to consummate the purchase of the Assets ("Qualified Bidders"). Qualified Bidders will be allowed to perform reasonable due diligence on the Assets, including reasonable access to the books, records and executives of the Debtors. Any interested bidders should contact Peter Keenoy at Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Telephone No.: (203) 956-6565, Facsimile: (203) 956-9546, or Kay Parry at Velocita Corp., 2941 Fairview Park Drive, Falls Church, Virginia 22042, Telephone No.: (703) 564-7222, Facsimile: (703) 564-7444, to seek to become Qualified Bidders and, thereafter, to request information in connection with their due diligence.

5. Notification of Stalking Horse Agreement.

The Debtors reserve the right to enter into an asset purchase agreement prior to the Auction, subject to higher or better offers at the Auction, with one or more entities (the "Stalking Horse Bidder(s)") to establish a minimum bid for some or all of the Assets (the "Stalking Horse Agreement(s)"), which may contain certain customary terms and conditions, including expense reimbursement and a "break-up fee," in an amount to be determined by the Debtors. In the event the Debtors seek approval of a Break-up Fee in connection with a Stalking Horse Agreement that the Debtors intend to present at the Sale Hearing (defined below), the Debtors must file a supplement to the Sale Motion seeking approval of such Break-up Fee no later than October 1, 2002 at 5:00 P.M. A hearing to approve the Break-up Fee, if any, shall be held on October 7, 2002 at 10:00 a.m

6. Form and Content of Bids.

All bids must be in writing and submitted using the asset purchase agreement (annexed as Exhibit "C" to the Sale Motion, the "Asset Purchase Agreement") executed by the Qualified Bidders and be accompanied by a completed letter authorizing the Qualified Bidder's representative and counsel to participate in the Auction (together with the Asset Purchase Agreement, the "Bid Package"). Each Qualified Bidder must submit an executed "clean" version of the Asset Purchase Agreement, together with a blackline

to reflect any proposed changes to the terms and conditions of the bid.² If any bid is conditioned on the assumption and assignment of executory contracts and unexpired leases, then such bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid (an "Adequate Assurance Package").

Notwithstanding the foregoing, holders of (a) Post-Petition Loans under the Final Order (i) Authorizing the Use of Lenders' Cash Collateral and (ii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 dated July 16, 2002 (the "Final Order") and (b) indebtedness under the Credit Agreement, dated as of October 29, 1999 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Credit Agreement"), among PF.Net, the several banks and other financial institutions from time to time party thereto (the "Senior Lenders") and Wachovia Bank, National Association in its capacity as administrative agent for the Lenders (in such capacity, the "Administrative Agent") shall be deemed to be Qualified Bidders and may submit a bid at the Auction. The Senior Lenders are not required to make an Earnest Money Down Payment (which is waived by the Debtors). In any bid submitted by the Senior Lenders, the Senior Lenders may "bid in" or receive credit in their bid for all or a portion of their Post-Petition Loans and indebtedness under the Credit Agreement, which shall reduce the cash required to be paid with respect to such bid on a dollar-for-dollar basis, pursuant to section 363(k) of the Bankruptcy Code.

Any bid for all or substantially all of the Debtors' assets must be no less than \$75 million (the "Minimum Bid").

Bids must be unconditional and not contingent upon any event, including, without limitation, any due diligence investigation, the receipt of financing and any further bidding approval, including from any board of directors, shareholders or otherwise. Bids shall not be shared among the Qualified Bidders. All bids are irrevocable until seven (7) days after the Sale Hearing. All bids shall be accompanied by an earnest money deposit (the "Earnest Money Down Payment") equal to 5% of the total proposed purchase price in the form of a certified check or wire transfer payable to Velocita Corp. The Earnest Money Down Payment only should be sent to the Debtors (and not the other parties to receive copies of the bids). Within 24 hours of the Auction, any Successful Bidders (as defined in section 9 hereof) must supplement the initial Earnest Money Down Payment (through certified check or wire transfer), so that the total deposit equals 10% of their winning bid. Such deposit shall be held by the Debtors, without interest, until the earlier to occur of (i) the time such bids are officially rejected by the Debtors and (ii) seven (7) days after the Sale Hearing.

² While bidders may suggest modifications to the Asset Purchase Agreement, any such modifications deemed by the Debtors' estates to increase the obligations or burdens upon the Debtors (such as additional conditions) will be considered by the Debtors' in determining whether to accept such bid.

The bidder shall forfeit the Earnest Money Down Payment if the bidder is the Successful Bidder and (A) modifies or withdraws the bid without the Debtors' consent before the consummation of the sale contemplated by the Bid (as such term is hereinafter defined), (B) breaches the Bid, or (C) breaches its confidentiality agreement. The Earnest Money Down Payment shall be promptly returned to the bidder (i) if the bidder is not determined to be a Qualified Bidder or (ii) if the bidder is a Qualified Bidder (who has not otherwise forfeited its Earnest Money Down Payment), but is not a Successful Bidder.

The Bid must be accompanied by a letter affirmatively setting forth (i) the identity of the bidder (including the authorized representative to attend the Auction), the contact information for such bidder, the identity of the bidder's counsel, and contact information for such bidder's counsel; (ii) the aggregate value of the consideration the bidder proposes to pay under the Bid (which statement of value shall not be binding on the Debtors or the Court), (iii) the form of the Earnest Money Down Payment (*i.e.*, cashier's check or wire transfer) made by the bidder, and (iv) its acknowledgement that such offer shall be irrevocable until the earlier of seven (7) days after the Sale Hearing, or the date on which the Bankruptcy Court enters an order approving another bidder as the Successful Bidder.

7. Time for Submission of Bids.

All Bid Packages and Adequate Assurance Packages must be submitted in writing so that they are *actually received* by no later than **12:00 noon (New York time) on October 15, 2002** by Velocita Corp., 2941 Fairview Park Drive, Falls Church, Virginia 22042, Attn: W. Terrell Wingfield, Jr., with copies to the following parties: (i) Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Attn: Peter Keenoy and (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153-0119, Attn: Gary T. Holtzer, Esq. Each bidder shall provide copies of the executed Asset Purchase Agreement (clean and blacklined) and Adequate Assurance Package to Weil, Gotshal & Manges LLP.

8. The Auction.

The Auction will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 on October 17, 2002 at 11:00 a.m. Qualified Bidders who have complied with the Auction Procedures ("Qualified Bids") may improve their bids at the Auction (such bids, as improved, the "Improved Bids"). Only Qualified Bidders will be permitted to participate at the Auction.

9. Selection of Successful Bidder.

The Debtors may select the winning bid(s) after consultation with counsel to the prepetition institutional lenders and the Committees at the conclusion of the Auction, subject to Court approval, and the winning bidder(s) will be required to enter into

definitive agreements (as modified by the bids submitted at the conclusion of the Auction) before the Auction is adjourned.

10. Auction Results.

The Debtors will file the results of the Auction and the highest or best offer(s) the Debtors shall file the results of the Auction with the Court by 12:00 noon on October 18, 2002. Any person interested in receiving a copy of the Auction results may request a copy of the document by contacting Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New Jersey, New Jersey, 10153-0119, Attn: Gary T. Holtzer, Telephone: (212) 310-8000, Facsimile: (212) 310-8007 or the document will be on file with the Bankruptcy Court.

11. Objections.

Objections to any relief requested by the Sale Motion, including objections relating to the assumption and assignment of executory contracts and unexpired leases under section 365 of the Bankruptcy Code thereunder, must be set forth in writing and state with particularity the grounds for such objections or other statements of position and shall be filed with the Bankruptcy Court and served upon (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153-0119, Attn: Gary T. Holtzer, Esq., (ii) Ravin Greenberg PC, 101 Eisenhower Parkway, Roseland, New Jersey, Attn: Howard S. Greenberg, Esq., (iii) Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attn: Steven M. Fuhrman, Esq., (iv) Drinker Biddle & Shanley, LLP, 500 Campus Drive, Florham Park, New Jersey 17932-1047, Attn: Robert K. Malone, Esq., (v) Wolff & Samson, P.A., 5 Becker Farm Road, Roseland, New Jersey 07068, Attn: Robert E. Niese, Esq. and (vi) the Office of the United States Trustee, One Newark Center, Suite 2100, Newark, NJ 07102, so as to be actually received by 4:00 p.m. on October 21, 2002.

Objections relating solely to the adequate assurance of future performance of any unexpired leases to be assumed and assigned under section 365 of the Bankruptcy Code must be served and filed within 10 days after receiving notice of the identity of the purchaser of the Company or its Assets.

12. Failure to Consummate Purchase.

If for any reason the Successful Bidder fails to consummate the purchase of the Company, the Assets, or any part thereof, the offeror of the second highest or best bid (the "Second Highest Bidder") will automatically be deemed to have submitted the highest or best bid and to the extent the Second Highest Bidder and the Debtors consent, the Debtors and the Second Highest Bidder are authorized to effect the sale, or any part thereof, to the Second Highest Bidder as soon as is commercially reasonable without further order of the Bankruptcy Court. If such failure to consummate the purchase is the result of a breach by the Successful Bidder, the Earnest Money Down Payment shall be

forfeited to the Debtors and the Debtors specifically reserve the right to seek all available damages from the defaulting bidder.

13. Bankruptcy Court Approval of the Successful Bidder

A hearing on the relief requested in the Sale Motion and to confirm the results of the Auction shall be held before the Honorable Donald H. Steckroth, United States Bankruptcy Judge, Martin Luther King Federal Building, Court Room 3B, 50 Walnut Street, Newark, New Jersey 07102, on October 25, 2002 at 10:00 a.m. Any sale of the Company or the Debtors' Assets is subject to entry of an order of the Bankruptcy Court approving the sale(s).

14. Return of Deposits.

Within ten (10) business days after the entry by the Bankruptcy Court of its order approving the Successful Bidder, the Earnest Money Down Payment submitted by all Qualified Bidders, except (i) the Successful Bidder, and (ii) any bidders that forfeit their Earnest Money Down Payments as set forth in section 6 above, shall be returned.

15. Business Judgment of the Debtors.

The Debtors reserve the right (a) to determine in the reasonable exercise of their business judgment whether the amendments and changes contained in each Bid are acceptable as terms and conditions to sell; (b) to determine, in the reasonable exercise of their business judgment, which Qualified Bid, if any, is the highest or otherwise best offer; and (c) to reject at any time prior to entry of an order of the Bankruptcy Court approving the Successful Bidder, any bid that the Debtors, in the reasonable exercise of their business judgment, deems to (i) be inadequate or insufficient, or (ii) not to conform with the requirements of the Bankruptcy Code or the Auction Procedures. **The Debtors also reserve the right to discontinue the sale process or adjourn the Auction and the Sale Hearing.**

16. Reservation of Rights.

The Debtors reserve the right to (i) impose additional terms and conditions at or prior to the Auction, (ii) extend the deadlines set forth in the Auction Procedures and/or adjourn the Auction at the Auction and/or the Sale Hearing in open court without further notice, (iii) withdraw any Asset(s) (the "Withdrawn Assets") from sale at any time prior to or during the Auction, to make subsequent attempts to market same, and to request separate hearing(s) by this Court to approve the sale(s) of some or all of the Withdrawn Assets (iv) reject any or all bids if, in the Debtors' reasonable judgment, no bid is for a fair and adequate price, (v) seek approval of any separate agreement to sell some or all of the Withdrawn Assets at the Sale Hearing, and (vi) alter the Minimum Bid.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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In re : **(Jointly Administered**
: **Under Case No. 02-35895)**
VELOCITA CORP., *et al.*, :
:
Debtors. : Chapter 11 Case Nos.
: 02-35894 (DHS)
: through 02-35905 (DHS)
-----X

**MOTION OF DEBTORS FOR (I) AUTHORITY TO
SELL ALL OR SUBSTANTIALLY ALL OF THEIR ASSETS,
(II) AUTHORITY TO ASSUME AND ASSIGN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (III) APPROVAL
OF AUCTION PROCEDURES RELATED THERETO**

Velocita Corp. ("Velocita") and its subsidiaries and affiliates (collectively,
the "Debtors"), as debtors and debtors in possession, respectfully represent:

Background

1. On May 30, 2002 (the "Commencement Date"), the Debtors each
commenced with this Court a voluntary case under chapter 11 of title 11 of the United
States Code (the "Bankruptcy Code"). The Debtors continue to operate their business

and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On June 7, 2002, the United States Trustee appointed two statutory committees of unsecured creditors, a committee of bondholders (the "Bondholders' Committee") representing the holders of the 13 ¾% notes issued by Velocita and a committee of general unsecured creditors of all of the Debtors (the "Trade Committee" and, together with the Bondholders' Committee, the "Committees").

Jurisdiction and Venue

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

Summary of Relief Requested

4. For several months, the Debtors and their financial advisors have been searching for sources of capital to fully implement their business plan, or to modify the Debtors' original business plan in light of the funds it had available to it. At the same time, the Debtors have implemented operational restructurings to reduce their cash losses. However, the general economic downturn and the state of the capital markets for telecommunications companies has adversely affected the Debtors and impaired their ability to obtain the necessary additional capital. To date, the Debtors have been unable to obtain sufficient postpetition financing to fund their business plan, notwithstanding the Debtors use of cash collateral. As a result, the Debtors have significantly curtailed their spending on construction of the Network and reduced headcount.

5. In their business judgment, the Debtors have decided to sell all or substantially all of the Debtors' assets (the "Assets") or selected Assets of the Debtors. Based upon the Debtors' current cash position and the length of time necessary to conduct a sale of all or substantially all of their assets, the Debtors have determined to commence their sale process immediately. However, if the Debtors were to obtain postpetition financing, or if another business justification arose, the Debtors reserve their right to withdraw this Motion (in whole or in part).

6. To facilitate an orderly sale of their Assets, the Debtors request that this Court establish various bidding procedures and guidelines. By this motion (the "Sale Motion"), the Debtors seek authorization to conduct an auction in accordance with the bidding procedures proposed herein.

7. Specifically, the Debtors seek entry of the following orders:

- Bidding Procedures Order: An order (the "Bidding Procedures Order") (A) approving (i) the auction bidding procedures annexed hereto as Exhibit "A" (the "Auction Procedures") in connection with a sale(s) of Assets and (ii) notice of the auction (the "Auction") and the sale hearing (the "Sale Hearing"), in the forms annexed hereto as Exhibits "B1" and "B2" (the "Auction and Hearing Notice"), establishing the dates, times and places of the Auction and the Sale Hearing and (B) authorizing the Debtors to enter into customary "break-up fee" arrangements with "stalking horse" bidder(s) in the event such bidder(s) are identified prior to the Auction.
- Sale Order(s): One or more orders (the "Sale Order(s)"), following the Auction, approving (i) the sale(s) of the Assets free and clear of liens, claims and encumbrances, (ii) the assumption(s) and assignment(s) of certain executory contracts and unexpired leases in connection with such sale(s) and (iii) the exemption of such sale(s) from stamp or similar taxes.

8. This Sale Motion is divided into two parts. Part I constitutes the Debtors' request for approval of the Bidding Procedures Order. By separate motion, the Debtors have requested an expedited hearing on the relief requested in Part I of the Sale

Motion. Part II constitutes the Debtors' request for approval of the sale of the company and/or the Assets, including the assumption and assignment of any executory contracts and unexpired leases related thereto, and other related relief.¹

The Debtors' Business

9. Velocita, along with its direct and indirect subsidiaries (all of which are Debtors), are currently constructing a fiber-optic network (the "Network"). Velocita is the immediate corporate parent of PF.Net Corp. ("PF.Net"), the primary operating company of the Debtors. All of the other Debtors are wholly-owned direct and indirect subsidiaries of PF.Net.

10. The Debtors use state-of-the-art optical fibers to create a high-speed broadband Network, which, upon completion, will rival or surpass many of their industry competitors. The currently constructed portion of the Debtors' Network includes fiber-optic filled conduits and empty conduits. Once completed, the Network could span approximately 20,000 miles and access more than 160 metropolitan areas in the United States.

Events Leading to the Commencement of the Chapter 11 Cases

11. The Debtors' business plan of building out a nationwide fiber optic Network required significant capital expenditures and was dependent on financing from several sources: partner payments from AT&T under the construction contract between AT&T and the Debtors and payments from Touch America under a reciprocal indefeasible right to use ("IRU") agreement between the Debtors and Touch America, financing from third parties from the issuance of its preferred stock and its 13 ¾% notes

¹ The Debtors reserve their right to reject any agreement not to be assumed and/or assigned.

and borrowings under their senior credit agreement, revenues generated by selling services to customers on the completed parts of the Network and from reselling network services provided by third parties including AT&T and sales to third parties of dark fiber (i.e., granting of an IRU for fibers the Debtors have already installed).

12. The Network is comprised of the portion that is constructed by the Debtors and that which is purchased by the Debtors from third parties. The original construction budget to complete the constructed portion of the Network (exclusive of all administrative and operating expenses) was approximately \$685 million, of which AT&T Corp. was contributing \$280 million and the remainder was to be funded from the proceeds of Debtor's financing and dark fiber sales. The Debtors borrowed approximately \$365 million under its senior credit agreement, and Velocita issued \$225 million of the 13 3/4% notes and \$325 million of preferred stock to fund its operations, including the construction project. As of today, the Debtors believe that finishing the constructed portion of the Network would require approximately \$150 million of which approximately \$100 million would be contributed by AT&T Corp. under existing contractual arrangements.

13. As a result of the severe downturn in the telecommunications industry, there has been a decline in the demand for the Debtors' services and for the sale of dark fiber. This led to defaults under the Debtors' senior credit agreement and prevented additional borrowing thereunder. The Debtors operated under a series of waivers and forbearance agreements under their senior credit agreement since March 29, 2002. As a result of the aforementioned financial distress, several of the Debtors' general contractors, who the Debtors hired to construct the Network, required the Debtors to pay

on a weekly basis. In addition, Touch America stopped making payments it owed to the Debtors. This put further strain on the Debtors' liquidity. On May 15, 2002, the Debtors did not pay the interest due on its 13 ¾% notes. As of the Commencement Date, other than the payments owing from AT&T and Touch America² and certain other limited sources, the Debtors' only significant source of cash for operations and completion of the Network was cash collateral of approximately \$23 million. Today, such cash collateral is approximately \$11 million.

14. In addition, PF.Net and Lucent Technologies, Inc. ("Lucent"), entered into an agreement (the "Lucent Agreement"), dated June 6, 2000, between PF.Net and Lucent Technologies, Inc. ("Lucent"), amending a Master Supply, Services, and System Agreement, dated August 6, 1999, whereby, in consideration for PF.Net's agreement to accept a modified fiber delivery schedule and to refrain from exercising its contractual remedies against Lucent, Lucent agreed that in the event PF.Net did not meet its dark fiber sales milestone of \$275 million by July 31, 2002, Lucent would make up for the "shortfall" by purchasing up to \$100 million worth of dark fiber "IRUs" from PF.Net. As of July 31, 2002, PF.Net in fact did have a shortfall of over \$100 million. Despite its clear obligations under the Letter Amendment, and despite the fact that PF.Net has remained willing and able to provide the requisite quantity of dark fiber IRUs, Lucent has failed to enter into an IRU purchase agreement with PF.Net to purchase any amount of dark fiber IRUs from PF.Net. Had Lucent performed its obligation under the Letter Agreement, the Debtors' business plan would have been fully-funded.

² On June 27, 2002, the Court entered an order approving an amendment to the agreement by and between the Debtors and TouchAmerica.

Sale(s) of Assets

15. The Debtors' original business plan required substantial amounts of capital, including significant debt financing to complete the Network and other capital expenditures and fund operating expenses, and debt service. During the last year, market conditions in the telecommunications industry, the difficult economic environment, the perceived bandwidth over-capacity, and distressed prices for capacity and telecommunication assets have dramatically affected the Debtors' business plan and growth strategy. During 2001, the Debtors began consulting with UBS Warburg as part of an effort to explore various merger and acquisition opportunities, including troubled telecommunications companies that would have provided large customer and revenue bases. In February 2002, the Debtors formally engaged UBS Warburg and Impala Partners to advise the company regarding strategic alternatives. At the Debtors' request, in an effort to prevent a chapter 11 filing, UBS Warburg prepared solicitation materials and contacted potential investors as part of a continuing effort to explore transactions with strategic partners to help meet the Debtors' debt covenant requirements. However, the efforts have not been successful prior to the Debtors' chapter 11 filing.

16. The Debtors believe that the best way to maximize the value of their assets would be to complete the Network, which would require that the Debtors' obtain debtor in possession financing. Despite extensive efforts, the Debtors have been unable to obtain such financing. As a result, the Debtors believe that the next best way to maximize the value of their assets is to sell all or substantially all of their assets as a going concern. The Debtors have modified and substantially reduced the amount of construction on the Network and, based on this downsizing, the Debtors' current cash

position will allow the Debtors to fully explore a sale of all or substantially all of the Debtors' Assets. However, the Debtors have a limited window in which to sell their assets as a going concern.

Relief Requested

17. The Debtors respectfully request, pursuant to sections 105, 363, 365 and 1146 of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) entry of the Bidding Procedures Order approving (i) the Auction Procedures, (ii) the forms of asset purchase agreements to be used in connection with the sale(s) of the Assets, (iii) the Auction and Hearing Notice and (iv) the right to enter into one or more customary "break-up fee" arrangements in the event that the Debtors enter into one or more "stalking horse" agreements prior to the Auction, and (b) entry of the Sale Order(s) approving (i) the sale(s) of the Assets free and clear of liens, claims and encumbrances, (ii) the assumption(s) and assignment(s) of certain executory contracts and unexpired leases in connection with the sale(s) of the Assets and (iii) the exemption of the sale(s) of the Assets from stamp or similar taxes.

18. The Debtors expressly reserve the right to modify the relief requested in this Sale Motion prior to or at the applicable hearings, including modifying the proposed auction procedures and bidding protections. Moreover, the Debtors reserve the right to (i) elect to discontinue the sale process and/or (ii) adjourn the Sale Hearing, if the Debtors' determine that such actions will maximize the value of the Debtors' estates.

PART I – Bidding and Auction Procedures

19. The Debtors believe that the sale procedures set forth herein will facilitate an orderly sale of the Assets. Accordingly, the Debtors request that the Court

approve the bidding and auction procedures in the form annexed hereto as Exhibit "A." The Debtors' proposed Auction and Hearing Notice is to be served on certain parties, including those parties previously solicited by Velocita, in the form annexed hereto as Exhibit "B1" and the proposed Auction and Hearing Notice is to be published in the Wall Street Journal, National Edition in the form annexed hereto as Exhibit "B2."

The Asset Purchase Agreement

20. It is increasingly commonplace that, in chapter 11 sales of this nature, the Court approves the form of agreement upon which bids are required to be submitted. The use of a uniform agreement will enable the Debtors and other parties in interest to easily compare and contrast the differing terms of the bids at the Auction.

21. Except with respect to a bid to purchase the entire company as a going concern or provide a capital infusion for which any form will be considered, the Debtors will require that bids for all or substantially all of the Assets or segments thereof be submitted pursuant to the terms of an asset purchase agreement (the "Asset Purchase Agreement"), a copy of which is annexed hereto as Exhibit "C," as such agreement may be modified in the manner described below.

22. The Debtors reserve the right to amend or otherwise change the terms of the Asset Purchase Agreement in such manner as the Debtors deem to be in the best interests of the Debtors' estates and creditors.

23. The Asset Purchase Agreement provides for the sale of the applicable Assets "AS IS," "WHERE IS," free and clear of liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

24. The Debtors submit that the Asset Purchase Agreement contains terms and conditions commonly used in sales of this nature. Moreover, to the extent that there

are any substantive changes made to the agreement as a result of the sale at auction of the Assets, the Debtors will bring such changes to the Court's attention at or prior to the Sale Hearing so that parties in interest will have an opportunity to object to any such changes. Therefore, the Debtors submit that the Asset Purchase Agreement should be approved by this Court for use by the Debtors in connection with the Auction of the Assets.

The Auction Procedures

25. The Debtors believe that conducting an auction of the Assets in accordance with the Auction Procedures will maximize the value of the Debtors and the Assets. Accordingly, the Debtors request that this Court approve the following Auction Procedures.

26. All interested bidders should read the Auction Procedures in their entirety. The following is merely a summary of the Auction Procedures:³

(a) No later than three (3) business days following entry of the Bidding Procedures Order, the Debtors will mail the Auction and Hearing Notice by first class mail to (a) all potential interested parties identified by the Debtors, (b) the Office of the United States Trustee, (c) counsel to the agent for the Debtors' prepetition institutional lenders and the Committees, (d) parties requesting notice pursuant to Bankruptcy Rule 2002, (e) all known entities holding or asserting a security interest in or lien against the Assets, (f) parties to the Debtors' executory contracts and unexpired leases that the Debtors believe may be subject to assumption and assignment (or rejection), (g) all taxing authorities whose rights may be affected by the sale of the Assets, and (h) all government agencies required to receive notice of proceedings under the Bankruptcy Rules and other regulatory rules. All other creditors of the Debtors and shareholders will receive notice by publication in the Wall Street Journal, National Edition.

(b) The Assets may be sold in a single sale to a single bidder or in parts to different bidders free and clear of liens, claims and encumbrances. Prior to the Auction, the Debtors must qualify potential bidders according to their financial qualifications which includes, *inter alia*, an examination of potential bidders' current financial statements and their ability to consummate the purchase of the Assets ("Qualified Bidders"). Subject to entering into a confidentiality agreement acceptable to the Debtors,

³ This summary is qualified in its entirety by reference to the Auction Procedures annexed hereto as Exhibit "A."

Qualified Bidders will be allowed to perform reasonable due diligence on the Assets, including reasonable access to the books, records and executives of the Debtors. Any interested bidders seeking to become Qualified Bidders, and thereafter to request information in connection with their due diligence should contact Peter Keenoy at Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Telephone No.: (203) 956-6565, Facsimile: (203) 956-9546, or Kay Perry at Velocita Corp., 2941 Fairview Park Drive, Falls Church, Virginia 22042, Telephone No.: (703) 564-7222, Facsimile: (703) 564-7444..

(c) Prior to the Auction, the Debtors may enter into an Asset Purchase Agreement, subject to higher and better offers at the Auction, with one or more entities (the "Stalking Horse Bidder(s)") to establish a minimum bid for some or all of the Assets (the "Stalking Horse Agreement(s)"), which may contain certain customary terms and conditions, including expense reimbursement and a "break-up fee," in an amount to be determined by the Debtors but in no event will exceed 2% of the proposed purchase price of the Assets, without consent of the Debtors' Senior Lenders (defined below), provided for in the applicable Stalking Horse Agreement (the "Purchase Price").

(d) All Bids must be in writing and submitted using the applicable Asset Purchase Agreement executed by the Qualified Bidders and be accompanied by a letter authorizing the Qualified Bidder's representative and counsel to participate in the Auction (together with the Asset Purchase Agreement, the "Bid Package"). Each Qualified Bidder must submit an executed "clean" version of the Asset Purchase Agreement, together with a blackline to reflect any proposed changes to the terms and conditions of the bid.⁴ If any bid is conditioned on the assumption and assignment of executory contracts and unexpired leases, then such bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid (an "Adequate Assurance Package"). All Bid Packages and Adequate Assurance Packages must be submitted in writing so that they are *actually received* by no later than 12:00 noon (New York time) on October 15, 2002 by Velocita Corp., 2941 Fairview Park Drive, Falls Church, Virginia 22042, Attn: W. Terrell Wingfield, Jr., with copies to the following parties: (i) Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Attn: Peter Keenoy and (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153-0119, Attn: Gary T. Holtzer, Esq.

Notwithstanding the foregoing, holders of (a) Post-Petition Loans under the Final Order (i) Authorizing the Use of Lenders' Cash Collateral and (ii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 dated July 16, 2002 (the "Final Order") and (b) indebtedness under the Credit Agreement, dated as of October 29, 1999 (as amended, supplemented or otherwise modified prior to the Petition Date, the

⁴ While bidders may suggest modifications to the Asset Purchase Agreement, any such modifications deemed by the Debtors' estates to increase the obligations or burdens upon the Debtors (such as additional conditions) will be considered by the Debtors in determining whether to accept such bid.

“Credit Agreement”), among PF.Net, the several banks and other financial institutions from time to time party thereto (the “Senior Lenders”) and Wachovia Bank, National Association in its capacity as administrative agent for the Lenders (in such capacity, the “Administrative Agent”) shall be deemed to be Qualified Bidders and may submit a bid at the Auction. The Senior Lenders are not required to make an Earnest Money Down Payment (which is waived by the Debtors). In any bid submitted by the Senior Lenders, the Senior Lenders may “bid in” or receive credit in their bid for all or a portion of their Post-Petition Loans and indebtedness under the Credit Agreement, which shall reduce the cash required to be paid with respect to such bid on a dollar-for-dollar basis, pursuant to section 363(k) of the Bankruptcy Code.

Any bid for all or substantially all of the Debtors’ assets must be no less than \$75 million (the “Minimum Bid”).

(e) Bids must be unconditional and not contingent upon any event, including, without limitation, any additional due diligence investigation, the receipt of financing and further bidding approval, including from any board of directors, shareholders or otherwise. Bids will not be shared among the Qualified Bidders. All bids are irrevocable until seven (7) days after the Sale Hearing. All bids will be accompanied by an earnest money deposit (the “Earnest Money Down Payment”) equal to 5% of the total proposed purchase price in the form of a certified check or wire transfer payable to Velocita Corp. The Earnest Money Down Payment only should be sent to the Debtors (and not the other parties to receive copies of the bids). Within 24 hours of the Auction, any Successful Bidders (as defined in section 9 of Exhibit “A” must supplement the initial Earnest Money Down Payment (through certified check or wire transfer), so that the total deposit equals 10% of the winning bid. Such deposit will be held by the Debtors, without interest, until the earlier to occur of (i) the time such bids are officially rejected by the Debtors and (ii) seven (7) days after the Sale Hearing. Such deposit will be forfeited in the event that any bidder for an accepted bid defaults.

(f) The Auction will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 on October 17, 2002 at 11:00 a.m. Qualified bidders who have complied with the Auction Procedures may improve their bids at the Auction. The Debtors may select the winning bid(s) after consultation with counsel to the Prepetition Lenders and the Committees at the conclusion of the Auction, subject to Court approval, and the winning bidder(s) will be required to enter into definitive agreements (as modified by the bids submitted at the Auction) before the Auction is adjourned.

(g) Objections to any relief requested by the Sale Motion, including objections relating to the assumption and assignment of executory contracts and unexpired leases, must be in writing and filed and served so as to be actually received by 4:00 p.m. on a date to be established by the Court.

(h) A hearing on the relief requested in Part II of this Sale Motion and to confirm the results of the Auction will be held before the Honorable Donald H. Steckroth, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of

New Jersey, Martin Luther King Federal Building, 50 Walnut Street, 3rd Floor Court Room, Newark, New Jersey 07102, on a date to be established by the Court.

(i) The closing of all sales will occur within fifteen (15) days after entry of the Sale Order(s), unless agreed to in writing by the Debtors, or as otherwise provided by Order of the Court.

(j) The Debtors reserve the right to (i) impose additional terms and conditions at or prior to the Auction, (ii) extend the deadlines set forth in the Auction Procedures and/or adjourn the Auction at the Auction and/or the Sale Hearing in open court without further notice, (iii) withdraw any Asset(s) (the "Withdrawn Assets") from sale at any time prior to or during the Auction, to make subsequent attempts to market the same, and to request separate hearing(s) by this Court to approve the sale(s) of some or all of the Withdrawn Assets, (iv) reject any or all bids if, in the Debtors' reasonable judgment, no bid is for a fair and adequate price, (v) seek approval of any separate agreement to sell some or all of the Withdrawn Assets at the Sale Hearing, and (vi) alter the Minimum Bid.

(k) If for any reason the entity or entities that make(s) the highest or best bid(s) fails to consummate the purchase of the Assets, or any part thereof, the offeror of the second highest or best bid will automatically be deemed to have submitted the highest or best bid and to the extent such offeror and the Debtors consent, the Debtors and such offeror are authorized to effect the sale of the Assets, or any part thereof, to such offeror(s) as soon as is commercially reasonable without further order of the Bankruptcy Court. If such failure to consummate the purchase is the result of a breach by the winning bidder, the Earnest Money Down Payment will be forfeited to the Debtors and the Debtors specifically reserve the right to seek all available damages from the defaulting bidder.

(l) The Earnest Money Down Payment will be forfeited if (i) the bidder is determined to be a Qualified Bidder and withdraws or modifies its bid other than as provided in the Auction Procedures before the Bankruptcy Court approves the Debtors' selection of the successful bidder, or (ii) the bidder is the successful bidder and (A) modifies or withdraws the bid without the Debtors' consent before the consummation of the sale contemplated by such bid, (B) breaches its bid, or (C) breaches its confidentiality agreement.

THE BID OF ANY BIDDER FAILING TO COMPLY WITH THESE REQUIREMENTS MAY NOT BE CONSIDERED BY THE DEBTORS.

THE FOREGOING IS ONLY A SUMMARY OF THE AUCTION PROCEDURES AND ALL INTERESTED PARTIES SHOULD CAREFULLY REVIEW EXHIBIT "A."

27. The Debtors believe that these Auction Procedures provide an appropriate framework for selling the Assets in a uniform fashion and will enable the

Debtors to review, analyze and compare all bids received to determine which Bid(s) is (are) in the best interests of the Debtors' estates and creditors. Therefore, the Debtors respectfully request that this Court approve the Auction Procedures.

**Marketing, The Auction and Hearing
Notice and Notice of Sale Motion**

28. The Debtors and Impala will continue their efforts to solicit bids from both strategic and financial investors previously solicited and other potentially interested parties identified by the Debtors or their advisors. Each investor previously contacted by the Debtors or Impala will be served with the Auction and Hearing Notice. In addition, notice of the sale will be published in the Wall Street Journal, National Edition, as soon as practicable.

29. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify their creditors of the proposed sale of the Assets, including a disclosure of the time and place of the Auction, the terms and conditions of the sale and the deadline for filing any objections. The Auction and Hearing Notice complies with Bankruptcy Rule 2002(c) and includes information on the Auction Procedures necessary to enable interested parties to participate in the Auction and the Sale Hearing.

30. The Debtors propose to serve the Auction and Hearing Notice in the form annexed hereto as Exhibit "B1," within three (3) business days of the entry of the Bidding Procedures Order, by first class mail, postage prepaid, to (a) all potential strategic and financial investors previously solicited by the Debtors or Impala, (b) all other potentially interested parties identified by the Debtors or their advisors, (c) the Office of the United States Trustee, (d) counsel to the agent for the Debtors' prepetition institutional lenders, (e) counsel to the Committees, (f) the parties in interest who have

requested notice pursuant to Bankruptcy Rule 2002, (g) all known entities holding a security interest in or lien against any of the Assets, (h) the parties to the Debtors' executory contracts and unexpired leases that the Debtors believe may be subject to assumption and assignment (or rejection), (i) all taxing authorities whose rights may be affected by the sale of the Assets, and (j) all government agencies required to receive notice of proceedings under the Bankruptcy Rules and other regulatory rules. All other creditors of the Debtors and shareholders will receive notice by publication in the Wall Street Journal, National Edition of the Auction and Hearing Notice in the form annexed hereto as Exhibit "B2."

31. Within three (3) business days of the entry of the Bidding Procedures Order, the Debtors will also serve a copy of this Sale Motion, including all exhibits, by first class mail, postage prepaid upon (i) all parties to executory contracts and unexpired leases that the Debtors believe will or may be assumed and assigned or rejected, (ii) all known entities holding or asserting a security interest in or lien against any of the Assets, (iii) all taxing authorities whose rights may be affected by the sale of the Assets and (iv) all parties that have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Service List"). The Auction and Hearing Notice provides that any party not on the Service List that wishes to obtain a copy of this Sale Motion, including all exhibits, may make such a request in writing to Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Gary T. Holtzer, Esq., Telephone: (212) 310-8000, Facsimile: (212) 310-8007.

32. In addition, the Debtors will file with this Court a supplement to the Sale Motion (the "Supplement") no later than 3 days before the Sale Hearing. The

Supplement will identify, among other things, (i) the proposed purchaser(s) of the Assets, (ii) the Assets to be acquired, (iii) the consideration to be paid by such purchaser(s) for the Assets, (iv) the material terms upon which such purchase(s) are based, and (v) any material executory contracts and unexpired leases to be assumed and assigned to the purchaser(s) in connection with the sale(s) of the Assets. In addition, the Debtors will annex to the Supplement, as exhibits, copies of the asset purchase agreement(s) and/or real property purchase agreement(s) and/or real property lease assignment agreement(s) entered into by the Debtors and the purchaser(s) (and assignee(s) if applicable) of the Assets. Any person interested in receiving a copy of the Supplement may request the document by contacting Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Gary T. Holtzer, Esq., Telephone: (212) 310-8000, Facsimile: (212) 310-8007 or the document will be on filed with the Bankruptcy Court.

33. The Debtors submit that the notice to be provided through the Auction and Hearing Notice, the Sale Motion and the Supplement and the method of service proposed herein constitutes good and adequate notice of the sale of the Assets and the proceedings to be had with respect thereto. Therefore, the Debtors respectfully request that this Court approve the foregoing notice procedures.

**Reservation of Rights to Enter Stalking Horse Agreement
and Provide a “Break-Up Fee” In Connection Therewith**

34. During the past several months, the Debtors have had discussions with potential investors and potential purchasers for the sale of some or all of the Assets. While the Debtors have determined in their reasonable business judgment that a sale of the Assets at this time, absent an agreement (a “ Stalking Horse Agreement”) with a potential purchaser (a “Stalking Horse Bidder”), is warranted and necessary, the Debtors

will continue to have discussions with potential investors and purchasers and, therefore, reserve the right to enter into one or more Stalking Horse Agreements, if they believe that such agreement(s) will further the purposes of the Auction.

35. The Debtors are also requesting authority to offer one or more Stalking Horse Bidders (i) a break-up fee (the “Break-Up Fee”) in an amount to be determined by the Debtors not to exceed 2%, without the consent of the Debtors’ Senior Lenders, of the cash portion of the Purchase Price set forth in such bidder’s Stalking Horse Agreement and/or reimbursement of the Stalking Horse Bidder’s reasonable fees and expenses (including, without limitation, expenses of counsel incurred in connection with the Stalking Horse Agreement); provided that in no event will more than one Break-Up Fee and/or Expense Reimbursement apply to a particular Asset; (ii) initial overbid protection not to exceed 105% of the Purchase Price set forth in such bidder’s Stalking Horse Agreement; and (iii) in the case of Stalking Horse Agreements for multiple Assets, reduction of the Purchase Price set forth in the Stalking Horse Agreement by an amount not to exceed 115% of the allocated price for particular Asset(s) to the extent such Asset(s) are sold to another entity and the Stalking Horse Bidder is the successful bidder with respect to the remaining Assets included in the Stalking Horse Agreement ((i), (ii), and (iii), collectively, the “Bidding Protections”).⁵

36. The ability of the Debtors to offer potential purchasers the Bidding Protections is beneficial to the Debtors’ estates and creditors in that they can provide the incentive required to induce a potential bidder to submit or increase its bid prior to the

⁵ The Debtors reserve the right to request that the Court approve different amounts at the hearing to approve the Auction Procedures.

Auction. To the extent bids can be improved prior to the Auction, a higher floor is established for further bidding. Thus, even if a Stalking Horse Bidder is offered one or more of the Bidding Protections and ultimately is not a successful bidder, the Debtors and their estates will have benefited from the higher floor established by the improved bid. The Debtors will exercise prudent business judgment before offering or agreeing to any of the Bidding Protections and will only do so if such protections, in the reasonable business judgment of the Debtors, will likely result in the realization of greater value for the Debtors and their estates.

37. 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. Bankruptcy courts have approved bidding incentives similar to the Bidding Protections 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 In re Fruit of the Loom, 274 B.R. 631 (D. Del. 2002); In re The Grand Union Company, et al., Case Nos. 00-39613 (NLW) (Bankr. D. N. J., Order dated October 30, 2000). See also, 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 acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”).

38. The Bidding Protections meets the “business judgment rule” standard. The Break-Up Fee is reasonable because (i) it is not excessive compared to fees and reimbursements approved in other cases and (ii) it will not diminish the Debtors’ estates. Break-up fees such as proposed herein enable a debtor to assure a sale to a contractually committed bidder at a price the debtor believes is fair and reasonable, while providing the debtor with the opportunity of obtaining even greater benefits for the estate through an auction process.

39. The Debtors submit that the proposed Bidding Protections are reasonable and their availability to the Debtors will enable them to maximize the value of their estates. Accordingly, the Debtors should be authorized to offer such forms of bid protection, as is necessary in the Debtors’ business judgment. See In re The Grand Union Company, et al, Case Nos. 00-39613 (NLW) (Bankr. D. N. J. order dated October 30, 2000). See In re Integrated Resources, Inc., 135 B.R. 746 (Bankr. S.D.N.Y.), *aff’d*, 147 B.R. 650 (S.D.N.Y. 1992).

PART II – Sale of the Assets and Related Relief
The Sale of the Debtors’ Assets Should Be Approved

40. The Debtors submit that ample authority exists for the approval of the proposed sale or sales of their Assets. Section 363 of the Bankruptcy Code, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business free and clear of liens, claims and encumbrances, provides, in relevant part, as follows:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

* * *

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

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents; ...

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(b)(1), (f); see Fed. R. Bankr. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”).

41. Section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, courts in the Second Circuit, as well as District Courts within the Third Circuit, have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtor. In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re United Healthcare Systems, Inc., 1997 WL 176574, *4 (D.N.J. 1997) (“District courts in this Circuit have consistently followed the ‘sound business rule’ enunciated by the Second Circuit”). See also Licensing By Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997) (“A sale of substantial part of a Chapter 11 estate may be conducted if a good business reason exists to support it”); Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); In re Chateaugay Corp., 973 F.2d 141 (2d Cir. 1992); Stephens Indus. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (“bankruptcy court can authorize a sale of all a Chapter 11 debtor’s assets under §363(b)(1) when a sound business purpose dictates such action”); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good

business reasons exists for completing the sale and that the transaction is in good faith); In re Abbotts Dairies of Pennsylvania, 788 F.2d 143, 149-150 (3d.Cir. 1986) (requiring a showing of good faith in a §363 sale); In re Trans World Airlines, Inc., 2001 WL 1820326, *10 (Bankr.D.Del.) ("It is not the function of a bankruptcy court to independently exercise a business judgment as to which proposal among competing proposals should be adopted by the debtor in effecting a § 363(b) sale."); In re Lehigh Valley Professional Sports Clubs, Inc., 2000 WL 567905 (Bankr.E.D.Pa.); In re Frezzo, 217 B.R. 985 (Bankr.E.D.Pa.,1998); In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15 (Bankr.E.D.Pa.,1987).

42. The “sound business purpose” test requires a debtor to establish four elements to sell property outside the ordinary course of business, namely, (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons; (c) that the debtor has obtained a fair and reasonable price, and (d) good faith. Phoenix Steel, 82 B.R. at 335-36. Courts have made it clear that a debtor’s showing of a sound business justification need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reason.” In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). See also In re Delaware & Hudson Ry. Co. 124 B.R. 169, 176 (D.Del.,1999) ("A non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale include: the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization;

the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value.").

43. In this case, the Debtors submit that the decision to sell the Assets is based upon their sound business judgment and should be approved. Prior to the Commencement Date, the Debtors worked diligently with their financial advisors to explore alternatives to a sale of the Assets.

44. Although the Debtors extensively marketed the Debtors' business and the Assets prior to the Commencement Date, to date no purchaser has submitted an acceptable bid or executed an acceptable asset purchase agreement to acquire all or substantially all of the Assets. Therefore, the Debtors have determined, in the exercise of their reasonable business judgment, to conduct an auction for the Debtors and the Assets. The proposed Auction will enable the Debtors to continue their efforts for an orderly sale of their businesses as a "going concern," while also enabling the Debtors to consider the value, if any, from a potential sale of Assets to more than one purchaser. Although the Debtors will consider all types of Bids, including bids for individual Assets submitted in compliance with the bid procedures, it is their preference to sell all or substantially all of the Assets to a single bidder.

Sale Free and Clear of Liens, Claims and Encumbrances

45. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) "free and clear of any interest in such property of an entity other than the estate" if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 354 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met).

46. To facilitate the sale of the Assets, the Debtors require authorization to sell them free and clear of any and all liens or interests that may be asserted, with such liens to attach to the sale proceeds, except to the extent a purchaser agrees to purchase and take title to such Assets subject to such liens. All liens on the Assets will be satisfied or will attach to the proceeds of sale of the Assets with the same force, effect and priority as such liens have on the Assets, subject to the rights and defenses, if any, of the Debtors and any party in interest with respect thereto. Accordingly, the Debtors submit that the sale of the Assets free and clear of liens, claims and encumbrances satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

Assumption and Assignment of Executory Contracts and Unexpired Leases

47. To facilitate and effect the sale(s) of the Assets, the Debtors also seek to assume and assign certain executory contracts and unexpired leases to the purchaser(s) of the Assets to the extent required. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign its executory contracts and unexpired leases subject to the approval of the Bankruptcy Court:

(a) Except as provided in ... subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debt 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. ...

* * *

(f)(2) 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.

See 11 U.S.C. §§ 365(a), (b)(1), (f)(2). Accordingly, section 365 authorizes the proposed assumptions and assignments, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided.

48. 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 Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every

case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

49. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. 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 a lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

50. Certain of the leases to be assumed and/or assigned to the purchaser(s) of the Assets may be unexpired leases of non-residential real property relating to the Debtors’ collocation spaces. In connection with the Sale Hearing, the Debtors will provide evidence that all requirements for the assumption and/or assignment of the executory contracts and unexpired leases proposed to be assigned to the purchaser(s) of the Assets will be satisfied. It is an express condition of the Auction Procedures that bidders submit their Adequate Assurance Packages containing sufficient financial and other information to assess the bidder’s compliance with section 365. The Debtors will provide all parties to executory contracts and unexpired leases to be assumed and assigned pursuant to the Sale Motion with such Adequate Assurance Packages and an opportunity to be heard. Thus, the Debtors respectfully submit that by the conclusion of the Sale Hearing, assumption and assignment of the executory contracts and unexpired leases should be approved.

Rejection of Unsold Contracts and Leases

51. In the event that there are any executory contracts or unexpired leases that remain unsold at the conclusion of the Auction, the Debtors reserve the right to request authority at or prior to the Sale Hearing to reject any or all such unsold executory contracts and unexpired leases. After conducting the auction and selling the Assets, the unsold executory contracts and unexpired leases may be valueless to the Debtors and would only create an administrative expense burden on the Debtors' estates. Therefore, the Debtors request authority to reject, as of the date of the Sale Hearing, some or all executory contracts and unexpired leases they believe to have no value.

The Court Should Fix the Cure Amounts as Set Forth in the Cure Schedule

52. To enable the Debtors and their respective professionals to analyze the net return to the Debtors' estates (e.g., the proposed purchase price less any cure obligations), the Debtors seek to identify and fix all cure amounts set forth on a "Cure Schedule" to be filed with the Court and served by first class mail on the parties to executory contracts and unexpired leases that may be assigned on or before 15 days before the Auction. Any objections to the proposed Cure Schedule by a nondebtor party to such unexpired leases or executory contracts, must be in writing, filed with the Court, and actually received by (i) the attorneys for the Debtors, and (ii) the attorneys the Committees, on or before seven (7) days before the Auction at 4:00 p.m. (EDT).

53. If no objections are received, then the cure amounts set forth in the Cure Schedule shall be binding upon the nondebtor party to the unexpired leases or executory contracts for all purposes in this case and will constitute a final determination of total cure amounts required to be paid by the Debtors in connection with the

assignment to, and assumption by, the Successful Bidder. In addition, each nondebtor contracting party in connection with an unexpired lease or executory contract shall be forever barred from objecting to the cure information set forth in the Cure Schedule, including, without limitation, the right to assert any additional cure or other amounts with respect to the unexpired leases or executory contracts. If a timely objection is received, the hearing to consider any objections to the proposed Cure Schedule will be held on a date to be established by the Court.

54. The Debtors request that any party failing to object to the proposed transactions be deemed to consent to the treatment of its executory contract and unexpired lease under section 365 of the Bankruptcy Code and this Sale Motion. See Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten (In re Gabel), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). Moreover, the Debtors request that each such party be deemed to consent to the assumption and assignment of its unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment. See 11 U.S.C. §§ 365(c)(1)(B), (e)(2)(A)(ii) and (f).

Exemption of Sale from Stamp or Similar Taxes and Bulk Sale Statutes

55. Pursuant to section 1146(c) of the Bankruptcy Code, the “transfer ... or 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.” See 11 U.S.C. § 1146(c). Courts have broadly construed this provision to include sales and transfers that occur outside of a chapter 11 plan of reorganization and before or after confirmation of that chapter 11 plan. See In re Jacoby-Bender, Inc., 40 B.R. 10 (Bankr.

E.D.N.Y. 1984), aff'd 758 F.2d 840 (2d Cir. 1985) (post-confirmation sale); In re 995 Fifth Ave. Assocs., L.L.P., 116 B.R. 384 (Bankr. S.D.N.Y. 1990), aff'd 127 B.R. 533 (S.D.N.Y. 1991), aff'd in part, rev'd in part (on other grounds) 963 F.2d 503 (2d Cir. 1992); see also In re Hechinger Investment Co. of Delaware, Inc., 254 B.R. 306 (Bankr. D. Del. 2000); In re Permar Provisions, Inc., 79 B.R. 530, 534 (Bankr. E.D.N.Y. 1987). In so holding, the courts have focused on whether the sale and transfer is "necessary to the consummation of the plan." Jacoby-Bender, 758 F.2d at 842.

56. In this case, the Debtors' sale of their business operations or Assets is essential to the consummation of a plan and, therefore, should be deemed to be "under a plan." The Debtors propose to distribute the net proceeds of the sale of the company or the Assets to creditors in connection with the sale(s) or pursuant to a confirmed chapter 11 plan. Consequently, the Debtors submit that the sale of the company or the Assets and distribution of the net proceeds pursuant to a chapter 11 plan facilitates and is indeed essential to confirmation of a chapter 11 plan for the Debtors, and thus falls within the scope of the exemption provided for under section 1146(c) of the Bankruptcy Code. See Permar Provisions, 79 B.R. at 534 (Bankr. E.D.N.Y. 1987) (sale of property one year prior to plan confirmation was exempt under section 1146(c) where sale proceeds were distributed to secured and unsecured creditors).

Waiver of Memorandum of Law

57. This Motion does not raise any novel issues of law and all of the legal precedent in support of the relief requested is cited herein. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in the District of New

Jersey Local Bankruptcy Rules, D.N.J. LBR 9013-2 that a separate memorandum of law be submitted.

Notice

58. No trustee or examiner has been appointed in these chapter 11 cases.

The Debtors have served notice of this Motion upon the Office of the United States Trustee for the District of New Jersey, counsel for the Debtors' prepetition secured lenders, respective counsel for the Bondholders' Committee and the Trade Committee, and those parties entitled to notice pursuant to this Court's order dated May 30, 2002 establishing certain notice procedures in these chapter 11 cases. The Debtors submit that no other or further notice need be given.

59. 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 grant the relief requested in this motion and grant the Debtors such other and further relief as this Court deems just and proper.

Dated: Newark, New Jersey
September 13, 2002

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
Gary T. Holtzer, Esq.

- and -

RAVIN GREENBERG PC
101 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 226-1500

By: /s/ Morris S. Bauer
Howard S. Greenberg, Esq. (HSG 8559)
Morris S. Bauer, Esq. (MB 6677)

ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

AUCTION PROCEDURES

The following procedures (the "Auction Procedures") shall govern the sale or other disposition at auction (the "Auction") of all or substantially all of the Debtors' Assets (the "Assets") pursuant to the Motion of Debtors dated September 13, 2002 for an Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code Approving, among other things, the Sale of All or Substantially All of the Debtors' Assets (the "Sale Motion"). These Auction Procedures have been approved and authorized by order dated [_____, 2002] (the "Bidding Procedures Order") of the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") in the chapter 11 cases of Velocita Corp. and certain of its subsidiaries and affiliates (collectively, the "Debtors").

1. Assets to be Sold

The Debtors shall consider bids for (i) a sale of the Company or all or substantially all of the assets (the "Assets") of the Company or (ii) a sale of select assets of the Company, and thereafter to sell all or substantially all of their Assets as a whole to one bidder or in parts to more than one bidder.¹

2. Mailing the Auction and Hearing Notice

On a date no later than three (3) business days following entry of the Bidding Procedures Order, the Debtors shall mail the Auction and Hearing Notice by first class mail, postage prepaid, to (a) all potential interested parties identified by the Debtors or their agent, (b) the Office of the United States Trustee, (c) counsel to the agent for the Debtors' prepetition institutional lenders and the statutory committees of general unsecured creditors and bondholders appointed in these cases (collectively, the "Committees"), (d) the parties in interest who have requested notice pursuant to Bankruptcy Rule 2002, (e) all known entities holding a security interest in or lien against any of the Assets, (f) the parties to the Debtors' executory contracts and unexpired leases that the Debtors believe may be subject to assumption and assignment (or rejection), (g) all taxing authorities whose rights may be affected by the sale of the Assets, and (h) all government agencies required to receive notice of proceedings under the Bankruptcy Rules and other regulatory rules. All other creditors of the Debtors and shareholders will receive notice by publication in the Wall Street Journal, National Edition.

¹ The Debtors reserve the right to discontinue the sale process and adjourn the auction if the Debtors determine such action is in the best interests of their estates and parties in interest.

3. Indication of Interest

The Debtors shall send a form of confidentiality agreement to any person indicating an interest in participating in the Auction and requesting information about the Company or its Assets who has not previously signed a confidentiality agreement.

4. Selection of Qualified Bidders

Potential purchasers shall be required to complete and execute the confidentiality agreement and provide the Debtors with their financial qualifications and such other information the Debtors may reasonably request. Prior to the Auction, the Debtors must qualify potential bidders according to their financial qualifications which includes, *inter alia*, an examination of potential bidders' current financial statements and their ability to consummate the purchase of the Assets ("Qualified Bidders"). Qualified Bidders will be allowed to perform reasonable due diligence on the Assets, including reasonable access to the books, records and executives of the Debtors. Any interested bidders should contact Peter Keenoy at Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Telephone No.: (203) 956-6565, Facsimile: (203) 956-9546, or Kay Perry at Velocita Corp., 2941 Fairview Park Drive, Falls Church, Virginia 22042, Telephone No.: (703) 564-7222, Facsimile: (703) 564-7444, to seek to become Qualified Bidders and, thereafter, to request information in connection with their due diligence.

5. Notification of Stalking Horse Agreement.

The Debtors reserve the right to enter into an asset purchase agreement prior to the Auction, subject to higher or better offers at the Auction, with one or more entities (the "Stalking Horse Bidder(s)") to establish a minimum bid for some or all of the Assets (the "Stalking Horse Agreement(s)"), which may contain certain customary terms and conditions, including expense reimbursement and a "break-up fee," in an amount to be determined by the Debtors but in no event will exceed 2% of the proposed purchase price of the Assets without consent of the Debtors' Senior Lenders (defined below), provided for in the applicable Stalking Horse Agreement (the "Purchase Price").

6. Form and Content of Bids.

All bids must be in writing and submitted using the asset purchase agreement (annexed as Exhibit "C" to the Sale Motion, the "Asset Purchase Agreement") executed by the Qualified Bidders and be accompanied by a completed letter authorizing the Qualified Bidder's representative and counsel to participate in the Auction (together with the Asset Purchase Agreement, the "Bid Package"). Each Qualified Bidder must submit an executed "clean" version of the Asset Purchase Agreement, together with a blackline to reflect any proposed changes to the terms and conditions of the bid.² If any bid is

² While bidders may suggest modifications to the Asset Purchase Agreement, any such modifications deemed by the Debtors' estates to increase the obligations or burdens upon

conditioned on the assumption and assignment of executory contracts and unexpired leases, then such bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid (an "Adequate Assurance Package").

Notwithstanding the foregoing, holders of (a) Post-Petition Loans under the Final Order (i) Authorizing the Use of Lenders' Cash Collateral and (ii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 dated July 16, 2002 (the "Final Order") and (b) indebtedness under the Credit Agreement, dated as of October 29, 1999 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Credit Agreement"), among PF.Net, the several banks and other financial institutions from time to time party thereto (the "Senior Lenders") and Wachovia Bank, National Association in its capacity as administrative agent for the Lenders (in such capacity, the "Administrative Agent") shall be deemed to be Qualified Bidders and may submit a bid at the Auction. The Senior Lenders are not required to make an Earnest Money Down Payment (which is waived by the Debtors). In any bid submitted by the Senior Lenders, the Senior Lenders may "bid in" or receive credit in their bid for all or a portion of their Post-Petition Loans and indebtedness under the Credit Agreement, which shall reduce the cash required to be paid with respect to such bid on a dollar-for-dollar basis, pursuant to section 363(k) of the Bankruptcy Code.

Any bid for all or substantially all of the Debtors' assets must be no less than \$75 million (the "Minimum Bid").

Bids must be unconditional and not contingent upon any event, including, without limitation, any due diligence investigation, the receipt of financing and any further bidding approval, including from any board of directors, shareholders or otherwise. Bids shall not be shared among the Qualified Bidders. All bids are irrevocable until seven (7) days after the Sale Hearing. All bids shall be accompanied by an earnest money deposit (the "Earnest Money Down Payment") equal to 5% of the total proposed purchase price in the form of a certified check or wire transfer payable to Velocita Corp. The Earnest Money Down Payment only should be sent to the Debtors (and not the other parties to receive copies of the bids). Within 24 hours of the Auction, any Successful Bidders (as defined in section 9 hereof) must supplement the initial Earnest Money Down Payment (through certified check or wire transfer), so that the total deposit equals 10% of their winning bid. Such deposit shall be held by the Debtors, without interest, until the earlier to occur of (i) the time such bids are officially rejected by the Debtors and (ii) seven (7) days after the Sale Hearing.

The bidder shall forfeit the Earnest Money Down Payment if the bidder is the Successful Bidder and (A) modifies or withdraws the bid without the Debtors' consent before the consummation of the sale contemplated by the Bid (as such term is hereinafter

the Debtors (such as additional conditions) will be considered by the Debtors' in determining whether to accept such bid.

defined), (B) breaches the Bid, or (C) breaches its confidentiality agreement. The Earnest Money Down Payment shall be promptly returned to the bidder (i) if the bidder is not determined to be a Qualified Bidder or (ii) if the bidder is a Qualified Bidder (who has not otherwise forfeited its Earnest Money Down Payment), but is not a Successful Bidder.

The Bid must be accompanied by a letter affirmatively setting forth (i) the identity of the bidder (including the authorized representative to attend the Auction), the contact information for such bidder, the identity of the bidder's counsel, and contact information for such bidder's counsel; (ii) the aggregate value of the consideration the bidder proposes to pay under the Bid (which statement of value shall not be binding on the Debtors or the Court), (iii) the form of the Earnest Money Down Payment (i.e., cashier's check or wire transfer) made by the bidder, and (iv) its acknowledgement that such offer shall be irrevocable until the earlier of seven (7) days after the Sale Hearing, or the date on which the Bankruptcy Court enters an order approving another bidder as the Successful Bidder.

7. Time for Submission of Bids.

All Bid Packages and Adequate Assurance Packages must be submitted in writing so that they are *actually received* by **no later than 12:00 noon (New York time) on October 15, 2002** by Velocita Corp., 2941 Fairview Park Drive, Falls Church, Virginia 22042, Attn: W. Terrell Wingfield, Jr., with copies to the following parties: (i) Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Attn: Peter Keenoy and (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153-0119, Attn: Gary T. Holtzer, Esq. Each bidder shall provide copies of the executed Asset Purchase Agreement (clean and blacklined) and Adequate Assurance Package to Weil, Gotshal & Manges LLP.

8. The Auction

The Auction will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 on October 17, 2002 at 11:00 a.m. Qualified Bidders who have complied with the Auction Procedures ("Qualified Bids") may improve their bids at the Auction (such bids, as improved, the "Improved Bids"). Only Qualified Bidders will be permitted to participate at the Auction.

9. Selection of Successful Bidder.

The Debtors may select the winning bid(s) after consultation with counsel to the prepetition institutional lenders and the Committees at the conclusion of the Auction, subject to Court approval, and the winning bidder(s) will be required to enter into definitive agreements (as modified by the bids submitted at the conclusion of the Auction) before the Auction is adjourned.

10. Auction Results.

The Debtors will file the results of the Auction and the highest or best offer(s) by filing a supplement to the Sale Motion with the Bankruptcy Court (the "Supplement"). The Debtors will file the Supplement by no later than three (3) days before the Sale Hearing. Any person interested in receiving a copy of the Supplement may request a copy of the document by contacting Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New Jersey, New Jersey, 10153-0119, Attn: Gary T. Holtzer, Telephone: (212) 310-8000, Facsimile: (212) 310-8007 or the document will be on file with the Bankruptcy Court.

11. Objections.

Objections to any relief requested by the Sale Motion, including objections relating to the assumption and assignment of executory contracts and unexpired leases under section 365 of the Bankruptcy Code thereunder, must be set forth in writing and state with particularity the grounds for such objections or other statements of position and shall be filed with the Bankruptcy Court and served upon (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153-0119, Attn: Gary T. Holtzer, Esq., (ii) Ravin Greenberg PC, 101 Eisenhower Parkway, Roseland, New Jersey, Attn: Howard S. Greenberg, Esq., (iii) Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attn: Steven M. Fuhrman, Esq., (iv) Drinker Biddle & Shanley, LLP, 500 Campus Drive, Florham Park, New Jersey 17932-1047, Attn: Robert K. Malone, Esq., (v) Wolff & Samson, P.A., 5 Becker Farm Road, Roseland, New Jersey 07068, Attn: Robert E. Niese, Esq. and (vi) the Office of the United States Trustee, One Newark Center, Suite 2100, Newark, NJ 07102, so as to be actually received by 4:00 p.m. on [_____, 2002].

Objections relating solely to the adequate assurance of future performance of any unexpired leases to be assumed and assigned under section 365 of the Bankruptcy Code must be served and filed within 10 days after receiving notice of the identity of the purchaser of the Company or its Assets.

12. Failure to Consummate Purchase.

If for any reason the Successful Bidder fails to consummate the purchase of the Company, the Assets, or any part thereof, the offeror of the second highest or best bid (the "Second Highest Bidder") will automatically be deemed to have submitted the highest or best bid and to the extent the Second Highest Bidder and the Debtors consent, the Debtors and the Second Highest Bidder are authorized to effect the sale, or any part thereof, to the Second Highest Bidder as soon as is commercially reasonable without further order of the Bankruptcy Court. If such failure to consummate the purchase is the result of a breach by the Successful Bidder, the Earnest Money Down Payment shall be forfeited to the Debtors and the Debtors specifically reserve the right to seek all available damages from the defaulting bidder.

13. Bankruptcy Court Approval of the Successful Bidder

A hearing on the relief requested in the Sale Motion and to confirm the results of the Auction shall be held before the Honorable Donald H. Steckroth, United States Bankruptcy Judge, Martin Luther King Federal Building, Court Room 3B, 50 Walnut Street, Newark, New Jersey 07102, on [_____, 2002] at __:__.m. Any sale of the Company or the Debtors' Assets is subject to entry of an order of the Bankruptcy Court approving the sale(s).

14. Return of Deposits.

Within ten (10) business days after the entry by the Bankruptcy Court of its order approving the Successful Bidder, the Earnest Money Down Payment submitted by all Qualified Bidders, except (i) the Successful Bidder, and (ii) any bidders that forfeit their Earnest Money Down Payments as set forth in section 6 above, shall be returned.

15. Business Judgment of the Debtors.

The Debtors reserve the right (a) to determine in the reasonable exercise of their business judgment whether the amendments and changes contained in each Bid are acceptable as terms and conditions to sell; (b) to determine, in the reasonable exercise of their business judgment, which Qualified Bid, if any, is the highest or otherwise best offer; and (c) to reject at any time prior to entry of an order of the Bankruptcy Court approving the Successful Bidder, any bid that the Debtors, in the reasonable exercise of their business judgment, deems to (i) be inadequate or insufficient, or (ii) not to conform with the requirements of the Bankruptcy Code or the Auction Procedures. **The Debtors also reserve the right to discontinue the sale process or adjourn the Auction and the Sale Hearing.**

16. Reservation of Rights.

The Debtors reserve the right to (i) impose additional terms and conditions at or prior to the Auction, (ii) extend the deadlines set forth in the Auction Procedures and/or adjourn the Auction at the Auction and/or the Sale Hearing in open court without further notice, (iii) withdraw any Asset(s) (the "Withdrawn Assets") from sale at any time prior to or during the Auction, to make subsequent attempts to market same, and to request separate hearing(s) by this Court to approve the sale(s) of some or all of the Withdrawn Assets (iv) reject any or all bids if, in the Debtors' reasonable judgment, no bid is for a fair and adequate price, (v) seek approval of any separate agreement to sell some or all of the Withdrawn Assets at the Sale Hearing, and (vi) alter the Minimum Bid.

EXHIBIT B1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

-----X
In re : **(Jointly Administered**
 : **Under Case No. 02-35895)**
VELOCITA CORP., *et al.*, :
 :
Debtors. : Chapter 11 Case Nos.
 : 02-35894 (DHS)
 : through 02-35905 (DHS)
-----X

NOTICE OF AUCTION PROCEDURES,
AUCTION DATE AND SALE HEARING

PLEASE TAKE NOTICE THAT, on October 17, 2002, Velocita Corp. and its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "Company" or "Debtors") will conduct an auction ("Auction") for the sale of all or substantially all of the assets (the "Assets") or select Assets of the Company, which consist of telecommunications equipment, real estate assets, and other property .

PLEASE TAKE FURTHER NOTICE THAT, the Auction will be conducted in accordance with the auction procedures annexed hereto as Exhibit "A" (the "Auction Procedures") that were approved by order of the United States Bankruptcy Court for the District of New Jersey dated [_____, 2002].

PLEASE TAKE FURTHER NOTICE THAT, in accordance with the Auction Procedures (a) interested parties will have the opportunity to make competing offers and (b) the Debtors will select the highest or best bid for the sale of the Company or the Assets and thereafter seek Bankruptcy Court approval of such bid.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, any bidder desiring to submit a bid at the Auction (a "Bid") shall send a letter indicating its interest in bidding addressed to the Debtors, the Debtors' counsel and the Debtors' financial advisors, as set forth in the Auction Procedures. The Debtors will qualify interested parties that (1) sign a confidentiality agreement, and (2) provide the requisite financial and other information (a "Qualified Bidder"). A Qualified Bidder may make a "Qualified Bid" by delivering a bid in writing to the Debtors, together with a certified check or wire transfer payable to Velocita Corp. in the amount equal to 5% of the total proposed purchase price, and by delivering a copy of such bid to (i) the attorneys and advisors for the Debtors; and (ii) the attorneys and advisors for the Committees, as set forth in the Auction Procedures, so that such Bid and copies thereof are actually received by no later than 12:00 noon (New York time) on October 15, 2002.

THE AUCTION PROCEDURES CONTAIN DETAILED REQUIREMENTS FOR THE SUBMISSION OF ALL BIDS AND SHOULD BE REVIEWED CAREFULLY

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, the Auction will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, 25th Floor, New York, New York 10153, on October 17, 2002 at 11:00 a.m. Any person seeking to participate as a Qualified Bidder at the Auction must comply with the Auction Procedures.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, objections to any relief requested by the Sale Motion, including objections relating to the assumption and assignment of executory contracts and unexpired leases under section 365 of the Bankruptcy Code, shall be set forth in writing and state with particularity the grounds for such objections or other

statements of position and shall be served so as to be actually received by 4:00 p.m. on [_____, 2002].

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Auction Procedures, objections relating solely to the adequate assurance of future performance of any unexpired leases to be assumed and assigned under section 365 of the Bankruptcy Code and any cure amounts thereunder shall be served and filed within 10 days after receiving notice of the identity the purchaser of the Company or its Assets.

PLEASE TAKE FURTHER NOTICE THAT, the Bankruptcy Court will hold a hearing on [_____, 2002] at __:___.m. to consider and approve the Debtors' selection of the highest or best bid for the sale of the Company or its Assets. The hearing may be adjourned from time to time without further notice except by announcement of the adjourned date or dates at the hearing or any adjournment thereof.

PLEASE TAKE FURTHER NOTICE THAT, that all requests for information concerning the Company or its Assets should be in writing directed to: Peter Keenoy at Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Telephone No.: (203) 956-6565, Facsimile: (203) 956-9546.

Dated: _____, 2002

WEIL, GOTSHAL & MANGES LLP
Co-Attorneys for the Debtors
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
Gary T. Holtzer, Esq. (GH 7732)

-and-

RAVIN GREENBERG PC
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(973) 226-1500
Howard S. Greenberg, Esq. (HSG 8559)

EXHIBIT B2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

-----X
In re : **(Jointly Administered**
 : **Under Case No. 02-35895)**
VELOCITA CORP., *et al.*, :
 :
 : Chapter 11 Case Nos.
Debtors. : 02-35894 (DHS)
 : through 02-35905 (DHS)
-----X

**NOTICE OF SALE OF SUBSTANTIALLY
ALL OF THE ASSETS OF THE DEBTORS**

Velocita Corp. ("Velocita") and its subsidiaries and affiliates (collectively, the "Company" or "Debtors"), as chapter 11 debtors, will conduct an auction ("Auction") for the sale of all or substantially all of the assets (the "Assets") free and clear of all liens and claims or a sale of select Assets of the Company. The Assets are comprised primarily of telecommunications equipment, real estate assets, and other property.

The auction of the Assets will take place on October 17, 2002 at 11:00 a.m. at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, NY, NY 10153. Bids made for all or certain of the Assets must be in writing, setting forth the identity of the party making such offer and comply with the auction procedures approved by the United States Bankruptcy Court for the District of New Jersey by order dated _____, 2002 (the "Auction Procedures"). A copy of the Auction Procedures may be obtained by contacting the Debtors' co-counsel, Attn: Gary T. Holtzer, Esq. at Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153-0119, Telephone No.: (212) 310-8000, Facsimile: (212) 310-8007 or, the Debtors' financial advisors, Attn: Peter Keenoy at Impala Partners, LLC, 18 Marshall Street, Suite 112, Norwalk, Connecticut 06854, Telephone No.: (203) 956-6565, Facsimile: (203) 956-9546. Inquiries about the Assets should be made to Peter Keenoy at Impala Partners, LLC.

Any bidder that seeks to submit a bid at the Auction shall send a letter indicating interest in bidding addressed to the Debtors, Debtors' counsel and the Debtors' financial advisors, as set forth in the Auction Procedures. Bidders can qualify to bid if their bids are delivered in writing, together with a certified check or wire transfer payable to Velocita Corp. in the amount equal to 5% of the total proposed purchase price to the attorneys and advisors for the Debtors by October 15, 2002 at 12:00 p.m.

The hearing on the proposed sale of the Assets will be held on _____, 2002 (the "Hearing"), in the United States Bankruptcy Court for the District of New Jersey, Martin Luther King Federal Building, Court Room 3B, 50 Walnut Street, Newark, New Jersey 07102.

WEIL, GOTSHAL & MANGES LLP
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EXHIBIT C

ASSET PURCHASE AGREEMENT

dated as of _____, 2002

between

PF.NET CORP.

and

[BUYER]

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of _____, 2002 by and between PF.Net Corp., a Delaware corporation, (the "Company") and collectively with the Subsidiaries, "Seller"), and _____, a _____ corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller is engaged in building a nationwide broadband network aimed at serving communications carriers, internet service providers, data providers, television providers and video providers (the "Business");

WHEREAS, Seller commenced a case (the "Case") under chapter 11 of title 11 of the United States Code, 11 U.S.C. Sections 101 *et seq.* (the "Bankruptcy Code") on May 30, 2002 filing a voluntary petition with the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court");

WHEREAS, the sale of assets and liabilities of the Business are subject to the supervision and control of Seller subject to the approval of the Bankruptcy Court; and

WHEREAS, Seller wishes to sell to Buyer and Buyer wishes to purchase from Seller certain assets and to assume from Seller certain liabilities of the Business, pursuant to, *inter alia*, Sections 363 and 365 of the Bankruptcy Code and the applicable Federal Rules of Bankruptcy Procedure.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS{ TC }

1.1. Defined Terms { TC }. As used herein, the terms below shall have the following respective meanings:

"Affiliate" shall have the meaning set forth in (i) Rule 12b-2 of the General Rules and Regulations of the Securities Exchange Act of 1934, as amended, or (ii) Section 101 of the Bankruptcy Code.

"Agreement" shall mean this Asset Purchase Agreement (together with all schedules and exhibits referenced herein).

"Approval Order" shall have the meaning ascribed to such term in Section 7.1(b).

"Business Day" shall mean any day other than a Saturday, Sunday or a legal holiday on which banking institutions in the State of New York are not required to open.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Governmental Entity” shall mean any (i) federal, state, local, municipal, foreign or other government; (ii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); or (iii) body exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and any successor law and the rules and regulations thereunder or under any successor law.

“Law” means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, principle of common law, judgment enacted, promulgated, issued, enforced or entered by any Governmental Entity, or other requirement or rule of law.

“Liabilities” shall mean, as to any Person, all debts, adverse claims, liabilities, commitments, responsibilities, and obligations of any kind or nature whatsoever, direct, indirect, absolute or contingent, of such Person, whether accrued, vested or otherwise, whether known or unknown and whether or not actually reflected, or required to be reflected, in such Person’s balance sheets or other books and records.

“Lien” shall mean any claim, pledge, option, charge, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, deed of trust or other encumbrance.

“Material Adverse Effect” shall mean a material adverse effect on the Business, taken as a whole, or any development which could be reasonably expected to delay or prevent the consummation of the transactions contemplated hereby or which could be reasonably expected to materially and adversely affect the value of the Assets, taken as a whole [, provided that the following shall not constitute as Material Adverse Effect: (i) general economic, political, regulatory or market conditions; (ii) any changes generally relating to the industries in which the Business operates; or (iii) any changes or effects arising out of or resulting from actions contemplated by the parties in connection with, or which are attributable to, the announcement of this Agreement and the transactions contemplated hereby, including but not limited to the filing of the Chapter 11 Case.

[“Network Equipment Assets” shall mean the network equipment assets and facilities used by the Seller in the Business set forth on Schedule 2.1(c).]

“Order” shall mean any judgment, order, injunction, writ, ruling, decree, stipulation or award of any Governmental Entity or private arbitration tribunal.

“Person” shall mean an individual, a partnership, a joint venture, a corporation, a business trust, a limited liability company, a trust, an unincorporated organization, a joint stock company, a labor union, an estate, a Governmental Entity or any other entity.

“Post-Petition” shall mean any time after the commencement of the Case.

“Proceeding” shall mean any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

“Representative” shall mean, with respect to any Person, such Person’s officers, directors, employees, agents and representatives (including any investment banker, financial advisor, accountant, legal counsel, agent, representative or expert retained by or acting on behalf of such Person or its subsidiaries).

“Subsidiaries” shall mean PF.NET Property Corp., PF.NET Construction Corp., PF.NET Network Services Corp., PF.NET Supply Corp., PF.NET Virginia Corp., PF.NET Construction, LLC, PF.NET Network Services East, LLC, PF.NET Network Services West, LLC, PF.Net Supply, LLC, and PF.NET Virginia, LLC.

“Tax” or “Taxes” shall mean any federal, state, county, local, foreign and other income, profits, gains, net worth, sales and use, ad valorem, gross receipts, business and occupation, license, estimated, stamp, custom duties, occupation, property (real or personal), franchise, capital stock, license, excise, value added, payroll, employees, income withholding, social security, unemployment or other tax, any penalty, addition to tax and interest on the foregoing.

“Transfer Tax” or “Transfer Taxes” shall mean any federal, state, county, local, foreign and other sales, use, transfer, conveyance, documentary transfer, recording or other similar tax, fee or charge imposed upon the sale, transfer or assignment of property or any interest therein or the recording thereof, and any penalty, addition to tax or interest with respect thereto, but such term shall not include any tax on, based upon or measured by, the net income, gains or profits from such sale, transfer or assignment of the property or any interest therein.

“WARN Act” shall mean the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any successor Law, and the rules and regulations thereunder and under any successor law.

1.2. Other Defined Terms{ TC }. The following additional terms shall have the meanings defined for such terms in the Sections set forth below:

<u>Term</u>	<u>Section</u>
Allocation Schedule	3.3
Assets	2.1
Assumed Contracts	2.1(e)
Assumed Liabilities	2.3
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals
Buyer	Recitals
Case	Recitals
Claims	2.2(f)

<u>Term</u>	<u>Section</u>
Closing	3.1(a)
Closing Date	3.1(a)
Company	Recitals
Continued Employee	6.6(b)
Cure Amounts	2.5
Damages	9.2(a)
Earnest Money Deposit	3.2
Employees	6.6(a)
Equipment	2.1(c)
Equipment Leases	2.1(b)
ERISA Affiliate	2.4(f)
Excluded Assets	2.2
Excluded Liabilities	2.4
Indemnified Party	9.2(c)
Indemnifying Party	9.2(c)
Lucent	2.1(e)
Lucent Claim	2.1(e)
Notice	9.2(c)
Owned Real Property	2.1(a)
Purchase Price	3.2
Real Property Leases	2.1(a)
Seller	Recitals

1.3. Other Definitional Provisions { TC }.

(a) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

II. TRANSFER OF ASSETS AND LIABILITIES { TC }

2.1. Assets to be Sold { TC }. Subject to Section 2.2, the other provisions of this Agreement and the Approval Order, at Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire, and accept the following assets and rights (collectively, the “Assets”):

(a) The leases or subleases and all amendments thereto under which Seller is a lessor or lessee or sublessor or sublessee of real property relating to the operation of the Business (collectively, the “Real Property Leases”) which relate to the operation of the Business and any real property which is owned by such Seller and which is used in the operation of the Business (the “Owned Real Property”), each as set forth on Schedule 2.1(a);

(b) The equipment leases which relate to equipment used in the operation of the Business (the "Equipment Leases"), as set forth on Schedule 2.1(b);

(c) The furniture, fixtures, equipment, machinery, supplies and other tangible personal property owned by Seller including the Network Equipment Assets, and pertaining exclusively to the operation of the Business (collectively, the "Equipment"), and all warranties, if any, express or implied, existing for the benefit of such Seller from third parties relating to the Equipment to the extent transferable;

(d) Any licenses, permits, franchises and other authorizations of any Governmental Entity relating to the Assets and to the operation of the Business which are listed on Schedule 2.1(d), to the extent the same are transferable or assignable;

(e) The contracts and agreements of the Seller pertaining to and necessary for operation of the Business in the ordinary course (collectively, the "Assumed Contracts"), as set forth on Schedule 2.1(e) including all rights, demands, claims, actions and causes of action that Seller or any of its Affiliates may have against Lucent Technologies, Inc. ("Lucent"), pursuant to that letter dated as of June 6, 2000 (the "Lucent Claim");

(f) Accounts receivable of the Business;

(g) Any books, records, files or papers of Seller, whether in hard copy or computer format, relating exclusively to the Assets or to the operation of the Business, including, without limitation, management information systems or software owned by the Seller, engineering information, sales and promotional literature, manuals and data, sales and purchase correspondence, personnel and employment records, customer lists, vendor lists, catalogs, research material, URLs, source codes, technical information, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data, if any, or any other intangible property and applications for the same;

(h) Any of Seller's right, title or interest in or to any of Seller's patents, patent registrations, patent applications, trademarks, trademark registrations, trademark applications, tradenames, copyrights, copyright applications, or copyright registrations relating exclusively to the Business, except to the extent expressly permitted pursuant to the terms and conditions of this Agreement and the rights to sue for, and remedies against, past, present and future infringements thereof and the rights of priority and protection of interests therein under applicable laws;

(i) Any computer software programs and databases used by the Sellers, whether owned, licensed, leased, or internally developed (in each case, subject to applicable restrictions);and

(j) Any telephone numbers or electronic mail addresses used by the Sellers in the conduct of the Business.

2.2. Excluded Assets{ TC }. The Assets shall not include any of Seller's right, title or interest in or to any assets or properties of Seller that are not expressly enumerated in Section 2.1, including, without limitation, any of Seller's right, title or interest in or to any of the following (collectively, the "Excluded Assets"):

(a) Cash and cash equivalents or similar type investments, uncollected checks, bank accounts, certificates of deposit, Treasury bills and other marketable securities;

(b) Any security, vendor, utility or other deposits;

(c) Any contracts or agreements other than the Assumed Contracts, the Equipment Leases or the Real Property Leases;

(d) Any assets and any rights under any plan or any agreement relating to employee benefits, employment or compensation of Seller or its respective employees;

(e) All rights, demands, claims, actions and causes of action (collectively, the "Claims") that Seller or any of its Affiliates may have against any third party, including any Governmental Entity, for causes of action based on Chapter 5 of the Bankruptcy Code and for refund or credit of any type with respect to Taxes accrued with respect to periods ending on or prior to the Closing Date;

(f) All Claims which Seller or any of its Affiliates may have against any third Person with respect to any Excluded Assets;

(g) All Claims (other than warranty Claims relating to the Equipment referred to in Section 2.1(c)) which Seller or any of its Affiliates may have against any Person with respect to any Asset;

(h) Any insurance policy, insurance claims and proceeds, except as otherwise provided herein; and

(i) The capital stock of the Seller.

2.3. Liabilities to be Assumed by Buyer{ TC }. Upon the transfer of the Assets on the Closing Date, Buyer shall assume and pay when due and discharge the following Liabilities (collectively, the "Assumed Liabilities"):

(a) Liabilities arising out of the ownership of the Assets and the operation of the Business by Buyer or any other Person, including, without limitation, Liability for personal injury of customers or employees, but only to the extent that the event or state of facts giving rise to such Liability occurs Post-Petition;

(b) Liabilities under the Real Property Leases assumed under this Agreement arising from and after the Closing, but only to the extent that the event or state of facts giving rise to such Liability occurs Post-Petition;

(c) Liabilities under the Assumed Contracts, but only to the extent that the event or state of facts giving rise to such Liability occurs Post-Petition;

(d) Liabilities under the Equipment Leases, but only to the extent that the event or state of facts giving rise to such Liability occurs Post-Petition;

(e) Liabilities under accounts payable related to the Business, together with any interest accrued thereon, but only to the extent that the event or state of facts giving rise to such Liability occurs Post-Petition;

(f) Liabilities related to the termination of employment after the Closing of any Person by Buyer who becomes an employee of Buyer, including, but not limited to any Liability arising under the WARN Act, but only to the extent that the event or state of facts giving rise to such Liability occurs after the Closing;

(g) Liabilities related to earned but unpaid salary, accrued but unpaid vacation days, accrued but unpaid medical and dental expenses and other accrued welfare benefits of employees or former employees of Seller employed in connection with the Business and, whether or not accrued, any obligations under Section 4980B of the Internal Revenue Code to provide continuation of group medical coverage with respect to any Employee or other qualified beneficiary that occur after the Closing;

(h) Liabilities for any and all Transfer Taxes due as a result of the transactions contemplated by this Agreement; and

(i) Liabilities under the capitalized leases and long-term debt obligations listed on Schedule 2.3(i), to the extent such items are not otherwise assumed as Real Property Leases, Assumed Contracts or Equipment Leases.

2.4. Excluded Liabilities{ TC }. Except as otherwise set forth in this Agreement, Buyer shall not assume, and shall be deemed not to have assumed, any Liabilities except for the Assumed Liabilities, and Seller shall be solely and exclusively liable with respect to all Liabilities of Seller other than the Assumed Liabilities (collectively, the “Excluded Liabilities”), including, but not limited to, those Liabilities set forth below:

(a) Any Liabilities which arise, whether before, on or after the petition, out of, or in connection with, the Excluded Assets;

(b) Any Liabilities under the Assumed Contracts or account payables, to the extent that the event or state of facts giving rise to such Liability does not occur Post-Petition;

(c) Any Liabilities under the Equipment Leases or the Real Property Leases to the extent that the event or state of facts giving rise to such Liability does not occur Post-Petition, unless otherwise specified;

(d) Any Liabilities arising out of, or in connection with, any Proceedings arising out of the operation of the Business to the extent that the event or state of facts giving rise to such Liability does not occur Post-Petition;

(e) Any Liabilities arising out of or in connection with any indebtedness of Seller or any of its Affiliates to their lenders or to their vendors of goods and services delivered or furnished to Seller that does not occur Post-Petition, except as otherwise provided in this Agreement;

(f) Except for Liabilities set forth in Section[s] 2.3(e) [and 2.3(f)], any Liabilities attributable to, incurred in connection with, arising from, or relating to, any collective bargaining agreement, or any bonus, incentive, deferred compensation, medical, health, life or other insurance, welfare, fringe benefit, severance, termination, retention, consulting, change of control, employment, stock option, stock appreciation right, stock purchase, phantom stock or other equity-based, performance, pension, retirement or any other incentive, compensation or benefit plan, program, policy, agreement or arrangement (including, but not limited to, any "employee benefit plan" as defined in Section 3(3) of ERISA), sponsored, maintained, contributed to or required to be contributed to at any time by Seller or any trade or business which together with Seller would be deemed (or at any time would have been) a "single employer" within the meaning of section 4001 of ERISA (each, an "ERISA Affiliate"), for the benefit of any current or former employee, officer, director, agent or consultant of Seller, or any ERISA Affiliate, whether formal or informal and whether legally binding or not that does not occur after the Closing;

(g) Any Liabilities for income Taxes of Seller and any other Taxes of Seller (other than Transfer Taxes referred to in Section 2.3(h)), including, but not limited to, all Taxes attributable to, incurred in connection with or arising out of the operation of the Business including those which are not due or assessed until after the Closing Date but which are attributable to any period (or portion thereof) ending on or before the Closing Date; and

2.5. Real Property Leases, Equipment Leases and Assumed Contracts{ TC }. At Closing and pursuant to Section 365 of the Bankruptcy Code, Seller shall assume and assign to Buyer the Real Property Leases, the Equipment Leases and the Assumed Contracts. The cure amounts, as determined by the Bankruptcy Court, if any (the "Cure Amounts"), necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Real Property Leases, the Equipment Leases and the Assumed Contracts, shall be paid by Seller and not by Buyer and Buyer shall have no Liability therefor.

III. CLOSING{ TC }

3.1. Closing; Transfer of Possession; Certain Deliveries{ TC }.

(a) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, the closing of the transactions contemplated herein (the "Closing") shall take place on _____, or on such other date as the parties hereto shall mutually agree, such date to be as soon as practicable following entry of the Approval Order. The Closing shall be held at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, at 10:00 a.m., local time, unless the parties hereto otherwise agree. The actual time and date of the Closing are herein called the "Closing Date."

- (b) At the Closing, Seller shall deliver to Buyer:
- (i) A duly executed bill of sale in form and substance reasonably satisfactory to Buyer;
 - (ii) A copy of the Approval Order for Seller;
 - (iii) The officer's certificates required to be delivered pursuant to Section 7.2(c) hereof; and
 - (iv) All other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Assets to Buyer or Buyer's designee.
- (c) At the Closing, Buyer shall deliver to Seller:
- (i) The Purchase Price;
 - (ii) All certificates required by all relevant taxing authorities that are necessary to support any claimed exemption from the imposition of Transfer Taxes;
 - (iii) The officer's certificate required to be delivered pursuant to Section 7.3(c) hereof; and
 - (iv) An assumption agreement pursuant to which Buyer shall assume all Assumed Liabilities; and
 - (v) All other instruments of transfer, in form and substance reasonably acceptable to Seller, as may be necessary to assume the Assumed Liabilities.

3.2. Purchase Price { TC }. In consideration for the Assets, and subject to the terms and conditions of this Agreement, Buyer shall assume the Assumed Liabilities as provided in Section 2.3 and at the Closing shall pay to Seller in immediately available funds, by wire transfer to an account or accounts designated by Seller, an amount in cash equal to \$ _____ (the "Purchase Price"); provided, however, Buyer shall pay to Seller in immediately available funds, by wire transfer to an account or accounts designated by Seller an earnest money deposit equal to 5% of the Purchase Price (the "Earnest Money Deposit") upon the date hereof. The Earnest Money Deposit shall be deducted from the total Purchase Price payable at the Closing. If Buyer terminates this Agreement in breach of Section 8.1 hereof or if Seller terminates this Agreement pursuant to Section 8.1(b) (provided the Closing has not occurred due to a breach by Buyer), then Seller shall be entitled to retain the Earnest Money Deposit and shall have no further obligations to Buyer. If Buyer terminates this Agreement pursuant to Section 8.1 hereof, provided that Buyer is not in breach of this Agreement, or if Seller terminates this Agreement pursuant to Section 8.1(a), (b) (provided the failure to have a Closing on the date specified is not due to a breach by Buyer) or (c), then Seller shall be obligated to return the Earnest Money Deposit to Buyer.

3.3. Allocation of Purchase Price{ TC }. Seller shall, within 120 days after the Closing Date, prepare and deliver to Buyer a schedule (the "Allocation Schedule") allocating the Purchase Price and the Assumed Liabilities among the Assets in accordance with Treas. Reg. 1.1060-1T (or any comparable provisions of state or local tax law) or any successor provision. Buyer will have the right to raise reasonable objections to the Allocation Schedule within 10 days after its receipt thereof, in which event Buyer and Seller will negotiate in good faith to resolve such objections. If Buyer and Seller cannot mutually resolve Buyer's reasonable objections to the Allocation Schedule within 10 days after Seller's receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to an accounting firm to be mutually selected by Buyer and Seller, on the next day for a decision that shall be rendered by such accounting firm within thirty (30) calendar days thereafter and shall be final and binding upon each of the parties. The fees, costs and expenses incurred in connection therewith shall be shared in equal amounts by Buyer and Seller. Buyer and Seller each shall report and file all Tax returns (including amended Tax returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any taxing authority or any other proceedings). Buyer and Seller shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation, including any amendments to such forms required with respect to any adjustment to the Purchase Price, pursuant to this Agreement. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date without limitation.

IV. REPRESENTATIONS AND WARRANTIES OF SELLER{ TC }

The Buyer specifically acknowledges and agrees to the following with respect to the representations and warranties of the Sellers:

A. The Buyer will not have any recourse to the Seller or to any of the officers or directors of the Seller in the event any of the representations and warranties made herein or deemed made are untrue as at any time of expression thereof. The only remedy for a breach of such representations and warranties shall be the Buyer's option, under certain circumstances, not to close in accordance with and subject to the limitations in Article VIII hereof and, without limiting the foregoing, the Buyer shall have no remedy whatsoever for any such breach after the Closing.

B. The Buyer has conducted its own due diligence investigations of the Business or has waived its right to conduct such due diligence.

Seller hereby represents and warrants to Buyer as follows:

4.1. Existence, Good Standing and Power{ TC }. Each of the Company and each of the Subsidiaries is validly existing and in good standing under the laws of the jurisdiction in which it is chartered or organized, with full corporate or limited liability company power and authority to own or lease, as the case may be, and to operate its Assets to be sold hereunder. Subject to entry of the Approval Order, Seller has all requisite power and authority to execute and deliver this Agreement and the other documents and instruments to be executed and delivered by such Seller and to perform its obligations hereunder and thereunder.

4.2. Authority{ TC }. The execution, delivery and performance of this Agreement and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all necessary corporate or limited liability company action on the part of Seller.

4.3. Execution and Binding Effect{ TC }. This Agreement has been duly and validly executed and delivered by Seller and constitutes, and, following the entering of the Approval Order, this Agreement and the transaction contemplated hereby will constitute (assuming in each case the due and valid authorization, execution and delivery thereof by the other parties thereto), a valid and legally binding obligation of Seller enforceable against Seller in accordance with its respective terms.

4.4. No Violation{ TC }. Except as disclosed in Schedule 4.4, the execution, delivery and performance by Seller of this Agreement and the transactions contemplated hereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of incorporation, organizational document or bylaws of such Seller or any resolution adopted by the board of directors of such Seller and not rescinded, (b) subject to entry of the Approval Order, any material agreement or other instrument to which Seller is a party or by which such Seller or any of its respective properties or assets is bound, (c) subject to entry of the Approval Order, any Order of any Governmental Entity to which Seller is bound or subject, (d) subject to entry of the Approval Order, any Law applicable to Seller or any of its respective properties or assets or (e) except as provided for herein, result in the imposition or creation of any Lien upon or with respect to any of the Assets, except where such violation, breach, default, acceleration, cancellation or termination would not have Material Adverse Effect.

4.5. Third Party Approvals{ TC }. Except for (i) any approvals required in order to comply with the provisions of the HSR Act, if necessary, (ii) the Approval Order and (iii) any other third party approvals as are reflected on Schedule 4.5 hereto, the execution, delivery and performance by Seller of this Agreement and the transactions contemplated hereby do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which have not been obtained by Seller.

4.6. Brokers and Finders{ TC }. Seller has engaged the firm of Lazard Freres & Co. LLC to assist them in connection with the matters contemplated by this Agreement and will be responsible for the fees and expenses of such firm.

4.7. Limitations on Seller's Representations and Warranties{ TC }. Buyer represents and hereby covenants and shall accept the Assets "AS IS," "WHERE IS" and "WITH ALL FAULTS" on the date hereof and on the Closing Date, subject to the terms and conditions of this Agreement. Except for the representations and warranties contained in this Agreement, Seller makes no other express or implied representation or warranty, including, without limitation, representations or warranties as to the condition of the Assets, their contents, the income derived or potentially to be derived from the Assets or the Business, or the expenses incurred or potentially to be incurred in connection with the Assets or the Business. Seller is not, and will not be, liable or bound in any manner by express or implied warranties, guarantees,

statements, promises, representations or information pertaining to the Assets or the Business, made or furnished by any broker, agent, employee, servant or other person representing or purporting to represent Seller, unless and to the extent the same is expressly set forth in this Agreement.

V. REPRESENTATIONS AND WARRANTIES OF BUYER{ TC }

Buyer hereby represents and warrants to Seller as follows:

5.1. Existence, Good Standing and Power{ TC }. Buyer is a corporation validly existing and in good standing under the laws of the State of _____ and has all requisite power and authority to own, lease and operate the property it now owns, leases and operates. Buyer has all requisite power and authority to conduct its business as presently conducted, to execute and deliver this Agreement and the other documents and instruments to be executed and delivered by Buyer pursuant hereto and to perform its obligations hereunder and thereunder. Buyer is duly authorized to transact business as a foreign corporation, and is in good standing, in the states in which the Business is conducted.

5.2. Authority{ TC }. The execution, delivery and performance of this Agreement and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Buyer.

5.3. Execution and Binding Effect{ TC }. This Agreement has been duly and validly executed and delivered by Buyer and constitutes, and (assuming, in each case, the due and valid authorization, execution and delivery thereof by the other parties thereto), a valid and legally binding obligation of Buyer, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

5.4. No Violation{ TC }. Except as disclosed in Schedule 5.4, the execution, delivery and performance by Buyer of this Agreement and the transactions contemplated hereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of incorporation or bylaws of Buyer or any resolution adopted by the board of directors of Buyer and not rescinded, (b) any agreement or other instrument to which Buyer is a party or by which Buyer or any of its respective properties or assets is bound, (c) any Order of any Governmental Entity to which Buyer is bound or subject or (d) any Law applicable to Buyer or any of its respective properties or assets.

5.5. Third Party Approvals{ TC }. Except for (i) any approvals required in order to comply with the provisions of the HSR Act, if necessary and (ii) any other third party approvals as are reflected on Schedule 5.5 hereto, the execution, delivery and performance by Buyer of this Agreement and the transactions contemplated hereby do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which have not been obtained by the Buyer.

5.6. Brokers and Finders{ TC }. Other than as disclosed on Schedule 5.6, Buyer has not employed any broker or finder or incurred any liability for any brokerage fees, commissions, finders, or similar fees in connection with the transactions contemplated by this Agreement.

5.7. No Continuation of Business{ TC }. Buyer's business is neither a continuation of, nor is it related to, the business of Seller, and Buyer covenants that it will not, in any way, represent that its business is a continuation of or related to the business of Seller.

5.8. Financing{ TC }. On the Closing Date, Buyer will have sufficient unrestricted funds on hand or committed lines of credit to consummate the transactions contemplated by this Agreement.

VI. COVENANTS OF THE PARTIES{ TC }

6.1. Conduct of Business{ TC }. From and after the date hereof and until the Closing Date, Seller shall use commercially reasonable efforts in the context of the Case to cause the Business to be conducted in the ordinary course and consistent with the present conduct of the Business.

6.2. Access{ TC }. From the date hereof until the Closing Date, Seller shall allow Buyer's employees, agents and Representatives during regular business hours to make such investigation of the Business and Seller's books and records related thereto, as Buyer reasonably deems necessary or advisable, and Seller shall instruct its employees to cooperate in any such investigation. From and after the Closing Date, so long as any books, records or other files relating to the Assets or operation of the Business, to the extent that they pertain to such operations prior to the Closing Date, remain in existence and available, each party (at its expense) shall have the right, upon reasonable notice, to inspect and to make copies of the same at any time during regular business hours for any proper purpose, including, without limitation, in connection with any third-party claim in respect of which a party may have Liability hereunder.

6.3. Public Announcements{ TC }. No party shall issue a press release or otherwise make any public statements with respect to the transactions contemplated hereby, except as may be required by Law, by obligations pursuant to any listing agreement with any national securities exchange or over-the-counter market or with respect to filings to be made with the Bankruptcy Court in connection with this Agreement (in which case the party required to make such public statement shall notify the other party prior to making such public statement), without the prior consent of the others, which consent shall not be unreasonably withheld.

6.4. Reasonable Efforts{ TC }. Upon the terms and subject to the conditions herein provided, each of the parties hereto shall use its respective reasonable, good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all things necessary, proper or advisable under applicable Laws and regulations to ensure that the conditions set forth in this Agreement are satisfied and to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

6.5. Notification of Certain Matters{ TC }. Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to Seller, of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement and (ii) any written objection, litigation or administrative proceeding that challenges the transactions contemplated hereby or the entry of the Scheduling Order or the Approval Order.

6.6. Employees{ TC }.

(a) Seller shall terminate all persons who are employees of the Business (the "Employees") on the Closing Date and, prior to Closing, Buyer shall offer full-time employment effective as of the Closing to all Employees, whether or not such Employees are actively at work on the Closing Date (including, employees on vacation, sick leave, short term disability and long-term disability). Each such offer of employment by Buyer shall be for a substantially similar position as such Employees held immediately prior to the Closing and at the same salary or regular wage rate received by such Employees immediately prior to the Closing Date. Buyer shall provide the Employees with employee benefits that are substantially comparable, in the aggregate to the benefits received by the Employees immediately prior to the Closing Date; or, in the alternative, Buyer shall provide the Employees with employee benefits generally provided to similarly situated employees of the Buyer if such employee benefits are, in the aggregate, more valuable than those received by the Employees immediately prior to the Closing Date. Buyer shall credit all Employees with service with the Seller for all purposes under the Seller's employee benefit plans, including eligibility and vesting, but not benefit accrual, and shall credit Employees for all deductibles and out-of-pocket expenses incurred by the Employees with respect to such benefits during the calendar year in which the Closing Date occurs. For a period of one year following the Closing Date, Buyer shall maintain severance benefits for the benefit of the Employees which are equal to the severance benefits applicable to the Employees immediately prior to the Closing Date. Buyer shall not during the 90-day period beginning on the Closing Date terminate the employment of full-time employees (as determined for purposes of the WARN Act) of the Business so as to cause any "plant closing" or "mass layoff" (as those terms are defined in the WARN Act) such that Seller has any obligation under the WARN Act that Seller otherwise would not have had absent such terminations; provided, however, that in the event of any breach by Buyer of the foregoing, Buyer shall indemnify Seller for any such obligations.

(b) Alternative Tax Procedure. Pursuant to the "Alternative Procedure" provided in section 5 of Revenue Procedure 96-60, 1996-2 C.B. 399, (i) Buyer and Seller shall report on a predecessor/successor basis as set forth therein, (ii) Seller will be relieved from filing a Form W-2 with respect to any employees of the Seller engaged primarily in the Business immediately prior to the Closing Date to whom Buyer offers employment pursuant to Section 6.6 hereof, who accept such an offer of employment by Buyer and who actually commence such employment with Buyer (a "Continued Employee") and (iii) Buyer will undertake to file (or cause to be filed) a Form W-2 for each such Continued Employee for the year that includes the Closing Date (including the portion of such year that such employee was employed by Seller). Seller shall provide Buyer on a timely basis with all payroll and employment-related information with respect to each employee of Seller who accepts employment with Buyer.

6.7. Further Assurances{ TC }. On and after the Closing Date, the parties shall take all appropriate action and shall execute all documents, instruments or conveyances of any kind that may be reasonably necessary or advisable to carry out any of the provisions hereof.

6.8. Further Agreements{ TC }. Seller authorizes and empowers Buyer on and after the Closing Date to receive and to open all mail received by Buyer relating to the Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in any proper manner. Seller shall promptly deliver to Buyer any mail or other communication received by Seller after the Closing Date pertaining to the Assets, the Business or the Assumed Liabilities. Buyer shall promptly deliver to Seller any mail or other communication received by it after the Closing Date pertaining to the Excluded Assets or any Excluded Liabilities and any cash, checks or other instruments of payment in respect thereof. From and after the Closing Date, Seller shall refer all inquiries with respect to the Business, the Assets and the Assumed Liabilities to Buyer, and Buyer shall refer all calls with respect to the Excluded Assets and the Excluded Liabilities to Seller.

6.9. Payment of Transfer Taxes and Tax Filings{ TC }.

(a) All Transfer Taxes arising out of the transfer of the Assets and any Transfer Taxes required to effect any recording or filing with respect thereto shall be borne by Buyer. The Transfer Taxes shall be calculated assuming that no exemption from Transfer Taxes is available, unless otherwise indicated in the Approval Order or, at Closing, Buyer shall provide an appropriate resale exemption certificate or other evidence acceptable to Seller of exemption from such Transfer Taxes. Seller and Buyer shall cooperate to timely prepare and file any returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes. Seller shall pay such Transfer Taxes and shall file all necessary documentation and returns with respect to such Transfer Taxes when due, and shall promptly following the filing thereof furnish a copy of such return or other filing and a copy of a receipt showing payment of any such Transfer Tax to Buyer, and Buyer shall reimburse Seller promptly for all of such Transfer Taxes paid after giving effect to the Approval Order.

(b) Each party shall furnish or cause to be furnished to the others, upon request, as promptly as practicable, such information and assistance relating to the Assets and the Business as is reasonably necessary for filing of all Tax returns, including any claim for exemption or exclusion from the application or imposition of any Taxes or making of any election related to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax return.

6.10. Utilities{ TC }. To the extent practicable, the parties shall notify the gas, water, telephone and electric utility companies that Buyer shall be responsible for the payment of all obligations incurred therefor on or after the Closing Date with respect to the operation of the Business. Seller shall request the gas, water and electric utility companies to cause meters to be read as of the Closing Date, and Seller shall be responsible for the payment of all charges for such services incurred and provided through the Closing Date. Seller shall cause the telephone companies to render a bill for telephone service incurred through the Closing Date, and Seller shall be responsible for the payment of such bills. In the event that after the Closing Date, any

provider of phone, gas, water or electric utilities seeks payment from Buyer of unpaid phone, gas, water or electric utilities provided to Seller prior to the Closing Date, Seller shall pay such unpaid amounts as promptly as is required (after reasonable notice from Buyer) to avoid any discontinuation of utility service to Buyer. To the extent that Buyer pays such unpaid amounts, Seller shall promptly reimburse Buyer for the cost of such payments.

6.11. Proration of Taxes and Certain Charges{ TC }.

(a) Except as provided in Section 6.9, all real property Taxes, personal property Taxes or similar ad valorem obligations levied with respect to the Assets for any taxable period that includes the day before the Closing Date and ends after the Closing Date, whether imposed or assessed before or after the Closing Date, shall be prorated between Seller and Buyer as of 12:01 A.M. on the Closing Date. If any Taxes subject to proration are paid by Buyer, on the one hand, or Seller, on the other hand, the proportionate amount of such Taxes paid (or in the event a refund of any portion of such Taxes previously paid is received, such refund) shall be paid promptly by (or to) the other after the payment of such Taxes (or promptly following the receipt of any such refund).

(b) Except as provided in Section 6.10, all installments of special assessments or other charges on or with respect to the Assets payable by Seller for any period in which the Closing Date shall occur, including, without limitation, base rent, common area maintenance, royalties, all municipal, utility or authority charges for water, sewer, electric or gas charges, garbage or waste removal, and cost of fuel, shall be apportioned as of the Closing Date and each party shall pay its proportionate share promptly upon the receipt of any bill, statement or other charge with respect thereto. If such charges or rates are assessed either based upon time or for a specified period, such charges or rates shall be prorated as of 12:01 A.M. on the Closing Date. If such charges or rates are assessed based upon usage of utility or similar services, such charges shall be prorated based upon meter readings taken on the Closing Date.

(c) All refunds, reimbursements, installments of base rent, additional rent, license fees or other use related revenue receivable by any party to the extent attributable to the operation of the Business for any period in which the Closing shall occur shall be prorated so that Seller shall be entitled to that portion of any such installment applicable to the period up to but not including the Closing Date and Buyer shall be entitled to that portion of any such installment applicable to any period from and after the Closing Date, and if Buyer or Seller, as the case may be, shall receive any such payments after the Closing Date, they shall promptly remit to such other parties their share of such payments.

(d) The prorations pursuant to this Section may be calculated after the Closing Date, as each item to be prorated (including without limitation any such Tax, obligation, assessment, charge, refund, reimbursement, rent installment, fee or revenue) accrues or comes due, provided that, in any event, any such proration shall be calculated not later than thirty (30) days after the party requesting proration of any item obtains the information required to calculate such proration of such item.

6.12. HSR Act{ TC }. If necessary, each party shall make an appropriate filing of a notification and report form pursuant to the HSR Act with respect to the transactions

contemplated hereby within two (2) Business Days after the date hereof and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each party shall promptly make any other filing that may be required under any other antitrust law or by any antitrust authority. All such filings shall comply in all material respects with the requirements of the respective laws or regulations pursuant to which they are filed. Each party hereto shall promptly inform the other of any communication from any Governmental Entity regarding any of the transactions contemplated by this Agreement. If any party or Affiliate thereof receives a request for additional information or documentary material from any such Government Entity with respect to the transactions contemplated by this Agreement, then such party will use its reasonable efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request. Each party shall bear its respective filing fees associated with the HSR filings.

6.13. Bulk Sales{ TC }. Each of the parties hereto waives compliance with any applicable provisions of the Uniform Commercial Code Article 6 (Bulk Sales or Bulk Transfers) or analogous provisions of law, as adopted in the states in which the Business is conducted as such provisions may apply to the transactions contemplated by this Agreement.

6.14. Rejected Contracts{ TC }. Seller shall not reject any Assumed Contract, Equipment Lease or Real Property Lease in any bankruptcy proceeding following the date hereof unless this Agreement is terminated in accordance with its terms.

6.15. Removal of Excluded Assets{ TC }. Within a reasonable period of time from the Closing, Seller shall remove all Excluded Assets from the locations used in the operation of the Business.

6.16. Disclosure Supplements{ TC }. From time to time prior to the Closing, Seller and Buyer shall supplement the Schedules hereto with respect to any matter hereafter arising or any information obtained after the date hereof of which, if existing, occurring or known at or prior to the date of this Agreement, would have been required to be set forth or described in the Schedules, or which is necessary to complete or correct any information in such schedule or in any representation and warranty of Seller which has been rendered inaccurate thereby. For purposes of determining the satisfaction of the conditions set forth in Article VII hereof, no such supplemental or amendment shall be considered.

6.17. Post-Closing Access to Records and Personnel{ TC }. Buyer hereby acknowledges that it shall grant to Seller, from and after the Closing Date, access, as promptly as practicable but in no event no later than five (5) days after receiving notice, to any records related to Seller's operation of the Business prior to the Closing Date upon Seller's written request. Buyer shall keep such records in a manner consistent with Buyer's past practice and such records shall not be destroyed or removed from their present location until the later of three (3) years from the Closing Date or the conclusion of all bankruptcy proceedings related to the Business.

VII. CONDITIONS TO OBLIGATIONS OF THE PARTIES { TC }

7.1. Conditions Precedent to Obligations of Buyer and Seller { TC }. The respective obligations of Buyer, on the one hand, and Seller, on the other hand, to close under this Agreement shall be subject to the satisfaction at or prior to the Closing Date of the following conditions:

(a) No Injunction. No preliminary or permanent injunction or other order issued by, and no Proceeding or Order by or before any Governmental Entity in the United States or by any United States Governmental Entity nor any Law or Order promulgated or enacted by any United States Governmental Entity shall be in effect or pending which materially delays, restrains, enjoins or otherwise prohibits or seeks to restrain, enjoin or otherwise prohibit the transactions contemplated hereby.

(b) The Approval Order. The Bankruptcy Court shall have entered the Approval Order. The "Approval Order" shall be an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Seller and Buyer approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (a) the Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of all Liens and Liabilities of any Person, such Liens and Liabilities to attach to the Purchase Price payable pursuant to Section 3.2; (b) Buyer has acted in good faith within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby; (c) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions; (d) Buyer is not acquiring or assuming any of Seller's or any other Person's Liabilities except as expressly provided in this Agreement; (e) all Assumed Contracts and Real Property Leases shall be assumed by Seller and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code and, as required by this Agreement, Seller shall be obligated to pay all Cure Amounts in respect thereof, and Buyer shall have no obligation to pay, or any Liability for, such Cure Amounts and, thereafter shall have no further Liability under such Assumed Contracts and Real Property Leases pursuant to Section 365(k) of the Bankruptcy Code; (f) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 10.10 hereof and (g) this Agreement and the transactions and instruments contemplated hereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by, Seller or any chapter 7 or chapter 11 trustee of any Seller and its estate.

(c) HSR Act. Any applicable waiting period under the HSR Act, if required, shall have expired or shall have been earlier terminated.

(d) Consents and Approvals. All consents, waivers, authorizations and approvals of third Persons as are necessary in connection with the transactions contemplated by this Agreement shall have been obtained, except for such consents, waivers, authorizations and approvals which would not have a Material Adverse Effect and such consents and approvals which are not required due to the entry by the Bankruptcy Court of the Approval Order.

7.2. Conditions Precedent to Obligations of Buyer{ TC }. The obligation of Buyer to close under this Agreement is subject to the satisfaction (or waiver by Buyer) at or prior to the Closing Date of each of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Seller contained herein shall be true and correct in all material respects on the date hereof and on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects as of such date.

(b) Performance of Agreements. Seller shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by them prior to or at the Closing Date.

(c) Officer's Certificate. Buyer shall have received a certificate, dated the Closing Date, of an officer of Seller to the effect that the conditions specified in Sections 7.2(a) and (b) above have been fulfilled.

7.3. Conditions Precedent to the Obligations of Seller{ TC }. The obligation of Seller to close under this Agreement is subject to the satisfaction (or waiver by Seller) at or prior to the Closing Date of each of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Buyer contained herein shall be true and correct in all material respects on the date hereof and on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representations or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct as of such date.

(b) Performance of Agreements. Buyer shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by it prior to or at the Closing Date.

(c) Officer's Certificate. Seller shall have received a certificate, dated the Closing Date, of an officer of Buyer to the effect that the conditions specified in Sections 7.3 (a) and (b) above have been fulfilled.

VIII. TERMINATION{ TC }

8.1. Termination of Agreement{ TC }. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) By mutual written consent of Buyer and Seller;

(b) By any party if the Closing shall not have occurred on or before _____, 2002; provided, however, that, if the Closing shall not have occurred due to the

failure of the Bankruptcy Court to enter the Approval Order and if all other conditions to the respective obligations of the parties to close hereunder that are capable of being fulfilled by _____, 2002 shall have been so fulfilled or waived, then neither party may terminate this Agreement prior to _____, 2002; provided, further, however, that if the Closing shall not have occurred on or before any such date due to a breach of this Agreement by Buyer or Seller, the breaching party may not terminate this Agreement pursuant to this Section 8.1(b);

(c) By any party not in breach of this Agreement, if there shall be any Law or regulation that makes the consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any court or governmental body having competent jurisdiction; or

(d) By Seller, on the one hand, or Buyer, on the other, if Buyer or Seller, as the case may be, materially breach any of its obligations under this Agreement, unless such breach shall be cured within ten (10) Business Days after such other party shall have received notice of such breach in accordance with the terms hereof.

8.2. No Liabilities in Event of Termination{ TC }. In the event of any termination of the Agreement pursuant to Section 8.1, written notice thereof shall forthwith be given to the other party specifying the provision hereof pursuant to which such termination is made, this Agreement shall forthwith become wholly void and of no further force and effect, and there shall be no liability on the part of Buyer or Seller, except that the obligations of Seller and Buyer under Section 10.1 shall remain in full force and effect and the breaching party shall remain liable to the non-breaching party for costs, expenses and damages incurred by its breach, and subject to Seller's right to the Earnest Money Deposit pursuant to Section 3.2.

IX. INDEMNIFICATION{ TC }

9.1. Survival{ TC }. All representations and warranties of Buyer and Seller contained in this Agreement shall survive up to the Closing and shall terminate at and upon the Closing, after which no claims based on any alleged breach thereof may be asserted; provided, however, that, the covenants and agreements of the parties hereto shall survive the Closing in accordance with their terms. In the event that an Indemnified Party (as defined below) (x) receives notice of any matter which provides a reasonable basis for a claim to indemnification hereunder within the applicable period provided in this Section 9.1 and (y) provides notice to the Indemnifying Party (as defined below) of the receipt of such notice, and such claim shall not have been finally resolved before the expiration of the applicable period referred to in this Section 9.1, any representation or warranty that is the basis for such claim shall continue to survive and shall remain a basis for indemnity as to such claim until such claim is finally resolved. This Section 9.1 shall not limit any covenant or agreement of the parties contained in this Agreement which by its terms contemplates performance after the Closing.

9.2. Indemnification{ TC }.

(a) Seller shall indemnify and hold Buyer and its Affiliates harmless against and in respect of loss, damage, claim, Liability, judgment or settlement of any nature or kind,

including all costs and expenses relating thereto, including, without limitation, interest, penalties and reasonable attorneys' fees (collectively "Damages"), arising out of, resulting from or relating to:

(i) all Excluded Liabilities; and

(ii) any breach by Seller of its covenants contained herein which survive the Closing or in the officer certificate delivered by Seller pursuant to Section 7.2(c); provided, however, that (x) Seller shall be required to provide indemnification pursuant to this clause (ii) only when the aggregate Damages resulting from such breaches to the indemnified party exceed 10% of the Purchase Price (and only to the extent of such excess) and (y) Seller shall not be required to provide indemnification pursuant to this clause (ii) in an aggregate amount in excess of 10% of the Purchase Price.

(b) Buyer shall indemnify and shall hold Seller and its Affiliates harmless against and in respect of any Damages, arising out of, resulting from or relating to:

(i) all Assumed Liabilities;

(ii) any breach by Buyer of its covenants contained herein which survive the Closing; and

(iii) the termination of any person who becomes an employee of Buyer with respect to the Business on or after the Closing Date.

(c) In the event that any Person shall incur or suffer any Damages in respect of which indemnification may be sought hereunder, such Person (the "Indemnified Party") may assert a claim for indemnification by providing written notice to the party from whom indemnification is being sought (the "Indemnifying Party"), stating the amount of Damages, if known, and the nature and basis of such claim (the "Notice"). In the case of Damages that arise or may arise by reason of any third-party claim, promptly after receipt by an Indemnified Party of written notice of the assertion of any claim or the commencement of any action with respect to any matter in respect of which indemnification may be sought hereunder, the Indemnified Party shall give Notice to the Indemnifying Party and shall thereafter keep the Indemnifying Party reasonably informed with respect thereto, provided that failure of the Indemnified Party to give the Indemnifying Party prompt notice as provided herein shall not relieve the Indemnifying Party of any of its obligations hereunder, except to the extent that the Indemnifying Party is materially prejudiced by such failure. In case any such claim is made or action is brought against any Indemnified Party, the Indemnifying Party shall be entitled to assume the defense thereof, by written notice of its intention to do so to the Indemnified Party within 30 days after receipt of the Notice. If the Indemnifying Party shall assume the defense of such claim or action, it shall have the right to settle such claim or action; provided, however, that it shall not settle such claim or action without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) if such settlement (i) does not include as an unconditional term thereof the giving by the claimant or the plaintiff of a release of the Indemnified Party from all Liability with respect to such claim or action or (ii) involves the imposition of equitable

remedies or the imposition of any material obligations on such Indemnified Party other than financial obligations for which such Indemnified Party will be indemnified hereunder. As long as the Indemnifying Party is contesting any such claim or action in good faith, the Indemnified Party shall not pay or settle such claim or action. Following delivery of notice of its intention to assume the defense of any claim or action hereunder, the Indemnifying Party shall not be liable hereunder for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, further, however, that if the defendants in any action shall include both an Indemnifying Party and any Indemnified Party and such Indemnified Party shall have reasonably concluded that counsel selected by the Indemnifying Party has a conflict of interest because of the availability of different or additional defenses to such Indemnified Party, such Indemnified Party shall have the right to separate counsel to participate in the defense of such action on its behalf, at the expense of the Indemnifying Party; provided, further, however, that the Indemnifying Party shall not be obligated to pay the expenses of more than one separate counsel for all Indemnified Parties, taken together.

(d) If the Indemnifying Party shall fail to notify the Indemnified Party of its desire to assume the defense of any claim or action within the prescribed period of time, or shall notify the Indemnified Party that it will not assume the defense hereof, then the Indemnified Party may assume the defense of such claim or action, in which event it may do so acting in good faith, and the Indemnifying Party shall be bound by any determination made in any such action, provided, however, that the Indemnified Party shall not be permitted to settle any such action without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. No such determination or settlement shall affect the right of the Indemnifying Party to dispute the Indemnified Party's claim for indemnification hereunder. The Indemnifying Party shall be permitted to participate in the defense of such claim or action and to employ counsel at its own expense. If the Indemnifying Party chooses to assume the defense of any claim or action pursuant hereto, the Indemnified Party shall cooperate in such defense, which cooperation shall include the retention and the provision to the Indemnifying Party of records and information which are reasonably relevant to such defense, and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder, including providing such employees to serve as witnesses.

(e) The right to indemnification pursuant to this Article IX shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the date the Closing occurs, with respect to the accuracy or inaccuracy of or compliance with, any representation, warranty, covenant or obligation. The waiver of any condition to the obligation of a party to consummate the transactions contemplated by this Agreement, where such condition is based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, shall not affect the right of an Indemnified Party to indemnification, payment of an Indemnified Party's Damages, or other remedy based on such representation, warranty, covenant or obligation.

(f) Any indemnification payments made pursuant to this Agreement shall be treated for tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable law.

X. MISCELLANEOUS { TC }

10.1. Expenses{ TC }. Except as set forth in this Agreement and whether or not the transactions contemplated hereby are consummated, each party shall bear all costs and expenses incurred or to be incurred by such party in connection with this Agreement and the consummation of the transactions contemplated hereby.

10.2. Assignment{ TC }. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Seller without the prior written consent of Buyer, or by Buyer without the prior written consent of Seller; provided, however, that, Buyer may assign its rights and obligations hereunder, in whole or in part, to any wholly-owned subsidiary of Buyer, provided that no such assignment shall relieve Buyer of its liabilities and obligations hereunder if such assignee does not perform such obligations and provided, further that this Agreement may be assigned to one or more trustees appointed by the Bankruptcy Court to succeed to the rights of Seller. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and except as otherwise expressly provided herein, no other Person shall have any right, benefit or obligation hereunder.

10.3. Parties in Interest{ TC }. This Agreement shall be binding upon and inure solely to the benefit of Seller and Buyer, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Without limiting the foregoing, no direct or indirect holder of any equity interests or securities of either Seller or Buyer (whether such holder is a limited or general partner, member, stockholder or otherwise), nor any Affiliate of either Seller or Buyer, nor any director, officer, employee, representative, agent or other controlling person of each of the parties hereto and their respective Affiliates shall have any liability or obligation arising under this Agreement or the transactions contemplated thereby.

10.4. Notices{ TC }. Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission (with such facsimile transmission confirmed by sending a copy of such notice, request, instruction or other document by certified mail, return receipt requested) or mailed by certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is acknowledged), as follows:

If to Seller:

With a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Gary Holtzer, Esq.
Fax: (212) 310-8007

If to Buyer:

 Attention: _____
 Fax: _____

With a copy to:

 Attention: _____
 Fax: _____

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

10.5. Choice of Law{ TC }. This Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the Bankruptcy Code and the substantive laws of the State of New York, except that any provisions contained herein relating to the conveyance of interests in real property shall be governed by the substantive laws of the State in which the Real Property is located, in each case without regard to the conflict of law principles thereof or of any other jurisdiction.

10.6. Entire Agreement; Amendments and Waivers{ TC }. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the parties. Except as set forth herein or in any certificate delivered pursuant hereto, no party (or any employee or agent thereof) makes any representation or warranty, express or implied, to any other party with respect to this Agreement or the transactions contemplated hereby. No supplement, modification or waiver of this Agreement (including, without limitation, any schedule hereto) shall be binding unless the same is executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), and no such waiver shall constitute a continuing waiver unless otherwise expressly provided. Unless this Agreement shall have been terminated pursuant to Section 8.1, the sole remedy of the parties against each other in connection with this Agreement and the transactions contemplated hereby shall be the indemnifying rights set forth in Article IX.

10.7. Counterparts{ TC }. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

10.8. Invalidity{ TC }. If any one or more of the provisions contained in this Agreement (other than any of the provisions contained in Article II or Article III hereof) or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, the parties shall use their reasonable efforts, including, but not limited to, the amendment of this Agreement, to ensure that this Agreement shall reflect as closely as practicable the intent of the parties hereto on the date hereof.

10.9. Headings{ TC }. The table of contents and the headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

10.10. Exclusive Jurisdiction{ TC }. Without limiting any party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all claims, actions, causes of action, suits and proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.3 hereof.

10.11. Waiver of Right to Trial by Jury{ TC }. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

10.12. Beneficiaries{ TC }. Nothing in this Agreement, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature under or by reason of this Agreement, except as expressly provided in herein.

10.13. Specific Performance{ TC }. Each of the parties hereto acknowledges that the other party hereto would be irreparably damaged in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions thereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction, in addition to any other remedy to which the parties may be entitled, at law, in equity or pursuant to this Agreement.

10.14. Counting{ TC }. If the due date for any action to be taken under this Agreement (including, without limitation, the delivery of notices) is not a Business Day, then such action shall be considered timely taken if performed on or prior to the next Business Day following such due date.

10.15. Service of Process{ TC }. Each party irrevocably consents to the service of process in any action or proceeding by receipt of mailed copies thereof by national courier service or registered United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 10.4 hereof. However, the foregoing shall not limit the

right of a party to effect service of process on the other party by any other legally available method.

10.16. Time of Essence{ TC }. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

10.17. Exhibits and Schedules{ TC }. The Exhibits and Schedules attached to, delivered with and identified to this Agreement are a part of this Agreement the same as if fully set forth herein and all references herein to any Section of this Agreement shall be deemed to include a reference to any Schedule named therein.

10.18. Interpretation{ TC }.

(a) Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”

(b) Words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(c) A reference to any party to this Agreement or any other agreement or document shall include such party’s successors and permitted assigns.

(d) A reference to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(e) All references to “\$” and dollars shall be deemed to refer to United States currency unless otherwise specifically provided.

(f) All references to any financial or accounting terms shall be defined in accordance with United States Generally Accepted Accounting Principles.

10.19. Preparation of this Agreement{ TC }. Buyer and Seller hereby acknowledge that (i) Buyer and Seller jointly and equally participated in the drafting of this Agreement and all other agreements contemplated hereby, (ii) both Buyer and Seller have been adequately represented and advised by legal counsel with respect to this Agreement and the transactions contemplated hereby, and (iii) no presumption shall be made that any provision of this Agreement shall be construed against either party by reason of such role in the drafting of this Agreement and any other agreement contemplated hereby.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Seller and Buyer as of the date first above written.

PF.NET CORP.

By: _____
Name:
Title:

[BUYER]

By: _____
Name:
Title: