IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

40-7580

In re:	)	Chapter 11
	)	
FANSTEEL INC., *et al.*,[1]	)	Case No. 02-10109(JJF)
	)	(Jointly Administered)
Debtors.	)	
	)	**Objection Deadline (Auction Procedures): February 11, 2002 at 4:00 p.m.**
	)	**Hearing Date (Auction Procedures): February 14, 2002 at 12:30 p.m.**
	)	**Auction Date: February 27, 2002 at 10:00 a.m.**
	)	**Objection Deadline (Sale Hearing): February 25, 2002 at 4:00 p.m.**
	)	**Hearing Date (Sale Hearing): February 28, 2002 at 12:30 P.M.**

NOTICE OF MOTION FOR ORDERS (A) SCHEDULING A HEARING ON THE PROPOSED SALE OF ACCOUNTS RECEIVABLE FREE AND CLEAR OF ADVERSE CLAIMS; (B) APPROVING AUCTION AND BIDDING PROCEDURES; AND (C) APPROVING TERMINATION FEE AND EXPENSE REIMBURSEMENT; (D) ASSUMING EXECUTORY CONTRACTS; AND (E) APPROVING SALE

TO: Parties required to receive notice pursuant to Del. Bankr. LR 2002-1.

On January 15, 2002, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the Motion for Orders (a) Scheduling a Hearing on the Proposed Sale of Accounts Receivable Free and Clear of Adverse Claims; (b) Approving Auction and Bidding Procedures; and (c) Approving Termination Fee and Expense Reimbursement; (d) Assuming Executory Contracts; and (e) Approving Sale (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court"), seeking approval of bidding procedures for the sale of certain accounts receivable (the "A/R") and seeking approval of the sale of the A/R to CIT

[1] The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

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Group/Commercial Services, Inc. ("CIT") or an overbidder. A true and correct copy of the Motion is included herewith.

If you are interested in making a bid for the A/R or have questions relating to the sale of the A/R, please contact Jeffrey S. Sabin, Debtors' counsel, at the address set forth below.

PLEASE TAKE NOTICE that objections, if any, to the auction and sale procedures set forth in the Motion (the "Auction Procedures") must be filed and served by February 11, 2002 at 4:00 p.m. eastern time. If objections are timely filed, a hearing will be held before the Honorable Joseph J. Farnan, Jr., United States District Court for the District of Delaware, 844 N. King Street, 6TH Floor, Courtroom 6A, Wilmington, Delaware, on February 14, 2002 at 12:30 p.m. eastern time.

PLEASE TAKE FURTHER NOTICE that pursuant to the Auction Procedures, an auction will be held at the office of Pachulski, Stang, Ziehl, Young & Jones P.C., 919 Market Street, 16th Floor, Wilmington, Delaware on February 27, 2002 at 10:00 a.m. eastern time (the "Auction").

PLEASE TAKE FURTHER NOTICE that a hearing on the sale of the A/R to CIT, or such other successful bidder as may be determined after the Auction, will be held on February 28, 2002 at 12:30 p.m. eastern time before the Honorable Joseph J. Farnan, Jr., United States District Court for the District of Delaware, 844 N. King Street, 6TH Floor, Courtroom 6A, Wilmington, Delaware (the "Sale Hearing"). Objections, if any, to the Sale Hearing must be filed and served by February 25, 2002 at 4:00 p.m. eastern time.

Objections and other responses to the Motion, if any, must be in writing and be filed with the Bankruptcy Court, and served on (i) counsel for the Debtors: Jeffrey S. Sabin, Esquire, Schulte, Roth & Zabel LLP, 919 Third Avenue, New York, New York, 10022; and Laura Davis Jones, Esquire, Pachulski, Stang, Ziehl, Young & Jones P.C., 919 North Market Street, Suite 1600, P.O. Box 8705, Wilmington, Delaware 19899-8705; (ii) the Office of the United States Trustee, David Buckbinder, Esquire, J. Caleb Boggs Federal Building, 844 King Street, Suite 2313, Lock Box 35, Wilmington, Delaware 19801; (iii) counsel to the Official Committee of Unsecured Creditors (if any); (iv) counsel for the postpetition lenders: Jeffrey N. Rich, Esquire, Kirkpatrick & Lockhart LLP, 1251 Avenue of the Americas, New York, New York 10022; and (v) counsel for CIT Vivek Melwani, Esquire, Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, New York 10004.

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 22, 2002

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[Proposed] Counsel for Debtors and Debtors In Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
FANSTEEL INC., et al.,[1]	)	Case No. 02-_____ ( )
	)	(Jointly Administered)
	)	
Debtors.	)	

MOTION FOR ORDERS (A) SCHEDULING A HEARING ON THE PROPOSED SALE OF ACCOUNTS RECEIVABLE FREE AND CLEAR OF ADVERSE CLAIMS; (B) APPROVING AUCTION AND BIDDING PROCEDURES; AND (C) APPROVING TERMINATION FEE AND EXPENSE REIMBURSEMENT; (D) ASSUMING EXECUTORY CONTRACTS; AND (E) APPROVING SALE

The above-captioned debtors and debtors in possession who are party to the "CIT Agreement" (as defined herein) (collectively, the "Debtors") hereby file this motion (the "Motion") for orders: (A) scheduling the date, time and place for a hearing on and establishing the notice procedures for the Motion, seeking, *inter alia*, Court approval for the sale of certain of Debtors' accounts receivable (the "A/R"), as further described in this Motion and in the CIT Agreement (as defined below) attached hereto as Exhibit A, free and clear of Adverse Claims (as defined below) to CIT Group/Commercial Services, Inc., or its designee ("CIT") or such other entity as determined to be the highest and best bidder for the A/R (the "Overbidder"); (B) approving auction and bidding procedures; and (C) approving a Termination Fee (as defined

[1] The Debtors are the following entities: Fansteel Inc., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

below) and expense reimbursement; (D) approving the assumption of any contracts that give rise to A/R that are executory contracts; and (E) approving the sale of the A/R to CIT or the Overbidder (the "Purchaser"). In support of this Motion, Debtors respectfully represent as follows:[2]

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 363, 364(c)(1), 365(f), 503(b) and 542(b) of the Bankruptcy Code.

Background

3. Fansteel and the other eight Debtors (each a direct or indirect wholly-owned subsidiary of Fansteel) have been engaged for over 70 years in the business of manufacturing and marketing specialty metal products with today's operations being conducted at ten manufacturing facilities (five of which are owned by Fansteel) in nine states and Mexico. The Debtors, collectively, have approximately 1,250 employees, substantially all on a full time basis, including approximately 365 employees who are working under collective bargaining agreements with four different unions. Each of the Debtors is operated separately, with separate

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Accounts Receivable Purchase Agreement, dated as of January 14, 2002 (the "CIT Agreement"), between CIT and Debtors Fansteel, Inc., Wellman Dynamics Corp., Escast, Inc., Washington Mfg. Co., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc. (a copy of which in annexed hereto as Exhibit A), and Affidavit of Gary L. Tessitore, the President and Chief Executive Officer of Fansteel Inc., in Support of First Day Motions, filed contemporaneously herewith, which are incorporated herein by reference.

employees, separate operations and separately maintained books and records. For purposes of efficiency, the Debtors have combined certain administrative functions, including a shared cash management system and shared benefits plans, and have certain common senior management.

4. The operations of the respective businesses of the Debtors have involved compliance with state and federal environmental laws, including the Atomic Energy Act of 1954.[3] The Debtors' bankruptcy cases are an outgrowth of the discontinuation of one of Fansteel's operations, that was conducted from the 1950s through 1989 at a site owned and operated by Fansteel in Muskogee, Oklahoma (the "Muskogee Site"). At the Muskogee Site, Fansteel, in accordance with a license obtained from the U.S. Nuclear Regulatory Commission (the "NRC")[4] in 1967, processed tantalum ore for further processing at Fansteel's plant in North Chicago. Tantalum naturally occurs in ores containing other metals, including uranium and thorium, each of which is radioactive. The processing of tantalum at the Muskogee site has resulted in, among other things, radioactive residues, contaminated equipment, buildings and soils. Fansteel, in accordance with applicable regulations promulgated by the NRC, is required, upon discontinuance of its business, to decommission and remediate the facility to prescribed levels.

5. In 1989, Fansteel discontinued its operations at the Muskogee Site. Notwithstanding such discontinuation, Fansteel has remained at all times in substantial

[3] As described more fully below, the Debtors anticipate that their bankruptcy cases will involve substantial consideration of federal environmental and other statutes, particularly the Atomic Energy Act and the regulations promulgated thereunder. As a result, the Debtors are filing, among their "first day" motions a motion seeking the withdrawal of the reference of the bankruptcy cases pursuant to the withdrawal provisions of 28 U.S.C. § 157(d).

[4] The NRC is the successor to the Atomic Energy Commission. The functions of the two commissions were substantially similar. Any reference to the NRC in this Affidavit shall mean, to the extent necessary, the Atomic Energy Commission.

compliance with its NRC license, and has maintained and continues to maintain the Muskogee Site in a manner that protects the health and safety of its employees and the public. Following its discontinuation of operations at the Muskogee Site, Fansteel developed a method to reprocess the residues at the Muskogee Site and thereafter to remediate the contaminated equipment, buildings and soils. It obtained the approval of the NRC for various aspects of such reprocessing and remediation. Fansteel's proposed method, among other things, contemplated construction of a processing plant to reprocess and remediate the residues over at least a 10 year period and thereafter to remediate the remaining contaminated soils. The reprocessing plant operations were projected to at least recover the cost of construction and cost of operations as a result of the anticipated revenue to be derived from the sale of the valuable metals to be recovered from the reprocessing. Unfortunately, due to operational difficulties in the processing plant and the significant reduction in the price of tantalum during the second and third quarters of 2001, continued operation of the reprocessing facility is now uneconomic, requiring Fansteel, as a matter of generally accepted accounting principals ("GAAP"), in its financial statements for the quarter ended September 30, 2001, to write off the costs that Fansteel had expended in designing and building the reprocessing plant (approximately $32 million), and to take an immediate reserve for the reasonably anticipated costs of remediating the radioactive residues and soils that remain on the Muskogee Site without regard to any reprocessing (an approximately $57 million reserve).

6. Fansteel's plight was further aggravated by the actions of its principal unsecured lenders, The Northern Trust Company ("NTC") and M&I Bank ("M&I"). NTC, as

agent for itself and M&I, had extended to Fansteel a $30 million unsecured revolving facility (the "Pre-Petition Credit Facility"). During October 2001, Fansteel promptly informed NTC of an anticipated prospective write-off and reserve required with respect to the Muskogee Site, and requested waivers of any events of default that would arise under the Pre-Petition Credit Facility as a result thereof, as well as an amendment of the loan documents governing the Pre-Petition Credit Facility in order either to allow Fansteel sufficient additional availability under the Pre-Petition Credit Facility or to allow Fansteel's subsidiaries to borrow funds on a secured basis, which in either case would have provided the Debtors with sufficient liquidity to avoid a bankruptcy filing. However, NTC refused these requests and, on November 19, 2001, accelerated the Pre-Petition Credit Facility, froze all of the Debtors' accounts that were maintained at NTC and M&I and set-off amounts owed under the Pre-Petition Credit Facility against those accounts. As a result of the freeze and such set-off, the Debtors no longer had access to sufficient funds necessary to operate their respective businesses. More important, as a result of certain terms under the Pre-Petition Credit Facility that prohibit borrowing by the subsidiaries, the Debtors' efforts to find substitute lenders was impaired.

7. The Debtors strongly believe that the set-offs (estimated to exceed $3,800,000) exercised by NTC and M&I constitute preferential transfers that the Debtors will seek to recover early in their bankruptcy cases. In addition, as a result of the Debtor's cash management system, NTC and M&I continued pre-bankruptcy to collect significant funds representing the collection from customers of accounts receivable and to set off most of such funds against the lenders' unsecured debt. The Debtors will similarly seek to avoid such

additional set offs. By letter dated January 11, 2002, Debtors closed their accounts at M&I and NTC. In addition, NTC and M&I have refused, to date, to turn over any funds received on and after the Petition Date. The Debtors will also seek turnover of such funds.

8. Notwithstanding the actions by NTC and M&I, the Debtors and their professionals spent considerable time, effort and money formulating, soliciting, negotiating and preparing various methods to finance the needs for cash of the Debtors. Efforts were initially focused on maximizing the value of the Debtors' assets through a debtor in possession asset-based loan to be secured by substantially all of the Debtors' assets. Bids for such DIP loans were solicited from at least six major DIP-type lenders. The CIT Group/Commercial Services, Inc. ("CIT") provided the best proposal. The Debtors and CIT executed a commitment letter and spent and considerable time (a) negotiating and preparing definitive documentation and (b) seeking to obtain the approval of the NRC of such DIP loan. However, the Debtors' immediate need for cash coupled with the additional time needed by the NRC (to complete its diligence and its negotiation) and Debtors' then proposed DIP Lender's insistence that it would not lend unless and until the NRC consented in writing and at least an additional 60 days had expired after court approval of the DIP loan (with no appeals having been filed) meant that such terms and conditions were not going to meet the Debtors' immediate cash needs.

9. As a result, the Debtors formulated and now seek to implement a two-part strategy to solve their financing needs. Stage 1, the immediate financing needs, expected to cover the Debtors' needs through April, 2002 are proposed to be met (and to date have been met) by a combination of proceeds from: (i) a proposed 70 day bridge loan from HBD Industries, Inc.

("HBD") of up to $3,000,000, to be secured by first liens in the Debtors' accounts receivable and inventory, (ii) the proposed sale to CIT (subject to higher and better offers) of a pool of up to $10 million of the Debtors' accounts receivable in early March, 2002 and (iii) the discounting of receivables with customers for expedited payments. Stage 2, covering the balance of the duration expected for these chapter 11 cases (between 1-2 years) is anticipated to be provided by funds from either or both of (a) sales of certain assets of the Debtors (for which the Debtors have hired as investment bankers, Lincoln Partners LLC) and (b) a long term asset based DIP loan, assuming that during Stage 1, consent of the NRC could be obtained.

The CIT A/R Agreement

10. Accordingly and immediately the Debtors' began nogotiations with various parties, including CIT, HBD Industries, Inc. and Foothill regarding the possible sale of A/R. CIT promptly performed its diligence and negotiated the CIT Agreement to purchase subject to Court approval and an open auction process (described herein) a pool of A/R and certain of the Debtors with up to an aggregate purchase price of $10,000,000.

11. The Purchase Price (as defined below) is based on the quality of the existing pool of A/R, which is identified on Schedule A of the CIT Agreement. The A/R to be purchased is required to be of the same quality as the existing pool, and will be a pool of A/R of all or some of the account debtors listed on Schedule B to the CIT Agreement, as determined by CIT in its reasonable discretion.

12. CIT, if it is the successful Purchaser, will pay 87% of face value for the A/R. Eighty-two percent of the Purchase Price will be paid directly to the Debtors and, 5% will

be held in an escrow (the "Escrow"), to be used, if at all, to repurchase A/R that are later determined not to conform to requirements in the CIT Agreement, and to indemnity CIT against certain losses and liabilities (not related to the credit worthiness of the account debtors). Under the term of the CIT Agreement, any amounts remaining in the Escrow will be remitted to the Debtors.

13. As more particularly described in Mr. Tessitore's first day affidavit, the Debtors believe that it is in the best interest of their estates and creditors to sell the A/R to supplement the Debtors' needs for cash and financing pursuant to public auction. The sale of the A/R will give the Debtors the necessary liquidity to continue operating while preserving the highest value of their otherwise unencumbered assets.

The Proposed Auction Procedures

14. In negotiating the CIT Agreement with CIT, the Debtors insisted that the value of the A/R be tested at a public auction pursuant to procedures approved by the Bankruptcy Court. Accordingly, Debtors and CIT negotiated certain auction rules and bidding procedures (the "CIT Bidding Procedures") to establish the form and nature of such an auction and related matters.[5]

15. An initial overbid must exceed CIT's offer by at least 3% of the face amount of the A/R (i.e., the initial overbid must be at least 90% of the face amount), and that additional overbid be in minimum increments of 1%. Prospective bidders (other than CIT) will be notified that they will be required to pre-qualify with Debtors at least one day prior to the

[5] The Bidding Procedures are attached hereto as Exhibit B.

auction (the "Auction") in order to demonstrate their financial ability to close an alternative proposed sale transaction.

16. As part of the prequalification process, each competitive bidder shall deliver to Debtors, prior to the commencement of the Auction, a minimum deposit of $25,000 in a cashier's check or other immediately available funds or otherwise demonstrate to the satisfaction of the Debtors its financial ability to close its purchase. Such deposit shall be nonrefundable if such party's bid is accepted by the Bankruptcy Court and such party fails to consummate the sale due to such party's default. Any and all overbids shall be on the same terms and conditions in all material respects to those set forth in the CIT Agreement; provided, however, that Debtors, in their sole and absolute discretion, shall determine whether an overbid is on the same terms and conditions as those set forth in the CIT Agreement.

17. In addition, the CIT Agreement provides that Debtors shall pay to CIT a termination fee in an amount equal to 3% of the Purchase Price, but in no event less than $150,000 (the "CIT Termination Fee"), which sum shall be payable to CIT in the event that (i) the Debtors accept another bid for the A/R; (ii) the Debtors are in default under the CIT Agreement; (iii) the Sale Order (sought by the Motion) approving the sale contemplated hereby is not entered within 45 days of the commencement of the Debtors' cases; or (iv) an Order is entered denying the transaction contemplated hereby.

Retention of Account Debtors' Adverse Claims against Debtors

18. A condition of the CIT Agreement is that the sale of the A/R is free and clear of Adverse Claims, and CIT may cause the Debtors to repurchase (among others) any receivables as to which an Adverse Claim is asserted, from the funds in the Escrow (or if the Escrow is depleted, as a superpriority administrative claim against the estates).

19. Under the CIT Agreement the term "Adverse Claim' means with respect to any A/R, a lien, security interests, offset, deduction, defense, dispute, claim, counterclaim, adjustment, setoff, right of recoupment or any charge or encumbrance or any other right or claim of any person (including, without limitation, an account debtor), whether related or not to the A/R, including, without limitation: (a) any claim or defense resulting from the sale of merchandise or rendering of services related to such A/R or the furnishing or failure to furnish such merchandise or service; and (b) any other claim, defense, basis or reason (that is not solely related to the creditworthiness of an account debtor) for the account debtor not to pay a receivable in cash, in full, when due.

20. Each A/R account debtor will receive a notice of sale (the "Notification Letter"), substantially in the form annexed to the CIT Agreement as Exhibit C thereto. In the Notification Letter, among other things, the relevant Debtor informs the account party that it believes that the account party has no Adverse Claims against the A/R, and that accordingly, the A/R will be sold free and clear of all Adverse Claims. The account debtor is requested to execute the letter, acknowledging and agreeing to the matters set forth therein. The Debtors, however, are seeking the sale free and clear regardless of whether they execute the letter.

21. The account party is also informed that if it believes that it has no Adverse Claims that it must file a statement (a "Statement of Adverse Claims") with the claims agent appointed in these cases (the "Claims Agent") by the 30-day deadline set forth therein (the "Account Party Bar Date") or forever lose its Adverse Claims.

22. The account parties are further informed that if they timely file a Statement of Adverse Claim, and their Adverse Claims are ultimately allowed by this Court, that if their A/R is purchased their Adverse Claims will be treated a superpriority administrative expense claims against the appropriate Debtor's estates, but that they cannot assert those claims to reduce the payments they must make to the Purchaser in respect to the A/R.

23. The account debtors are further told to send all payments with respect to the A/R to a lockbox account that will be maintained at or by CIT. All other persons and entities, including Debtors, will also be required to remit any funds received from the notified account debtors, and hold it in trust for the CIT pending remittance.

24. The Debtors are seeking a hearing on its proposed Bid Procedures in early February. Shortly thereafter the Debtors expect to finalize the exact list of A/R to be sold at auction and will provide notice thereof to all interested parties, including customers whose receivables are to be sold.

25. The Debtors' also are seeking, as part of this Motion, the scheduling of the auction and sale date toward the end of February.

26. The Debtors', will provide notice in January of the schedule set by the Court so as to permit any and all interested bidders sufficient time to perform diligence (subject

to execution of a Confidentiality Agreement) and to formulate and submit competing bids. All competing bids must be in writing and submitted, under seal, to the Debtors prior to the Auction.

27. At the Auction, the Debtors will announce, at the commencement thereof, the highest and best bid, and proceed with an open, oral auction at the offices of its Delaware counsel.

Relief Requested – Need For Expedited Hearing

28. Debtors request that the Court conduct an expedited hearing on this Motion in light of Debtors' urgent need to commence preparations for the Auction, so that the Auction may be conducted as soon as possible. Debtors' estates will suffer significantly if the Motion is not immediately granted so that the Auction preparations may commence. The entire auction process, including the obtaining of the Court's approval of the Motion, for the A/R will take approximately one month. As set forth in the budget attached to Debtors' motion to obtain debtor in possession financing, Debtors' anticipate running out of working capital within 60-90 days after the Petition Date. Accordingly, during this time period, Debtors must obtain approval of the procedures sought by this Motion, conduct an Auction, perhaps negotiate with a new potential buyer of the A/R, obtain approval of the sale sought by this Motion, and close the sale of the A/R. It is not until the entire process is complete that Debtors can be sure that CIT, or an overbidder, will provide them with the capital that they need to continue their operations. Even just a one week delay could result in substantial, and perhaps irreparable harm, to Debtors' estates.

29. Due to the urgency of the relief sought in the Motion, Debtors submit that there is no just reason to stay or delay the implementation of any order granting the Motion. Accordingly, Debtors also request that the Court waive the automatic stay provisions contained in Bankruptcy Rule 6004(g).[6]

Legal Authority

30. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. See, e.g., Official Comm. of Subordinated Bondholders v. Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656-57 (S.D.N.Y, 1992) (noting that overbid procedures and Termination fee arrangements that have been negotiated by debtors are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

31. Here, the proposed rules for the Auction and the CIT Termination Fee are reasonable, appropriate, and within Debtors' sound business judgment under the circumstances, because they will each serve to maximize the value that Debtors will recover on account of the sale of the A/R.

The Auction Rules and Bidding Procedures Are Appropriate

[6] Bankruptcy Rule 6004(g), which is entitled "Stay of Order Authorizing Use, Sale, or Lease of Property," states: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until expiration of 10 days after entry of the order, unless the court orders otherwise."

32. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand); Integrated Resources, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the Debtor's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting Cello Bay Co. v. Champion Int'l Corp. (In re Atlanta Packaging Prods., Inc.), 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

33. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. See, e.g., Integrated Resources, 147 B.R. at 659 (such procedures "encourage bidding and maximize the value of the debtor's assets"); In re Financial News Network, Inc., 126 B.R. 152, 156 (S.D.N.Y.) ("court-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and provide for a fair and efficient resolution of bankrupt estates").

34. Debtors and CIT have agreed upon the Bidding Procedures, which establish the parameters under which the value of the A/R may be tested at a public auction. It is respectfully submitted that such procedures will increase the likelihood that Debtors will receive the greatest possible consideration for the A/R, by ensuring a competitive and fair bidding process.

35. One important component of the Bidding Procedures is the initial and incremental "overbid" provisions. Indeed, a minimum overbid is necessary not only to compensate Debtors for the risk that they assume in foregoing a known, willing, and able purchaser, (i.e., CIT) for a new potential acquirer, but also to ensure that there is an increase in the net proceeds received by the estate, after deducting the CIT Termination Fee to be paid to CIT in the event of a prevailing overbid. Many courts have approved the use of similar minimum overbid provisions. See, e.g., Integrated Resources, 135 B.R. at 753 (approving a minimum initial overbid of $15 million in a $565 million sale); In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 888 (Bankr. S.D.N.Y. 1990) (approving a minimum initial overbid of $500,000 in a $45 million sale); In re Canyon Partnership, 55 B.R. 520, 526 (Bankr. S.D. Cal. 1985) (approving a minimum initial overbid of $20,000 in a $662,000 sale).

The CIT Termination Fee Is Appropriate

36. As explained above, in order to compensate CIT for the time, effort, expense, and risk that it has incurred and will incur in negotiating, documenting, and seeking to consummate the sale transaction, the CIT Agreement provides that under certain circumstances, Debtors will pay CIT a reasonable termination fee of 3% of the Purchase Price, but in no event less than $150,000.

37. Break-up and other termination fees are a normal and, in many cases, necessary component of significant sales conducted under Section 363 of the Bankruptcy Code:

> Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets.... In fact, because the... corporation ha(s) a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values.

Integrated Resources, 147 B.R. at 659-60 (emphasis in original). Specifically, "breakup fees and other strategies may be legitimately necessary to convince a 'white knight' bidder to enter the bidding by providing some form of compensation for the risks it is undertaking." 995 Fifth Ave., 96 B.R. at 28 (quotations omitted); In re Hupp Indus., Inc., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) ("without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence").

38. As a consequence, courts frequently approve termination and break-up fees in connection with proposed bankruptcy sales. The standard that the Court should apply when considering whether a break-up fee is appropriate, however, currently is in question as a result of the Third Circuit's recent decision in Calpine Corp. v. O'Brien Environmental Energy, Inc. (In re O'Brien Environmental Energy, Inc.), 181 F.3d 527 (3d Cir. 1999).

39. Prior to O'Brien, courts considering the propriety of a proposed breakup fee typically considered "(1) whether the relationship of the parties who negotiated the fee is marked by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the fee is reasonable in relation to the proposed purchase price." In re Twenver, Inc., 149 B.R. 954, 956 (Bankr. D. Colo. 1992). Accord In re Bidermann Indus. U.S.A., Inc., 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997); Integrated Resources, 147 B.R. at 657.

40. In O'Brien, however, the Third Circuit held that, under the circumstances of that case, the payment of a break-up fee was appropriate only if the fee was among the actual, necessary costs and expenses of preserving the estate and therefore qualified as an administrative expense within the meaning of section 503(b) of the Bankruptcy Code. O'Brien, 181 F.3d at 535. The Third Circuit distilled the inquiry to whether "awarding . . . break-up fees [was or] was not necessary to preserve the value of [the debtor]'s estate." Id. at 536.

41. Because O'Brien did not involve a request to approve the payment of a break-up fee prior to consummation of an auction, and instead involved a post-auction payment request by a disappointed bidder under section 503(b) of the Bankruptcy Code, O'Brien is distinguishable from Debtors' pre-sale request to approve the proposed CIT Termination Fee for CIT. Rather, Debtors respectfully submit that the appropriate analysis is that undertaken by the Integrated Resources, Twenver, and Bidermann Industries courts.

42. However, even applying O'Brien's "necessary to preserve the value of the estate" standard, it is submitted that the proposed CIT Termination Fee is appropriate and reasonable. Specifically, CIT has indicated that it will not proceed with the CIT Agreement unless it has reasonable assurance that it will be compensated for its time, effort, and expenses, through payment of the CIT Termination Fee and reimbursement of its expenses pursuant to the CIT Agreement, as applicable, in the event the CIT Agreement does not close (other than because of CIT's default). As explained above, CIT's offer currently represents the highest and best offer for the A/R, and Debtors, as a result of substantial marketing, are not confident that the Auction will generate any offers higher or better than the CIT offer.

43. Accordingly, if the Court does not approve the proposed CIT Termination Fee and expense reimbursement, Debtors risk losing CIT's offer and being left with no viable alternative, an outcome that could be disastrous to the value of the estates. Debtors believe that the willingness of CIT to commit to a purchase of the A/R (and to continue to perform the activities necessary to consummate that purchase), subject to higher and better offers and the terms of the CIT Agreement, will add value by enabling Debtors to likely close the sale of the A/R at a price not less than that provided in the CIT Agreement.

44. Also, considering the factors traditionally considered by courts in analyzing proposed break-up fees prior to a sale (as set forth below), it is clear that the CIT Termination Fee is appropriate under the circumstances.

45. Courts also routinely approve break-up fees where, as here, such fees are not tainted by self-dealing and instead are the product of arm's length negotiations. See, e.g., Integrated Resources, 147 B.R. at 657; 995 Fifth Ave., 96 B.R. at 28; cf. Bidermann, 203 B.R. at 552-53 (not approving break-up fees where "[t]here is manifest self-dealing" because the debtor's management had created the proposed buyer that would benefit from the payment of such fees).

46. Debtors and CIT are not affiliated in any way, they engaged in extensive arm's length negotiations regarding the proposed sale, and CIT consistently has indicated that the CIT Termination Fee and expense reimbursement would be a critical component of any offer made for the A/R.

47. CIT's willingness to commit to the sale transaction, to continue to perform the activities necessary to consummate the transaction, and to serve as a "stalking horse" against which other prospective offers will be compared, in and of itself represents a significant contribution to the estates. As a result, by agreeing to pay the CIT Termination Fee, Debtors have used their best efforts to ensure, at a minimum, that the estates would have the benefit of CIT's offer, without sacrificing the potential for interested parties to submit overbids at the Auction.

48. The CIT Termination Fee will also encourage fair and competitive bidding. The general rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable. Integrated Resources, 147 B.R. at 659; see, e.g., 995 Fifth Ave., 96 B.R. at 28. A break-up fee may encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid, (2) to establish a bid standard or minimum for other bidders to follow, or (3) to attract additional bidders." Integrated Resources, Inc., 147 B.R. at 662. By virtue of the forgoing, the CIT Termination Fee here accomplishes all of these objectives.

49. Here, as noted above, CIT has indicated that the Court's approval of the proposed CIT Termination Fee and expense reimbursement is a material condition to its offer for the A/R. Debtors believe that CIT's demands in this regard are reasonable because the collectibility of the A/R may diminish as time passes. Additionally, Debtors believe that their ability to collect on the A/R may likely decrease as their account debtors realize that Debtors are in bankruptcy, CIT's offer is in excess of the liquidation value of the A/R, and CIT has expended

considerable time and resources negotiating, drafting, and performing due diligence activities necessitated by the sales transaction, despite the fact that its bid will be subject not only to Court approval but also to overbidding by third parties. Given this substantial risk, CIT quite reasonably did not want to proceed with a transaction that would not provide it with protections in the event it did not prevail as the winning bidder.

50. Based on the foregoing, the proposed CIT Termination Fee is essential to Debtors' efforts to sell the A/R for the greatest possible consideration and are appropriate under the above-noted standards.

51. Finally, the amount of the CIT Termination Fee is also fair and reasonable under the circumstances. In this case, the CIT Termination Fee amounts to three percent (3%) of the proposed purchase price for the A/R (with a floor of $150,000). As such, the proposed CIT Termination Fee is well within the range of fees typically paid in other significant sales transactions that have been consummated in a bankruptcy setting. See, e.g., Consumer News & Bus. Channel Partnership v. Fin. News Network, Inc. (In re Financial News Network Inc.), 980 F.2d 165, 167 (2d Cir. 1992) (noting that the transaction at issue provided for a $8.2 million break-up fee on the $149.3 million transaction); cf. Twenver, 149 B.R. at 957 (disapproving of a proposed break-up fee of ten percent of the total purchase price).

52. The proposed CIT Termination Fee and expense reimbursement thus is reasonable and appropriate under the circumstances.

Retention of Account Debtors' Adverse Claims against Debtors is Appropriate

53. As described in this Motion, Debtors believe that they have established a mechanism by which the Purchaser can obtain the A/R free and clear of Adverse Claims.

54. Under section 363(f) of the Bankruptcy Code, the A/R may be sold free and clear of the vast majority of Adverse Claims:

> The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –.
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitble proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f). "Section 363(f) authorizes sales free and clear of interests in the property sold." In re Trans World Airlines, Inc., 2001 Bankr. LEXIS 273, at *9 (Bankr. D.Del. Mar. 27, 2001) (citations omitted) (hereafter "TWA").

55. The Third Circuit recently stated that while "[t]he term 'any interest' as used in section 363(f) is not defined anywhere in the Bankrupcy Code . . . the trend is toward a broader interpretation" of it. Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV, 209 F.3d 252,

257-58 (3d Cir. 2000) (citations omitted). In interpreting a Fourth Circuit case, the Third Circuit said that "the court's holding seems to suggest that the term 'any interest' is intended to refer to obligations that are connected to, or arise from, the property being sold." Id. at 259, discussing In re Leckie Smokeless Coal Co., 99 F.3d 573, 582 (4th Cir. 1986), and citing 3 Collier on Bankruptcy ¶ 363.06[1]. The debtor's believe that under this broad interpretation of the term "interests," the A/R may be sold free and clear of the vast majority of the Adverse Claims.

56. The Third Circuit, in Folger Adam, however, held that "the affirmative defenses of setoff, recoupment, and other contract defenses, which arose as a consequence of alleged defaults under certain contracts with the debtors . . . do not constitute an 'interest' for purposes of section 363(f), and, therefore, were not extinguished by the bankruptcy sale."[7] Id. at 253.

57. The facts of Folger Adam differ significantly from the facts here, as the Court there stated:

> Folger is not an innocent party. Many of Folger's principals were also principals of the Debtors. Thus they should have been aware of the dispute regarding DeMatteis ' construction contracts. Indeed, the DeMatteis construction contracts were removed from the Designation Notice, presumably because Folger was not willing to have those contracts assumed and assigned to it knowing that DeMatteis contested full payment because of the Debtor's alleged default under those contracts. Accordingly we do not see anything inequitable in allowing DeMatteis to raise defenses to Folger's claims of breach of contract.

[7] The Third Circuit held that any setoff must be completed prepetition to survive a section 363 sale. Id. at 263 ("In our view DeMatteis must prove that it actually took a setoff, the amounts and against which contracts, before the bankruptcy filing. This does not mean it actually must have received funds, but that its accounts receivable were reduced or offset. . . . To the extent the amount being claimed by Folger and the amount of reduction sought by DeMatteis arise from the same contract, DeMatteis' defense will be one of recoupment. However, to the extent that amount being claimed by Folger and the amount of reduction sought by DeMatteis arise from different contracts, DeMatteis' defense will be one of setoff.").

I.I.I.

> Even if we were to find that the term "any interest" included affirmative defenses, the notice to DeMatteis was insufficient to give it notice that by failing to object it was waiving affirmative defenses.

Id. at 264. Additionally, in Folger Adam, the Third Circuit found that language of the Bankruptcy Court's sale order did not support the conclusion that defenses and claims of recoupment and setoff were extinguished. Id. at 257-58 (in reversing the District Court: "Although the Sale Order did not explicitly state that the sale included defenses, the District Court nonetheless concluded that '[t]he term 'any other interests' necessarily include[d] defenses within its scope. . . .Under the rule of ejusdem generis, the term 'other interest' would ordinarily be limited to interests of the same kind as those enumerated, i.e., 'liens, mortgages, security interests, encumbrances, liabilities, [and] claims'") (emphasis in original; citations omitted).

58. In these Chapter 11 cases, unlike the facts in Folger Adam, the following facts exist:

- the sale of the A/R will be to a third-party, not an insider;
- Debtors believe that account debtors do not have any Adverse Claims;
- account parties will receive timely notice of the sale and its free and clear nature, as well as their right to assert Adverse Claims;
- account parties will have an opportunity to file a Statement of Adverse Claim;
- the relief requested here is under the general equitable powers of the Court and section 105(a) of the Bankruptcy Code, as well as section 363; and
- any allowed Adverse Claim will be treated as a superpriority administrative expense;

The last item above may be most significant – as these cases will involve little, if any, secured debt after the closing of the A/R sale. The account debtors here are provided with the highest

priority obtainable in these cases, and, therefore, virtually assured payment of any allowed Adverse Claim. Cf. Folger Adam, at 264 ("Our holding is further supported by good policy reasons. First of all if we were to hold that DeMatteis' contract defenses were extinguished by the section 363(f) sale, the value of the Debtors' assets purchased would be enhanced at DeMatteis' expense. Bankruptcy law generally does not permit a debtor or an estate to assume the benefits of a contract and reject the unfavorable aspects of the same contract.") (citation omitted).

59. While the facts underlying Folger Adam are significantly different than in these cases, the Debtors' recognize that it, may not be fully distinguishable for all potential Adverse Claims. See id. at 261 ("[n]either of the parties nor the District Court has cited a single decision which has held that a defense may be extinguished as the result of a 'free and clear' sale. Likewise we have not found any such authority to exist.").

60. The Debtors believe, however, that their proposed treatment of Adverse Claims is not in conflict with Folger Adams. Here, the timely filed Adverse Claims are not extinguished. They are assertable against the applicable Debtor's estate, and even afforded a superpriority in these cases, where there is little, if any, secured debt. As opposed to Folger Adam, where after the sale the debtors became empty corporate shells, here Debtors are operating companies, and will have liquidity to pay Adverse Claims due to the A/R sale.

61. Courts have broad equitable powers to shape asset sales in bankruptcy. The Bankruptcy Court for this District recently stated:

> Even before the enactment of the Bankruptcy Code in 1978, a court sitting in bankruptcy had the authority to authorize the sale of estate assets free and clear based on it general equitable powers and its duty to distribute the debtor's assets and determine controversies related thereto. In other words, bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f).
>
> The authority to sell free and clear is broad. It reflects a compelling policy to encourage bankruptcy sales subject only to claims of specific and recognized nature in the subject property.

TWA, at *9.

62. In addition to its general equitable powers, section 105(a) of the Bankruptcy Code provides that the court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. §105(a). See IRS v. Kaplan (In re Kaplan), 104 F. 3d 589, 596 (3d Cir. 1997) ("Turning to section 105, the Court noted that the Code also provides that bankruptcy courts may 'issue any order, process, or judgment that is necessary or appropriate to carry out the provisions' of the Code.' Id. (citing 11 U.S.C. § 105(a)). The Court further noted that these 'statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships.'"), quoting United States v. Energy Resources Co., 495 U.S. 545, 549 (1990).

63. The Debtors propose that the claims of account debtors arising from their Adverse Claims be paid as superpriority administrative expenses. The mechanism that the Debtors have proposed is consistent with the priority scheme of the Bankruptcy Code and other applicable law.

64. Many of the defenses and claims here may take the form of claims of recoupment, which reduce or extinguish an obligation. See Folger Adam, 209 F.3d at 260 ("a defense seeks to diminish a claim or to defeat a recovery rather than share in it. . . . a number of courts have held that a right of recoupment is a defense and not a claim in the bankruptcy context.") (citations omitted). See also White & Summers, Uniform Commercial Code, § 17-1, at 400 (4th ed. 1995) (under the Uniform Commercial Code, where a buyer accepts defective goods and sues for damages arising from the defect[, i]n the words of the drafters, this buyer has no 'defense' because, under Article 2, buyer is obligated to pay for the goods. Buyer has only a claim in recoupment."); Nalley v. McClements, 295 F. Supp. 1357, 1359-60 (D. Del. 1969) ("[R]ecoupment 'is a defensive measure concerning matters growing out of the same transaction or occurrence which was the basis of the opponent's claim and [is] utilized for the reduction or extinguishments of the opponent's claim.") (citations omitted). Accord Coplay Cement Co., Inc. v. Willis & Paul Group, 983 F. 2d. 1435, 1440 (7th Cir. 1992) (mandatory counterclaims under FRCP 13(a) are the modern formulation of the equitable claim of recoupment, in which a claim of recoupment is asserted to reduce an opposing claim arising out of the same transaction, and permissive counterclaims under FRCP 13(b) are the modern formulation of setoff, which is the netting out of unrelated claims).

65. The Third Circuit has stated, in essence, that recoupment is a form of superpriority. See Anes v. Dehart (In re Anes), 195 F. 3d 177, 182 (3d Cir. 1999) ("A creditor with a right of recoupment generally can recoup the full amount owed, to the exclusion of other creditors."), citing In re Flagstaff Realty Assocs., 60 F. 3d 1031 (3d Cir. 1995) ("A claim subject

to recoupment avoids the usual bankruptcy channels and thus, in essence, is given priority over other creditors' claims.").

66. The elevation of these prepetition Adverse Claims is also justified under the equitable doctrine of necessity. See Miltenberger v. Logansport C. & S.W.R. Co., 106 U.S. 286 (1882); In re Lehigh & N.E. Ry. Co., 657 F. 2d 570, 581 (3d Cir. 1981) ("if payment of a claim which arose prior to reorganization is essential to the continue operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus [of the estate]. . . ."); In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (payment of prepetition trade vendor claims authorized where payment was essential to the survival or continued operation of the debtor during the chapter 11 case).

67. Also, although this is a true sale and not a loan transaction, the treatment of Adverse Claims is also consistent with the policy behind section 364 of the Bankruptcy Code, which permits the Court to elevate claims to superpriority status in a postpetition financing, because the sale satisfies the Debtors' critical need for cash. 11 U.S.C. § 364(c)(1) ("If the trustee is unable to obtain unsecured credit allowable under section 503(b)(l) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt – (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title . . . .").[8]

[8] Also, although courts have held that a postpetition lender to a debtor in possession may not cross-collateralize pre- and postpetition debt (or, presumably, bootstrap its prepetition debt to superpriority status) in a section 364 financing, see, e.g., In re Saybrook Mfg. Co., Inc., 963 F. 2d 1490 (11th Cir. 1992), here, the account debtors are not the ones seeking special treatment, and CIT, and presumably any other Purchaser here, has no prepetition claims. Also, the account debtors would receive no lien here.

68. In the alternative, however, if this Court determines that the account debtors should not be afforded superpriority administrative expenses status for their Adverse Claims, the Debtors request that they receive non-superpriority administrative expense status. See Novacare Holding, Inc. v. Mariner Post-Acute Network, Inc. (In re Mariner Post-Acute Network, Inc.), 267 B.R. 46, 61 (Bankr. D. Del. 2000) (administrative expense claim for substantial contribution for actions of creditor benefiting estate).

69. The treatment of Adverse Claims as superpriority claims (or, at a minimum, administrative expenses) is fair because the Debtors will have little, if any, secured debt upon retirement of the Interim DIP Loan with the proceeds of the A/R sale, and will have liquidity. The treatment for all creditors is also fair because without the A/R purchase, the Debtors would be left with severely impaired liquidity, and would need to cease operations. The mechanism discussed here benefits all creditors, without depriving the account debtors of a reliable source of payment for any allowed Adverse Claims.

Debtors may Sell the A/R after the Conclusion of the Auction

70. As stated above, the Debtors' liquidity situation prior to the sale is dire. The Interim DIP Loan will only provide liquidity for at most 60-90 days. In order expedite the sale of the A/R, and to assure continuing liquidity to operate the Debtors' business, the Debtors hereby seek and Order of this Court approving the sale of the A/R to the Purchaser, which will be either CIT or an overbidder, upon conclusion of the Auction.

71. Under Section 363(b)(1) of the Bankruptcy Code: "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,

property of the estate." 11 U.S.C. § 363(b)(1). Transactions are subject to a "sound business judgment" test, which requires that a debtor establish four elements: (1) that a sound business purpose justifies the sale; (2) that adequate and reasonable notice has been provided to interested persons; (3) that the debtor has obtained a fair and reasonable price; and (4) good faith. See In re Martin (Myers v. Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) (requiring good faith finding); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). The Debtors respectfully submit that the sale of the A/R upon the terms discussed herein is well within their sound business judgment, proper notice will be given, the price obtained under the CIT Agreement is fair and reasonable, and (as discussed below) is made in good faith.

72. Section 363(m) of the Bankruptcy Code provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith", the Third Circuit in Abbotts Dairies has held that:

> [t]he requirement that a purchaser act in good faith . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted). Debtors submit that the CIT Agreement is an intensely-negotiated, arm's-length transaction, in which CIT has, at all times, acted in good faith under the Abbotts Dairies standards. Furthermore, there is no relationship, business or otherwise, between Debtors and CIT, except for the buyer-seller relationship contemplated by the CIT Agreement. Debtors thus request that the Court make a finding that CIT purchased the A/R in good faith within the meaning of section 363(m) of the Bankruptcy Code (and for the purposes of the sound business judgment test discussed above).

73. Debtors expect that CIT, or an overbidder, will require that the protections for the Purchaser proposed herein (i.e., selling the A/R free and clear of all Adverse Claims) be contained in an Order authorizing the sale. Bankruptcy Rule 7001(7) requires that any injunction be sought by adversary proceeding. The Bankruptcy Court for this District, however, held recently that Rule 7001(7) is not applicable to a section 363(f) sale. TWA, at *25 ("[T]he EEOC

argues that the Sale Order may not impose injunctive relief outside the scope of an adversary proceeding. I disagree. An adversary proceeding is not required for an order under § 363(f), even if the order includes injunctive relief necessary to effectuate the sale 'free and clear.' If what the EEOC argues were true, all § 363(f) sales would have to proceed via an adversary proceeding – a procedure finding no support in the Bankruptcy Code or twenty plus years of reported decisions interpreting that Code."). Other courts have also held that protections akin to injunctions may be afforded parties to matters brought by motion where these protections are contemplated by the applicable provisions of the Bankruptcy Code under which the motion is brought. See O'Brien Envtl. Energy Inc. v. NRG Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 188 F. 3d 116, 123 (3d Cir. 1999) ("The reading of Rule 7001(7) appellant urges would render meaningless other rules that require certain requests to the court to be made by motion and application, contrary to general principals of statutory interpretation."); In re Dow Corning Corp., 198 B.R. 214, 243-46 (Bankr. E.D. Mich. 1996) (motion for settlement that enjoined lawsuits against insurers approved; court analogized to section 363(f) sale); In re T. Craft Aviation Serv., Inc., 187 B.R. 703, 708-09 (Bankr. N. D. Okla. 1995) ("A request for injunctive relief should be brought by formal complaint commencing an adversary proceeding, F.R.B.P. 7001(7) and resulting in a decree. Instead of complaint and decree, it is possible that a motion, resulting in an order, might have been adequate. The choice between motion practice and adversary proceeding in seeking a particular type of relief is not always clear-cut but can be a 'matter of degree.' But in this instance at least a separate, clearly identifiable motion was called for.") (citations omitted; emphasis in original); In re Vance, 120 B.R. 181, 191-92 (Bankr. N.D. Okla. 1990) (court

granted debtor's motion and an ordered the U.S. Trustee to conclude a section 341 meeting over U.S. Trustee's argument that the request for relief had to be brought by adversary proceeding under Rule 7001(7)). Accord In re Briggs, 143 B.R. 438, 462 (Bankr. E.D. Mich. 1992) (injunction granted despite action being brought by motion where there was no objection on procedural grounds and the court had made a substantial investment of judicial time and resources).

Debtors may Assume All Executory Contracts Underlying the A/R

74. Debtors request approval, under 11 U.S.C. § 365, of the assumption of the contracts underlying the A/R to the extent any of them are executory contracts. Under section 365(a), a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

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

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

11 U.S.C. § 365(b)(1).

75. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession's decision to assume an executory contract, courts have consistently applied a "business judgment" test when reviewing such a decision. See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R.R.Co., 318 U.S. 523, 550 (1953); Matter of Talco, Inc., 558 F.2d 1369, 1173 (10th Cir. 1977). A debtor satisfies the "business judgment" test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D. N.Y. 1986).

76. In the Notification Letter that will be sent to all account debtors, the Debtors will state that they believe that the account debtor has no Adverse Claims, and provide the account debtor with the opportunity to acknowledge that statement or file a Statement of Adverse Claims. If the account party signs and returns the acknowledgement, or no Statement of Adverse Claims is timely filed, no cure amount will be owing. If any Adverse Claim arising under an A/R that the account debtor claims is executory is allowed, it will be paid in full as a superpriority claim, and will be final satisfaction of all obligations to cure defaults and compensate these non-Debtor parties for any pecuniary losses under such contracts pursuant to section 365(d)(1) of the Bankruptcy Code.

77. 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 an 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). The Debtors believe that the A/R sale will permit them to meet their future obligations on an A/R that are executory. Consequently, assumption and assignment of the A/R is appropriate under the circumstances.

Notice of the Proposed Sale Is Reasonable Under the Circumstances

78. Debtors are currently operating under distressed operating conditions, with only limited financing, which conditions are expected to continue for the foreseeable future unless Debtors can effectuate the sale of the A/R. Moreover, typically, the filing of a chapter 11 petition causes account debtors to delay payment on accounts payable. This in turn may substantially diminish the value of the A/R, imperil third party vendors and suppliers and render any subsequent sale of the A/R for comparable consideration impossible. Accordingly, the Auction and hearing on the Motion must occur on an expedited basis to preserve the value of Debtors' A/R and yield the greatest possible return for the benefit of creditors.

79. Here, Debtors propose to provide, through the auction notice annexed hereto as Exhibit C, the creditors with at least twenty (20) days' notice of the Auction on the proposed sale of the A/R. Debtors propose to hold the Auction on or before February 20, 2002 at

the offices of Pachulski, Stang, Ziehl, Young & Jones, P.C., 919 Market Street, 16th Floor, Wilmington, Delaware 19899-8705 at 9:00 a.m. prevailing Eastern time. Moreover, Debtors also propose to publish a notice regarding the Auction in The Wall Street Journal. Finally, Debtors will serve copies of this Motion, and its exhibits on: (a) the Office of the United States Trustee; (b) counsel to the Official Committee of Creditors Holding Unsecured Claims (if and when such a committee is appointed); (c) counsel for Debtors' prepetition lenders; (d) the entities who have requested notice pursuant to Bankruptcy Rule 2002; (e) the Nuclear Regulatory Commission, the Securities and Exchange Commission and those government agencies required to receive notice of proceedings under the Bankruptcy Rules and the Local Bankruptcy Rules; (f) potential qualified bidders known to Debtors (including, but not limited to, all entities who had signed confidentiality agreements with Debtors in connection with a sale of the A/R); (g) Debtors' postpetition lenders; (h) the approval obligors (as defined in the CIT Agreement); and (i) and other entities Debtors desire to receive notice. Such documents clearly disclose the terms of the proposed sale.

80. Accordingly, Debtors submit that the notice to be provided is reasonable and appropriate and will be more than adequate to ensure that all interested parties have the opportunity to bid for the A/R and/or to object to the relief sought in this Motion.

WHEREFORE, Debtors respectfully request that the Court grant the relief sought in the Motion and grant Debtors such other and further relief as the Court deems just and proper under the facts and circumstances of Debtors' cases.

Dated: January 14, 2002

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[Proposed] Co-Counsel to Debtors and Debtors in Possession

EXHIBIT A

CIT ACCOUNTS RECEIVABLE PURCHASE AGREEMENT

This ACCOUNTS RECEIVABLE PURCHASE AGREEMENT, dated as of January 14, 2002, is entered into by and between **Fansteel, Inc.**, a Delaware corporation, **Wellman Dynamics**, a Delaware corporation, **Escast Inc.**, an Illinois corporation, **Washington Manufacturing**, a Delaware corporation, **American Sintered Technologies, Inc.**, a Delaware corporation, and **Fansteel Schulz Products, Inc.**, a Delaware corporation, (each a *"Seller"*, and collectively, the *"Sellers"*), and **The CIT Group/Commercial Services Inc.** (the *"Purchaser"*).

WHEREAS, Sellers desire to sell, transfer, assign and convey all of their right, title and interest in certain Receivables to Purchaser on the terms and conditions set forth herein;

WHEREAS, Purchaser has agreed to buy such Receivables from the Sellers on the terms and conditions set forth herein;

WHEREAS, each of the Sellers intends to file voluntary petitions for relief commencing cases (the *"Cases"*) under Chapter 11 of Title 11 of the United States Code (the *"Bankruptcy Code"*) in the United States Bankruptcy Court for the District of Delaware (the *"Bankruptcy Court"*).

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Sellers and Purchaser agree as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, unless otherwise specified, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Accounts" means an account as defined in the UCC.

"Adverse Claim" means with respect to any Receivables, a lien, security interest, offset, deduction, defense, dispute, claim, counterclaim, adjustment, setoff, right of recoupment or any charge, encumbrance, or interest or any other right or claim of any Person (including, without limitation, an Obligor), whether related or not to the Receivable, including, without limitation, (i) any claim or defense resulting from the sale of merchandise or rendering of services related to such Receivable or the furnishing or failure to furnish such merchandise or service and (ii) any other claim, defense , basis or reason (that is not solely related to the creditworthiness of an Obligor) for the Obligor not to pay a receivable in cash, in full, when due.

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the

direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"Aggregate Amount" means the aggregate net invoice dollar amount of the Purchased Receivables on the Closing Date.

"Agreement" means this Accounts Receivable Purchase Agreement (including all schedules, exhibits, annexes and appendices hereto).

"Alternate Proposal" has the meaning assigned to that term in Section 5.01(i) of this Agreement.

"Approval Order" means an order of the Bankruptcy Court, which among other things, approves this Agreement and the transactions contemplated hereby, which order shall be in form and substance satisfactory to the Purchaser (in its sole discretion).

"Approved Obligor" means each of the Sellers' customers approved by the Purchaser and set forth on Schedule B or approved by the Purchaser and added to Schedule B on or prior to the Notification Date.

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and all rules and regulations promulgated thereunder.

"Bid Procedures Order" means a document substantially in the form of Exhibit D attached to this Agreement.

"Bill of Sale" means a document (substantially in the form of Exhibit A attached to this Agreement) evidencing the sale, transfer and assignment of the Purchased Receivables and Related Security from Seller to Purchaser.

"Bridge DIP" means that certain debtor-in-possession financing from HBD Industries, Inc., in an amount of up to $3,000,000. The liens granted under the Bridge DIP on the Receivables shall be released on the Closing Date.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"Cases" has the meaning assigned to that term in the recitals of this Agreement.

"Closing Date" means that date on which all closing conditions are satisfied.

"Collections" means, with respect to any Receivable, all collections and other proceeds of such Receivable, including, without limitation, all proceeds of any Related Security with respect to such Receivable.

"Concentration Limit" means fifteen percent (15%).

"Contract" means any agreement, including, without limitation, a purchase order, e-mail confirmation, or other writing, if any, between any Seller and any Obligor pursuant to or under which such Obligor shall be obligated to pay for merchandise or services from time to time.

"Conveyed Property" has the meaning assigned to that term in Section 2.01 of this Agreement.

"Defaulted Receivable" means any Receivable: (i) as to which any payment, or part thereof, remains unpaid for 45 days from the original due date for such payment, or (ii) which would be written off Seller's books as uncollectible.

"Disputed Receivable" means any Receivable with respect to which any Adverse Claim is asserted by the Obligor (other than any protection provided to debtors under the operation of bankruptcy or other insolvency laws).

"Eligible Receivable" means a Receivable:

(i) the Obligor of which is one of the Approved Obligors;

(ii) the Obligor of which (x) is not a party to a case under the Bankruptcy Code or any other insolvency law and (y) has not had a receiver, liquidator, trustee, custodian or other similar officer appointed;

(iii) which is a Receivable representing the extension of credit by Seller under a Contract in connection with the credit sale by Seller to an Approved Obligor of merchandise or services;

(iv) which is not a Defaulted Receivable;

(v) which is a Receivable of an Approved Obligor required to be paid in full within 60 days of the original invoice date thereof;

(vi) which is an "Account" or a "general intangible" within the meaning of Section 9-102 of the UCC;

(vii) which is denominated and payable only in United States dollars in the United States;

(viii) which is not a Disputed Receivable on the Closing Date;

(ix) which arises under a Contract which has been duly authorized and which, together with such Receivable, is in full force and effect and constitutes the legal, valid and binding obligation of the Approved Obligor of such Receivable enforceable against such Approved Obligor in accordance with its terms;

(x) which, together with the Contract related thereto, does not contravene in any material respect any laws, rules or regulations applicable thereto (including, without limitation, laws, rules and regulations relating to truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) and with respect to which no party to the Contract related thereto is in violation of any such law, rule or regulation in any material respect;

(xi) which is free and clear of any Adverse Claim, except as created by this Agreement;

(xii) which is not a Government Receivable or a receivable owed by an Obligor domiciled outside of the United States or other country agreed to by the Purchaser;

(xiii) the goods of which have been accepted or the services related to it shall have been performed; and

(xiv) which is not related, in any way, to the Muskogee Facility.

For clarity, all of the conditions set forth in (i) through (xiv) above must be satisfied for a Receivable to be deemed an Eligible Receivable.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Account" means that certain account designated by Purchaser wherein Purchaser shall deposit the Escrow Proceeds. The Escrow Account shall not be property of the Sellers' bankruptcy estates.

"Escrow Proceeds" has the meaning assigned to that term in Section 2.01(b) of this Agreement.

"Event of Default" has the meaning assigned to that term in Section 7.01 of this Agreement.

"Existing Pool" means Eligible Receivables set forth on Schedule A.

"Final Order" means an order or judgment of the Bankruptcy Court as entered on the docket that has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari, or seek reargument or rehearing has expired and as to which no appeal, reargument, petition for certiorari, or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing in a manner satisfactory to the Purchaser or, if an appeal, reargument, petition for certiorari, or rehearing thereof has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, the time to take any further appeal or to seek certiorari or further reargument has expired.

"Fundamental Change" has the meaning assigned to such term in Section 5.04 of this Agreement.

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

"Government Receivables" means a Receivable evidencing a claim against the United States Government which is subject to the Assignment of Claims Act of 1940, 31 U.S.C. § 3727.

"Indebtedness" means, as applied to any Person, (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to capital leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money (other than accounts payable incurred in the ordinary course of business and accrued expenses incurred in the ordinary course of business), (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, and (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person.

"Indemnified Liabilities" has the meaning assigned to that term in Article IX of this Agreement.

"Indemnitees" has the meaning assigned to that term in Article IX of this Agreement.

"Lien" means any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary, (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest).

"Lockbox Agreement" means that certain agreement between the Sellers and the Purchaser substantially in the form of Exhibit E attached to this Agreement.

"Material Adverse Effect" means (a) a material adverse effect upon the business, operations, material properties, assets or financial condition of Seller and its Subsidiaries taken as a whole (b) the material impairment of the ability of Seller to perform its obligations under this Agreement or (c) the impairment of the ability of Purchaser to enforce this Agreement or collect any of the Purchased Receivables.

"Muskogee Facility" means that facility owned by Fansteel, Inc., in Muskogee, Oklahoma.

"Nonconforming Receivable" means a Purchased Receivable (a) with respect to which there has occurred any breach of Seller's representations and warranties under Section 4.01 of this Agreement (b) that becomes a Disputed Receivable after the Closing Date, or (c) with respect to which any Seller has granted after the Closing Date, without the written consent of the Purchaser, any credit, discount, allowance or offset or that relates to any merchandise sold to and returned by an Obligor. A Purchased Receivable shall not become a Nonconforming Receivable solely as a result of the assertion by the Obligor, in accordance with the Bid Procedures Order, of a claim against the Sellers in connection with the Purchased Receivable; provided that no Adverse Claim is asserted against such Purchased Receivable, or the Purchaser.

"Non-Acknowledged Receivable" has the meaning assigned to that term in Section 2.01(b) of this Agreement.

"Non-Purchased Receivable" has the meaning assigned to that term in Section 5.04(a) of this Agreement.

"Notification Date" means the date on which the Notification Letters are sent out to the Obligors.

"Notification Letter" means the letter substantially in the form of Exhibit C attached to this Agreement.

"NRC" means the Nuclear Regulatory Commission and any agreement state that is operating under the authority of the Atomic Energy Act.

"Obligor" means a Person obligated to make payments to any Seller pursuant to a Contract.

"Person" means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental person, the successor functional equivalent of such Person).

"Prime Rate" means the rate of interest per annum publicly announced from time to time by The Chase Manhattan Bank as its prime rate in effect at its principal office in New York City (The Prime Rate not being intended to be the lowest rate of interest charged by The Chase Manhattan Bank in connection with extensions of credit to debtors).

"Purchase Price" means the purchase price for the Purchased Receivables as calculated pursuant to Section 2.01(b).

"Purchased Receivable" means an Eligible Receivable that is set forth on the Schedule of Receivables, and that is purchased under this Agreement. Purchased

Receivables will only include Eligible Receivables for which Purchaser has received a Notification Letter acknowledged by the Obligor of such Receivables (in form and substance satisfactory to Purchaser); provided that, Purchaser may, in its sole and absolute discretion, waive such requirement (i.e. Purchaser may, in its sole and absolute discretion, choose to purchase Eligible Receivables set forth on the Schedule of Receivables for which it has not received an acknowledged Notification Letter). The quality, type and nature of the Purchased Receivables shall, in the reasonable determination of the Purchaser, be substantially similar to or better than the Existing Pool. The Purchaser shall advise the Seller, in writing, of its determination one (1) Business Day after its receipt of the proposed Schedule of Receivables.

"Purchaser" has the meaning assigned to that term in the recitals of this Agreement.

"Purchaser Lockbox" means that certain lockbox in the name and sole dominion of Purchaser, established pursuant to the Lockbox Agreement.

"Receivable" means the indebtedness of any Obligor under a Contract, whether constituting an Account or general intangible, arising from a sale of merchandise and/or services by Seller to such Obligor, and includes the right to payment of any interest or finance charges, if any, and other obligations of such Obligor with respect thereto.

"Related Security" means with respect to any Receivable:

(i) all of Seller's interest in the merchandise (including returned merchandise and rights of reclamation and replevin), if any, relating to the sale which gave rise to such Receivable;

(ii) at Purchaser's option, all other security interests or liens and property subject thereto from time to time purporting to secure payment of such Receivable, whether pursuant to the Contract related to such Receivable or otherwise;

(iii) the assignment to Purchaser of all UCC financing statements covering any collateral securing payment of such Receivable;

(iv) all guaranties, insurance proceeds and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Receivable whether pursuant to the Contract related to such Receivable or otherwise; and

(v) all proceeds of the foregoing.

"Repurchase Amount" has the meaning assigned to such term in Section 5.01(g) of this Agreement.

"Repurchase Date" has the meaning assigned to such term in Section 5.01(g) of this Agreement.

"Schedule of Receivables" means a document substantially in the form of Schedule A attached to this Agreement to be delivered to the Purchaser at least two (2) Business Days prior to the Notification Date, listing the proposed Purchased Receivables, the respective Obligors, the Related Security, if any, and the Aggregate Amount of each Purchased Receivable proposed to be sold on the Closing Date.

"Second Closing" has the meaning assigned to such term in Section 2.01(b) of this Agreement.

"Seller" has the meaning assigned to that term in the recitals of this Agreement.

"Subsidiary" means, with respect to any Person, any corporation, partnership, or other entity the outstanding securities or interest of which having ordinary voting power to elect a majority of the board of directors or similar governing body of such corporation, partnership or other entity (whether or not any other class of securities has or might have voting power by reason of the happening of a contingency) are at the time owned or controlled directly or indirectly by such Person or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries together.

"Termination Fee" has the meaning assigned to that term in Section 10.02 of this Agreement.

"Termination Fee Event" has the meaning assigned to that term in Section 10.02 of this Agreement.

"UCC" means the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Weekly Reporting Period" means a seven-day period commencing on Saturday and ending on Friday of the following week.

"Weekly Settlement Report" means a report to be delivered by Purchaser to Seller each Wednesday, or in case such day is not a Business Day then the next succeeding Business Day, for the most recently ended Weekly Reporting Period showing, as to all Purchased Receivables, all amounts collected in the Purchaser Lockbox during such Weekly Reporting Period, all amounts transferred from the Purchaser Lockbox to Sellers, and all amounts remitted by Sellers to Purchaser.

SECTION 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's

successors and assigns, (c) the words "herein", "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, subsections, Exhibits and Schedules shall be construed to refer to Articles and subsections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.03. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP.

ARTICLE II.

PURCHASE AND SALE OF RECEIVABLES

SECTION 2.01 Purchase and Sale of Receivables. On the Closing Date (and on the date of the Second Closing, if any), and on the terms and subject to the conditions of this Agreement and without recourse to any Seller (except to the extent specifically provided herein), each Seller shall sell, transfer, assign and convey to Purchaser, and Purchaser shall purchase from the Seller on such date (i) all right, title and interest of Seller in and to the Purchased Receivables (including, without limitation, the rights set forth in Section 2.01(e)), and all moneys collected due or to become due with respect thereto and (ii) the Related Security of such Purchased Receivables ((i) and (ii) collectively, the "Conveyed Property"), free and clear of all Adverse Claims. Purchased Receivables will only include Eligible Receivables for which Purchaser has received a Notification Letter acknowledged by the Obligor of such Receivables (in form and substance satisfactory to Purchaser); provided that, Purchaser may, in its sole and absolute discretion, waive such requirement (i.e. Purchaser may, in its sole and absolute discretion, choose to purchase Eligible Receivables set forth on the Schedule of Receivables for which it has not received an acknowledged Notification Letter).

(a) *Purchaser Does Not Assume Obligations.* The foregoing sale, transfer, assignment, and conveyance do not constitute and are not intended to result in a creation or an assumption by Purchaser of any obligation of any Seller in connection with the Purchased Receivables or any agreement or instrument relating thereto, including, without limitation, any obligation to any Obligors.

(b) *Purchase of Receivables.* (i) On the Closing Date, in consideration of the sale of the Purchased Receivables and other Conveyed Property sold by each Seller to the Purchaser, the Purchaser shall pay by wire transfer of immediately available funds, the product of the Aggregate Amount of the Purchased Receivables and eighty-seven percent (87%) (the "*Purchase Price*") as follows: (x) the product of the Aggregate Amount and eighty-two percent (82%) to an account designated by the Sellers, and (y) the product of the Aggregate Amount and five percent (5%) to the Escrow Account (the "*Escrow Proceeds*"); provided that, the aggregate Purchase Price for all Purchased Receivables shall not exceed $10,000,000. Sellers acknowledge that the Purchase Price set forth above is based on the expectation that the Purchased

Receivables will be substantially similar or better in type, nature and quality than the Existing Pool (as determined in the Purchaser's reasonable discretion).

(ii) If there are Eligible Receivables set forth on the Schedule of Receivables that are not purchased on the Closing Date because the Purchaser has not received a Notification Letter acknowledged by the Obligor of such Receivable (a "Non-Acknowledged Receivable"), the Sellers can elect on the Closing Date to (x) no longer sell such Non-Acknowledged Receivable to the Purchaser or (y) seek a second closing (the "Second Closing") with respect to such Non-Acknowledged Receivable. If a Seller elects to no longer sell a Non-Acknowledged Receivable, (1) the Purchaser shall deliver to the Seller any Collections received in the Purchaser Lockbox to date with respect to such Non-Acknowledged Receivable and (2) Sellers and Purchaser shall notify such Obligor to no longer send Collections to the Purchaser Lockbox. If a Seller has elected a Second Closing with respect to any Non-Acknowledged Receivables, such Second Closing shall occur seven (7) Business Days after the Closing Date (or such later date agreed to in writing by the Purchaser). At the Second Closing, subject to satisfaction of all the closing conditions set forth in Section 3.01, Purchaser shall purchase on the terms and conditions set forth in Section 2.01(b)(i) above all Non-Acknowledged Receivables for which Purchaser has received a Notification Letter acknowledged by the Obligor of such Receivables.

(c) *Accounting Records.* In connection with the sale and assignment of the Purchased Receivables hereunder, each Seller agrees, at its own expense, on the Closing Date, to indicate or cause to be indicated clearly and unambiguously in its accounting records that the Purchased Receivables and the other Conveyed Property described in Section 2.01 have been sold to Purchaser pursuant to this Agreement as of the Closing Date (or, if applicable, the date of the Second Closing).

(d) *True Sale.* It is the express intent of Seller and Purchaser that the sale, assignment and conveyance of the Purchased Receivables and other Conveyed Property by Seller to Purchaser pursuant to this Agreement is and will be construed as an absolute sale of such Purchased Receivables and Conveyed Property by Seller to Purchaser. In order to comply with the requirements of Article 9 of the UCC, as made applicable to the sale of the Receivables by Section 9-109(a)(3) of the UCC, and not in derogation of the parties' intention that the transactions contemplated by this Agreement constitute a sale, the Seller does hereby grant to the Purchaser a first lien and security interest in the Receivables and the proceeds thereof including, without limitation, the Contracts and all of the Seller's books and records related thereto.

(e) *Additional Rights as Purchaser.* It is understood and agreed that the Purchaser shall be the absolute owner of each Purchased Receivable, and shall have, with respect to any goods related to the Purchased Receivable, all the rights and remedies of an unpaid seller under the UCC and other applicable law, including the rights of replevin, claim and delivery, reclamation and stoppage in transit. The Purchaser's rights shall include, without limitation:

(i) in addition to the Notification Letters, the Purchaser shall have the right at any time to notify, or require that Seller at its own expense notify, the respective Obligors of the Purchaser's ownership of the Purchased Receivables and may direct that payment of all

amounts due or to become due under the Purchased Receivables be made directly to the Purchaser or its designee;

(ii) the Purchaser shall have the right to request verification of balances on any and all Purchased Receivables owing from the Obligor, using the Seller's name or the Purchaser's name, with the responses directed to an address under the Purchaser's exclusive control;

(iii) the Purchaser shall have the right to (A) sue for collection on any Purchased Receivables or (B) sell any Purchased Receivables to any Person for a price that is acceptable to Purchaser if Purchaser (y) maintains the right to collect such Purchased Receivables or (z) believes, in its sole discretion, that its ability to collect such Purchased Receivables in full has been reduced for any reason whatsoever; provided, that (i) purchaser shall notify seller of its intention to sell such Purchased Receivables five (5) Business Days in advance of such sale; and

(iv) Seller hereby grants to the Purchaser an irrevocable power of attorney (coupled with an interest) to take any and all steps in Seller's name necessary or desirable, in the reasonable opinion of the Purchaser, to collect all amounts due under the Purchased Receivables, including, without limitation, enforcing the Purchased Receivables and exercising all rights and remedies in respect thereof and endorsing Seller's name on checks and other instruments representing Collections.

Sellers hereby release Purchaser and its officers, employees and designees, from any liability arising from any act or acts under this Agreement or in furtherance thereof, whether of omission or commission, and whether based upon any error of judgment or mistake of law or fact, except for acts of bad faith or willful misconduct.

(f) *Repurchase.* Except to the extent expressly set forth herein, Seller shall not have any right or obligation under this Agreement, by implication or otherwise, to repurchase from Purchaser any Purchased Receivables or to rescind or otherwise retroactively effect any purchase of any Purchased Receivables after the Closing Date.

(g) *Escrow.* All Escrow Proceeds remaining in the Escrow Account on the Termination Date shall be delivered to the Sellers.

SECTION 2.02 Collections

(a) *Notification.* On the Notification Date, each Seller shall instruct all Approved Obligors from the date thereof to cause all Collections with respect to all Receivables owed to any Seller by such Approved Obligors to be sent directly into the Purchaser Lockbox (by way of letter (the *"Notification Letter"*) in substantially the form attached hereto as Exhibit C). All Collections received in the Purchaser Lockbox shall be deposited into an account of the Purchaser. Until the Closing Date, (a) Purchaser shall hold the deposited Collections in constructive trust for the Debtors in accordance herewith and subject to the liens under the Bridge DIP, and (b) Purchaser shall not use, transfer, apply or otherwise effect in any manner the Collections; provided, however, that Purchaser shall deliver to Sellers three (3) Business Days after the funds clear the Federal Reserve, any Collections that would have been distributed to the

Sellers pursuant to Section 2.02(c) if such Collections had been received by Purchaser after the Closing Date. If the Closing Date occurs, on the Closing Date, (x) Purchaser shall no longer hold the Collections in constructive trust for the Debtors or any other party, (y) the Collections shall not be subject to any liens or other Adverse Claims of any party, and (z) Purchaser shall apply the Collections as set forth in Section 2.02(c) below. If the Agreement is terminated prior to the Closing Date, Purchaser shall deliver the Collections deposited into the account of Purchaser (less any amounts owed by Sellers to Purchaser, including, without limitation, pursuant to Sections 10.02 and 12.07 hereof; provided, however, that all obligations of the Debtors under the Bridge DIP have been satisfied in full prior thereto), to an account directed by the Sellers. Upon termination of the Agreement (whether prior to or after the Closing Date), unless otherwise agreed to in writing by the Sellers and the Purchaser, Purchaser shall close the Purchaser Lockbox. If any Approved Obligor causes any Collections to be deposited with or delivered to any Seller (or any of its affiliates), such Seller (or such affiliate) shall (i) not commingle such Collections with any other monies, and (ii) hold such Collections (in the form received) in trust for the Purchaser and immediately, but in any event no later than one (1) Business Day after receipt, cause such Collections (in the form received) to be delivered to Purchaser.

(b) *Collection on Accounts.* The Seller will fully cooperate with Purchaser's efforts to enforce and collect all amounts owing on the Purchased Receivables and will not take any actions, directly or indirectly, which would be adverse to Purchaser's collection efforts.

(c) *Application-of Collections.* Purchaser and Sellers agree that payments received from, or on behalf of an Approved Obligor will be applied as follows (notwithstanding any agreement with such Obligor):

(i) if such Approved Obligor specifies a particular invoice to which a particular amount is to be paid, then (y) if such invoice is related to a Purchased Receivable, such payment will be applied to such Purchased Receivable, (z) if such invoice is not related to a Purchased Receivable, such payment will be delivered to the appropriate Seller three (3) Business Days after the funds clear the Federal Reserve;

(ii) if such Approved Obligor specifies multiple invoices to which payments are to be made, but fails to specify the particular amount to be paid from each particular invoice, then the payment shall be applied first to any Purchased Receivables related to such specified invoices, with any payment remaining after such Purchased Receivables have been satisfied in full being delivered to the appropriate Seller three (3) Business Days after the funds clear the Federal Reserve; and

(iii) if such Approved Obligor fails to specify an invoice to which payments are to be made, then such payment will be applied in any manner the Purchaser chooses to the Purchased Receivables of such Approved Obligor, with any payment remaining after all Purchased Receivables from such Approved Obligor have been satisfied in full being delivered to the appropriate Seller three (3) Business Days after the funds clear the Federal Reserve.

ARTICLE III.

CONDITIONS OF PURCHASE AND SALE OF RECEIVABLES

SECTION 3.01. Conditions Precedent to the Closing Date. The purchase and sale of the Purchased Receivables hereunder is subject to the satisfaction or waiver by the Purchaser of each of the following conditions precedent (each delivery shall be in form and substance reasonably acceptable to Purchaser):

(a) Receipt by Purchaser of certified copies of Seller's Certificate of Incorporation, together with a good standing certificate from the Secretary of State of the State of Seller's state of incorporation and each other state in which Seller is qualified as a foreign corporation to do business, each dated a recent date prior to the Closing Date;

(b) Receipt by Purchaser of copies of Seller's Bylaws certified as of the Closing Date by its corporate secretary or an assistant secretary as being in full force and effect without modification or amendment;

(c) Receipt by Purchaser of resolutions of Seller's Board of Directors approving and authorizing the execution, delivery and performance of this Agreement, certified as of the Closing Date by its corporate secretary or an assistant secretary as being in full force and effect without modification or amendment;

(d) Receipt by Purchaser of signature and incumbency certificates of Seller's officers executing this Agreement (on which certificate Purchaser may conclusively rely until such time as it shall receive from Seller a revised certificate meeting the requirements of this subsection (d));

(e) Receipt by Purchaser of executed originals of this Agreement;

(f) Receipt by Purchaser of such other documents as Purchaser may reasonably request;

(g) Receipt by Purchaser of evidence reasonably satisfactory to Purchaser of the filing of Financing Statements (Form UCC-1) naming Seller as debtor and Purchaser as secured party and covering the Purchased Receivables and Related Security, in form and substance satisfactory to the Purchaser, or other similar instruments or documents as may be necessary or appropriate under the UCC of all appropriate jurisdictions or any comparable law to transfer Seller's interests in all Purchased Receivables and Related Security to the Purchaser;

(h) The Bid Procedure Order, in form attached hereto as Exhibit D, shall have been entered by the Bankruptcy Court within 30 days after the commencement of the Cases and such Order shall have become a Final Order.

(i) The Approval Order, in form and substance satisfactory to Purchaser (in its sole discretion), shall have been entered by the Bankruptcy Court within 45 days after the commencement of the Cases and such Order shall have become a Final Order;

(j) Payment of all reasonable legal fees and other fees and out-of-pocket expenses as to which Purchaser has presented bills or invoices on or prior to the Closing Date;

(k) No less than two (2) Business Days prior to the Notification Date, Seller shall have delivered to Purchaser, the Schedule of Receivables setting forth the proposed Purchased Receivables (which shall be all Eligible Receivables of the Approved Obligors). The Schedule of Receivables shall indicate the name of each Obligor, the Related Security, if any, to each Receivable and listing separately the Aggregate Amount of the Receivables and shall be in form and substance satisfactory to Purchaser;

(l) Determination by Purchaser (in its reasonable discretion) that the Eligible Receivables designated by the Sellers as the proposed Purchased Receivables pursuant to clause (m) above are substantially similar or better in type, nature and quality to the Existing Pool;

(m) Purchaser shall be satisfied, in its discretion, with the results of its verification of the proposed Purchased Receivables;

(n) The Notification Letters shall have been sent out on the Notification Date in accordance with the Bid Procedures Order;

(o) Sellers shall have delivered properly executed UCC-3 releases for any and all financing statements filed in connection with the Bridge DIP including, without limitation, with respect to the Receivables, the Collections, and other proceeds thereof;

(p) The Purchaser shall have received acknowledged copies of the Notification Letters, satisfactory to Purchaser, from the Approved Obligor of each proposed Purchased Receivable to be purchased pursuant to Section 2.01.

(q) A certificate from an Authorized Officer certifying that on the Closing Date the following statements shall be true before and after giving effect to the purchase and sale of the Purchased Receivables:

(i) The representations and warranties contained in Section 4.01 are correct on and as of the Closing Date (or, if applicable, the date of the Second Closing) as though specifically made on and as of the Closing Date (or, if applicable, the date of the Second Closing);

(ii) No event has occurred and is continuing, or would result from such purchase and sale of the Purchased Receivables, which constitutes an Event of Default or would constitute an Event of Default.

(r) A Bill of Sale, substantially in the form of Exhibit A, covering the Purchased Receivables shall be duly executed by Seller and delivered to Purchaser.

(s) Seller shall have delivered to Purchaser or its designee an invoice register in connection with the Purchased Receivables, in the form of a diskette or magnetic tape,

or in such other form and substance reasonably acceptable to Purchaser, showing each Obligor's name, the invoice date, invoice number and net invoice amount of each Purchased Receivable and any other information concerning each such Purchased Receivable as Purchaser may reasonably require.

(t) Seller shall, at Seller's expense (i) assemble and make copies of all of Seller's documents, instruments and other records (including credit files and computer tapes or disks) that (A) evidence or will evidence or record Purchased Receivables and (B) are otherwise necessary or desirable to effect Collections of the Purchased Receivables (collectively, the *"Documents"*) and (ii) have delivered the Documents to the Purchaser or its designee at a place designated by the Purchaser. In recognition of Seller's need to have access to any Documents which may be transferred to the Purchaser hereunder, whether as a result of its continuing business relationship with any Obligor for Receivables purchased hereunder, the Purchaser hereby grants to Seller the right to keep all copies of the Documents, provided that Seller's use of such copies shall not disrupt or otherwise interfere with the Purchaser's use of and access to the Documents and its computer software.

(u) One hundred percent (100%) of the Collections received in the Purchaser Lockbox and deposited into the account of Purchaser, other than those distributed to the Sellers pursuant to the proviso to the third sentence of Section 2.02(a), shall be available for application to the Purchased Receivables by Purchaser on the Closing Date. The lender under the Bridge DIP shall not have asserted or exercised any right, remedy, or claim of any type with respect to the Collections received in the Purchaser Lockbox or deposited into the account of Purchaser.

(v) All obligations under the Bridge DIP shall have been, or concurrent with the Closing Date will be, satisfied in full, and all liens and security interests under the Bridge DIP, including, without limitation, all liens and security interests in the Purchased Receivables, the Collections or other proceeds thereof, shall have been fully released and terminated.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of Seller. Each Seller represents and warrants as follows:

(a) Seller is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and is duly qualified to transact business, and is in good standing, in every jurisdiction where the failure to be so qualified would adversely affect (i) the collectibility of any Purchased Receivable or (ii) the ability of Seller to perform its obligations hereunder.

(b) Subject to entry of the Approval Order, the execution, delivery and performance by Seller of this Agreement, each Bill of Sale and all other instruments and

documents to be delivered hereunder, and the transactions contemplated hereby and thereby, are within Seller's corporate powers, have been duly authorized by all necessary corporate action, do not contravene Seller's charter, bylaws or any contractual restriction binding on or affecting Seller, do not contravene or require compliance with (except to the extent Seller has complied therewith) any applicable law.

(c) Subject to entry of the Approval Order, no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Seller of this Agreement, any Bill of Sale or any other document or instrument to be delivered hereunder, all of which, at the Closing Date shall have been duly made and shall be in full force and effect.

(d) Subject to entry of the Sale Order, this Agreement constitutes, and each Bill of Sale when delivered hereunder shall constitute, the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its respective terms.

(e) Seller is not engaged in, or a party to or, threatened with, any legal action, suit, investigation or other proceeding by or before any court, arbitrator or administrative agency, which in any manner may affect the performance of its obligations under this Agreement, and there is no basis for any such legal action, suit, investigation or proceeding. There are no outstanding, threatened or contemplated governmental orders, directives or actions, rulings, decrees, judgments or stipulations which in any manner may affect the performance of Seller's obligations under this Agreement.

(f) Each Receivable set forth on the Schedule of Receivables and each Purchased Receivable is an Eligible Receivable.

(g) Each Receivable set forth on the Schedule of Receivables and each Purchased Receivable (and all Collections and other proceeds thereof) and all Related Security is free and clear of any Adverse Claim except as created hereby and no effective financing statement or other instrument similar in effect covering any Related Security shall at any time be on file in any recording office except such as may be filed in favor of Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing, none of the Sellers have granted any credit, discount, allowance or other accommodation with respect to the Purchased Receivables (other than an assertion by an Obligor, in accordance with the Bid Procedures Order, of a claim against the Sellers in connection with the Purchased Receivables that is not in any way asserted against any of the Purchased Receivables or the Purchaser).

(h) Other than the commencement of the Cases, no change has or shall have occurred in Seller's property, assets, business or financial condition or capital, organization or legal structure since December 31, 2001 which would have an adverse effect on the ability to collect in full on the Purchased Receivables.

(i) All Receivables set forth on the Schedule of Receivables and the Purchased Receivables have been and will be transferred to Purchaser in good faith and for fair

consideration or reasonably equivalent value and without intent to hinder, delay or defraud creditors of Seller.

(j) Seller is not an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(k) No transaction contemplated hereby with respect to Seller requires compliance with, or will be subject to avoidance under, any bulk sales act or similar law.

(l) The Purchase Price of the Purchased Receivables is equivalent to the fair market value of such Purchased Receivables.

(m) The Receivables set forth on the Schedule of Receivables are substantially similar or better in type, nature and quality to the Existing Pool.

(n) The names, addresses and other information of the Approved Obligors set forth on Schedule B are correct and complete in all respects.

SECTION 4.02. Representations and Warranties of the Purchaser

(a) Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and is duly qualified to transact business, and is in good standing, in every jurisdiction where the failure to be so qualified would adversely affect the ability of Purchaser to perform its obligations hereunder.

(b) The execution, delivery and performance by Purchaser of this Agreement, and all other instruments and documents to be delivered hereunder, and the transactions contemplated hereby and thereby, are within Purchaser's corporate powers, have been duly authorized by all necessary corporate action, do not contravene Purchaser's charter, bylaws or any contractual restriction binding on or affecting Purchaser, and do not contravene or require compliance with (except to the extent Purchaser has complied therewith) any applicable law.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Purchaser of this Agreement, or any other document or instrument to be delivered hereunder, all of which, at the Closing Date shall have been duly made and shall be in full force and effect.

ARTICLE V.

GENERAL COVENANTS OF SELLER

SECTION 5.01. Affirmative Covenants of Seller. So long as Purchaser shall have any interest in any Purchased Receivables, Seller shall, unless Purchaser shall otherwise consent in writing:

(a) *Compliance with Laws, Etc.* Comply with all applicable laws, rules, regulations, orders and provisions with respect to its business and properties and all Purchased Receivables, related Contracts and Related Security except to the extent that failure to comply would not have a material adverse effect on Purchaser's ability to collect in full on any Purchased Receivable.

(b) *Preservation of Corporate Existence.* Preserve and maintain Seller's corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify to transact business and remain so qualified and in good standing as a foreign corporation in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification would have an adverse effect on (i) the interests of Purchaser, (ii) the collectibility of any Purchased Receivable or (iii) the ability of Seller to perform its obligations hereunder.

(c) *Audits.* As often as is commercially reasonable, following one (1) Business Days' prior written notice to Seller, during regular business hours, permit Purchaser, or its agents or representatives, (i) to examine and make abstracts from all books, records and documents (including, without limitation, computer tapes and disks) in the possession or under the control of Seller and to make copies of any of the foregoing and (ii) to visit the principal place of business of Seller for the purpose of examining such materials described in clause (i) above, and to discuss matters relating to Purchased Receivables and Conveyed Property or Seller's performance hereunder with any of the officers or employees of Seller having knowledge of such matters.

(d) *Keeping of Records and Books of Account.* Maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing all of Seller's Receivables in the event of the destruction of the originals thereof), and keep and maintain, all documents, books, records and other information reasonably necessary or advisable for the collection of all Purchased Receivables.

(e) *Performance and Compliance with Receivables and Contracts.* At Seller's expense, timely and fully perform and comply with all material provisions, covenants and other promises required to be observed by Seller under the Contracts related to Purchased Receivables.

(f) *Acknowledgments.* Sellers shall use their reasonable best efforts to promptly obtain acknowledged copies of the Notification Letters from each Approved Obligor.

(g) *Repurchase of Nonconforming Receivables.* Seller hereby covenants and agrees to repurchase from Purchaser each Nonconforming Receivable within two (2) Business Days of its becoming a Nonconforming Receivable (the "*Repurchase Date*"), at the "*Repurchase Amount*". The Repurchase Amount as to any Nonconforming Receivable shall be equal to the sum of the Purchase Price allocable to such Nonconforming Receivable. On the Repurchase Date, Purchaser shall immediately be entitled to withdraw, without further approval of the Bankruptcy Court, the Repurchase Amount in full from the Escrow Account. To the extent that there are insufficient funds

in the Escrow Account, the Sellers shall immediately, and without further court approval, pay the Repurchase Amount to the Purchaser in cash. Upon receipt in cash by the Purchaser of the Repurchase Amount, all right, title and interest of Purchaser in such Nonconforming Receivable and the Related Security of such Nonconforming Receivable shall automatically be deemed transferred back to the appropriate Seller and such Nonconforming Receivable shall no longer be considered a Purchased Receivable. All payments referred to in this Section 5.01(g) shall constitute superpriority administrative expenses of the Seller's bankruptcy estate in these Cases under sections 503(b) and 507(a)(i) of the Bankruptcy Code, without further approval of the Bankruptcy Court.

(h) *Further Action.* Seller agrees that at any time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action that Purchaser may request in order to protect or more fully evidence the Purchased Receivables held by Purchaser hereunder, or to enable Purchaser to exercise or enforce any of its rights hereunder. Without limiting the generality of the foregoing, Seller will, upon the request of Purchaser: (i) execute and file such instruments or notices as may be requested by Purchaser, (ii) mark conspicuously each Contract with a legend, acceptable to Purchaser, evidencing the interests of Purchaser in each of the Purchased Receivables and (iii) mark its master data processing records evidencing such Purchased Receivables and related Contracts with such legend. The Seller hereby authorizes Purchaser, if Seller fails to do so pursuant to clause (i) of the preceding sentence, to file one or more financing or continuation statements, and amendments thereto and assignments thereof, relative to all or any of the Purchased Receivables and the Related Security now existing or hereafter arising without the signature of the Seller where permitted by law. If Seller fails to perform any of its agreements or obligations under this Agreement, Purchaser may (but shall not be required to) itself perform, or cause performance of, such agreement or obligation, and the expenses of Purchaser incurred in connection therewith shall be payable by Seller.

(i) *Alternative Proposals.* Prior to the filing of the Cases, Sellers agree that (i) neither it nor any of its Subsidiaries shall, and it shall direct and use its reasonable best efforts to cause its officers, directors, employees, agents and representatives (including, without limitation, any investment banker, attorney or accountant retained by it or any of its Subsidiaries) not to initiate, solicit or encourage, directly or indirectly, any inquiries or the making or implementation of any proposal or offer (including, without limitation, any proposal or offer to its stockholders) with respect to an acquisition of, or loan secured by, the Receivables that would prevent, delay or impede the consummation of the transactions contemplated hereby (any such proposal or offer being hereinafter referred to as an "*Alternative Proposal*") or engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions or otherwise cooperate in any way with, any Person relating to an Alternative Proposal; (ii) upon execution and delivery of this Agreement, it will (and shall direct and use its best efforts to cause its officers, directors, employees, agents and representatives to) immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing, and it will take the necessary steps to inform the individuals or entities referred to above of the obligations undertaken in this

Section 5.01(i); and (iii) it will notify Purchaser immediately if any such inquiries or proposals are received or discussions are sought to be initiated or continued with it.

(j) *Lockbox Fees.* The Company shall on the Closing Date and first Business Day of each month, pay the Lockbox Fees set forth in the Lockbox Agreement, attached hereto as Exhibit E.

SECTION 5.02. Reporting Requirements of Seller. So long as Purchaser shall have any interest in any Purchased Receivables, Seller shall furnish to Purchaser:

(a) all financial information that Purchaser may reasonably request from time to time;

(b) immediate written notice of the occurrence of any breach of Seller's representations and warranties, including but not limited to any assertion by any Obligor of any dispute (bona fide or otherwise) or other defense to payment of Purchased Receivables. If any of the foregoing results in a Purchased Receivable becoming a Nonconforming Receivable such notice shall indicate the manner in which the Repurchase Amount shall be paid and the date of repurchase, as required by Section 5.01(g).

(c) promptly within two (2) Business Days, from time to time, such other information, documents, records or reports respecting any Receivable(s), Approved Obligor(s), Contract(s), Adverse Claim(s), Related Security or the financial condition or operations of Seller as Purchaser may from time to time reasonably request.

SECTION 5.03. Negative Covenants of Seller. So long as Purchaser shall have any interest in any Purchased Receivables, Seller shall not, without the prior written consent of Purchaser:

(a) *Sales, Liens, Etc.* Except for the liens granted in connection with the Bridge DIP (which shall be discharged on or prior to the Closing Date) and as otherwise provided herein, (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon or with respect to any Purchased Receivable, related Contract or Related Security, Collections, or other proceeds thereof, or (ii) assign any right to receive income in respect of any of the foregoing.

(b) *Change in Payment Instructions to Obligors.* Make any change in the instructions provided to Approved Obligors in the Notification Letters.

(c) *Accounting Treatment.* Prepare any financial statements that shall account for the transactions contemplated hereby, nor will it in any other respect account for the transactions contemplated hereby, in a manner that is inconsistent with Purchaser's ownership interest in the Purchased Receivables.

(d) *Deposit Accounts.* Open or maintain any deposit accounts other than the accounts at thee financial institutions set forth in the Bid Procedures Order.

SECTION 5.04. Fundamental Changes. So long as Purchaser shall have any interest in any Purchased Receivables, Seller shall not make, cause, effect or allow any:

(a) (i) Extension, amendment or other modification of the terms of any Purchased Receivable, or (ii) amendment, modification or waiver of any term or condition of any Contract related thereto which would impair the collectibility of any Purchased Receivable; provided, however, Sellers may allow modifications (such as discounts) with respect to a Receivable not purchased by Purchaser hereunder (a *"Non-Purchased Receivable"*) (but such Sellers shall provide Purchaser with prior written notification of all such modifications) so long as none of the Purchased Receivables which have the same Obligor as such Non-Purchased Receivable is past due (based upon the payment date set forth on the relevant invoice); and

(b) Change in any form of any Contract, if any, related to Receivables which change would, in any case, impair the collectibility of any Purchased Receivable.

Any change, amendment, modification or extension described in clauses (a) and (b) above is hereinafter referred to as a *"Fundamental Change."*

ARTICLE VI.

OBLIGORS

SECTION 6.01. Concentration Limit. On the Closing Date, with respect to each Approved Obligor, the ratio of (i) the aggregate Amount of the outstanding Purchased Receivables of such Approved Obligor under this Agreement to (ii) the Aggregate Amount of the outstanding Purchased Receivables of all Approved Obligors under this Agreement shall not exceed the Concentration Limit applicable to such Approved Obligor.

ARTICLE VII.

EVENTS OF DEFAULT

SECTION 7.01. Events of Default. The following events shall constitute an event of default (each an "Event of Default"):

(a) Seller shall fail to make any payment to be made by it hereunder when due; or

(b) Any representation or warranty made or deemed to be made by Seller (or any of its officers) under or in connection with this Agreement, other than Sections 4.01(f) and (g), or any certificate or report delivered pursuant hereto shall prove to have been false or incorrect when made; or

(c) (i) Seller shall fail to perform or observe any term, covenant or agreement contained in Section 5.03 or 5.04 on its part to be performed or observed by it; or (ii) Seller shall fail to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or observed by it and any such failure shall

remain unremedied for three (3) Business Days after written notice thereof shall have been given by Purchaser to Seller; or

(d) There shall have occurred any event which affects the ability of Seller to perform hereunder; or

(e) The Bid Procedure Order or Approval Order shall have been modified, stayed, or vacated without the Purchaser's prior written consent.

Upon the occurrence of an Event of Default, Purchaser shall have, (i) the right to immediately declare all Purchased Receivables to be Nonconforming Receivables, and (ii) in addition to all other rights and remedies under this Agreement or otherwise, all other rights and remedies, if any, provided under the UCC of the applicable jurisdiction and other applicable laws, which rights shall be cumulative.

ARTICLE VIII.

PARTICIPATIONS AND ASSIGNMENTS

Purchaser retains the right at any time and from time to time to sell or assign the Purchased Receivables, in whole or in part, or to sell participation interests in any amount in any of the Purchased Receivables to one or more participants as Purchaser may deem desirable; provided that: (i) Purchaser shall notify Sellers of any such sale promptly after consummation of such sale, and (ii) Purchaser shall sell the Purchase Receivables only if (y) Purchaser continues collections with respect to such Receivables, or (z) Purchaser, in its sole discretion, believes that its ability to collect the Purchased Receivables in full has been reduced for any reason whatsoever.

ARTICLE IX.

INDEMNIFICATION

In addition to the payment of expenses pursuant to Section 12.07, whether or not the transactions contemplated hereby shall be consummated, Seller agrees to defend, indemnify, pay and hold harmless Purchaser, and the officers, directors, trustees, partners, employees, agents, attorneys and affiliates of Purchaser and each such Person (collectively called the *"Indemnitees")* from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including, without limitation, securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement, the Lockbox Agreement (including, but not limited to, the ownership or

maintenance of such lockbox or the deposit, collection or processing of any item deposited therein) or the transactions contemplated hereby (including, without limitation, Purchaser's agreement to purchase the Purchased Receivables hereunder or the use or intended use of the proceeds of any of such purchase) (collectively called the *"Indemnified Liabilities"*);provided, that Seller shall have no obligation under this Article IX to Indemnitees with respect to, and Indemnified Liabilities shall in no event include (a) losses arising from a delay in payment, or a default, by an Obligor with respect to any Purchased Receivable that relates to the creditworthiness of such Obligor or (b) the costs of administering or collecting the Purchased Receivables. The agreements in this Article IX shall survive the collection of all Purchased Receivables, the termination of this Agreement and the payment of all amounts payable hereunder. All payments referred to in this Section shall be made by Sellers immediately, without further court approval and shall constitute superpriority administrative expenses of the Seller's bankruptcy estate in these Cases under sections 503(b) and 507(a)(i) of the Bankruptcy Code. In addition, all such payments may, at Purchaser's option, be withdrawn by Purchaser from the Escrow Proceeds.

To the extent that the undertaking to defend, indemnify, pay and hold harmless set forth in the preceding paragraph may be unenforceable because it is violative of any law or public policy, Seller shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

ARTICLE X.

TERMINATION

SECTION 10.01. Termination Prior to Closing. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and the transactions hereby contemplated hereby abandoned at any time prior to, or at the Closing Date by:

(a) Mutual written consent of the Purchaser and the Sellers;

(b) The Sellers or Purchaser by written notice to the other, if a court of competent jurisdiction or governmental, regulatory, or administrative agency or commission shall have issued an order, decree or ruling, or taken any other action, in each case, permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby and such order, decree, ruling, or other action shall have become final and nonappealable;

(c) The Sellers or Purchaser by written notice to the other, if the Closing Date shall not have occurred by April 17, 2002, (or such later date as maybe agreed in writing by the parties), unless the Closing Date shall not have occurred on or before such date due to the failure of the party seeking to terminate this Agreement to have fulfilled any of its obligations under this Agreement; and provided

further that the Sellers may not terminate this agreement pursuant to this Section 10.01 by reason of failure of the Bankruptcy Court to hold a hearing on or otherwise rule on the Approval Order prior to such date;

(d) Purchaser, by written notice to Sellers, if the Sellers are in breach of any of its representations or warranties made in this agreement, or is in violation or in default in any material respect of any of its covenants or agreements in this Agreement, if such breach, violation, or default is not cured within five (5) Business Days after written notice;

(e) Sellers, by written notice to the Purchaser, if any Seller shall have accepted the bid of any Person other than the Purchaser as the highest or best offer for any or all of the Eligible Receivables;

(f) Purchaser, by written notice to Sellers, if (i) any Seller shall have accepted the bid of any Person other than the Purchaser as the highest and best offer for any or all of the Eligible Receivables, or (ii) if the condition contained in Section 3.01(i), shall not have been timely satisfied;

(g) Purchaser by written notice to Sellers, if the Sellers have not filed the Cases with the Bankruptcy court prior to January 17, 2002;

(h) Purchaser, if it shall determine in its reasonable discretion that the Eligible Receivables set forth in the Schedule of Receivables as the proposed Purchased Receivables are not substantially similar or better in type, nature, and quality to the Existing Pool;

(i) The Sellers or Purchaser by written notice to the other, if the Aggregate Amount of the Eligible Receivables on the Schedule of Receivables is less than $2,000,000.

(j) Purchaser, by written notice to Sellers, if the lender under the Bridge DIP shall have exercised any rights, remedies, or claims of any type with respect to the Collections received in the Purchaser Lockbox or deposited into the account of the Purchaser, other than those Collections distributed or to be distributed to Sellers pursuant to the proviso to the third sentence of Section 2.02(a).

SECTION 10.02 Termination Fee. The Sellers, jointly and severally, shall pay to the Purchaser as a fee (a "*Termination Fee*") an amount equal to three percent (3%) of the Purchase Price, but in no event less than $150,000, if a Termination Fee Event (as defined below) shall occur at any time; provided that the Sellers shall not be obligated to pay the Termination Fee if prior to the occurrence of a Termination Fee Event, this Agreement has been validly terminated pursuant solely to Sections 10.01(a), (b), or (i). This obligation (as

well as the Sellers' obligations under Section 12.07) shall survive the termination of this Agreement and shall constitute an administrative expense of the Sellers' Bankruptcy estates in the Cases under Section 503(b) and 507(i) of the Bankruptcy Code. The Termination Fee shall be earned and payable upon the occurrence of any of the following (each a "*Termination Fee Event*"):

(a) The termination of this Agreement by Sellers pursuant to Section 10.01(e);

(b) The termination of this Agreement by the Purchaser pursuant to Sections 10.01(d), 10.01(e), 10.01(f) or 10.01(j); or

(c) The entry by the Bankruptcy Court of an order denying the transactions contemplated by the Approval Order.

SECTION 10.03 Termination After Closing. This agreement will terminate upon the earlier to occur of (a) the mutual written consent of the Purchaser and the Sellers and (b) the date on which the Purchaser no longer has any interest in any Purchased Receivable (the date of such termination, the "Termination Date").

ARTICLE XI.

BANKRUPTCY PROCEDURES

SECTION 11.01 Solicitation of Proposals.(a) Purchaser and the Sellers acknowledge that under the Bankruptcy Code the sale of assets are subject to Bankruptcy Court approval. Purchaser and Sellers acknowledge that to obtain such approval, the Seller must demonstrate that it has taken reasonable steps to obtain the highest and best price possible for the Purchased Receivables, including, but not limited to, giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court providing information about the Purchased Receivables to responsible bidders, subject to appropriate confidentiality agreements, entertaining higher and better offers from responsible bidders, and, if necessary, conducting an auction.

(b) To facilitate the foregoing, the Sellers shall, promptly following the Filing Date, seek the entry of the Bid Procedures Order containing the overbid procedures and protections contained in the form of the Bid Procedures Order or as otherwise reasonably satisfactory to the Purchaser.

(c) Unless this Agreement has been terminated in accordance with its terms, or if the Board of Directors of any Seller determines in good faith that it is necessary in good faith to do so to comply with its fiduciary duties under applicable corporate law or the Bankruptcy Code, the Sellers will not, directly or indirectly, through any officer, director, employee, representative, Affiliate, advisor or agent, or otherwise, (i) solicit, initiate or encourage or take any other action to facilitate, any inquiry or the making of any proposal that constitutes, or could be expected, to lead to, an overbid; provided that (x) the Debtor-seller shall give the notice of the transactions contemplated by this Agreement to such Persons and in such manner as the Bankruptcy Court shall direct and (y) following the commencement of the Case, such Seller may in response to an

unsolicited request from a bona fide prospective purchaser (A) provide public and nonpublic information concerning the Eligible Receivables, so long as such prospective purchaser shall have executed a confidentiality agreement no less favorable than that executed by, and (B) participate in negotiations or discussions concerning such prospective purchaser's overbid.

SECTION 11.02 Bankruptcy Court Actions. (a) The Sellers shall file with the Bankruptcy Court on the Filing Date a motion, together with appropriate supporting papers and notices, seeking the entry of the Bid Procedures Order, in form and substance satisfactory to Purchaser, approving, among other things, the terms of Sections 10.02 and 12.07 hereof. The Sellers shall use their best efforts to obtain entry of the Bid Procedures Order at the first hearing conducted by the Bankruptcy Court in the Cases subject to the Bankruptcy Court's calendar. Each of the Sellers and the Purchaser acknowledge that the form of the Bid Procedures Order, attached as Exhibit D hereto, is in form and substance satisfactory to such party.

(b) In accordance with the Bid Procedure Order, the Sellers will timely send out the Notification Letters to the Approved Obligors.

(c) The Debtor-Sellers shall file with the Bankruptcy Court on the date of commencement of the Cases a motion, together with appropriate supporting papers and notices, seeking the entry of an order, pursuant to Bankruptcy Code sections 105 and 363 authorizing and approving, inter alia, the sale and assignment of the Purchased Receivables (and all Collections and other proceeds thereof) on the terms and conditions set forth herein, free and clear of all Adverse Claims to Purchaser and containing a finding that Purchaser has acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code (the "Approval Order"), all in form and substance satisfactory to the Purchaser. The Sellers shall use their best efforts to obtain entry of the Approval Order at the earliest possible hearing.

(d) The Sellers shall provide Purchaser with copies of all motions, applications, and supporting papers and notices prepared by the Seller (including forms of orders and notices to interested parties) relating in any way to Purchaser, this Agreement or the transactions contemplated hereby prior to the filing thereof in the Cases.

ARTICLE XII.

MISCELLANEOUS

SECTION 12.01. Amendments and Waivers. No amendment, modification, or termination, or waiver or consent of any provision of this Agreement, shall be effective unless the same shall be in writing and signed by Seller and Purchaser, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 12.02. Notices. Any notice or other communication required shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied, sent by overnight courier service or U.S. mail and shall be deemed to have been given when received by any person at the address specified below.

Notices shall be addressed as follows:

If to Seller:
Fansteel Inc.
Number One Tantalum Place
North Chicago, IL 60064
Attn: Gary Tessitore
Fax : (847) 689-0307

with copies to:
Schulte Roth & Zabel
919 Third Avenue
New York, NY 10022
Attn: Jeffrey Sabin, Esq.
Fax: (212) 593-5955

If to Purchaser:
The CIT Group/Commercial Services Inc.
1211 Avenue of the Americas
New York, NY 10036
Fax: (212) 382-9036

with copies to:
Fried Frank Harris Shriver & Jacobson
One New York Plaza
New York, NY 10004
Attn: Vivek Melwani, Esq.
Fax: (212) 859-8583

SECTION 12.03. No Waiver; Remedies. No failure or delay on the part of Purchaser to exercise, or any partial exercise of, any power, right, or privilege hereunder shall impair such power, right, or privilege or be construed to be a waiver of any default or Event of Default. All rights and remedies existing hereunder are cumulative to and not exclusive of any rights or remedies otherwise available.

SECTION 12.04. Binding Effect; Assignability. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that Seller shall not assign its rights or obligations hereunder.

SECTION 12.05. Survival. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the termination of this Agreement. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Sellers set forth in Section 10.02 and 12.07 and Article IX shall survive any termination of this Agreement or the Closing Date.

SECTION 12.06. Governing Law. This Agreement shall be governed by, and shall be construed and interpreted in accordance with, the laws of the State of New York.

SECTION 12.07. Costs, Expenses and Taxes. In addition to the rights of indemnification granted to Purchaser, Seller agrees to pay all reasonable out-of-pocket costs and expenses incurred by Purchaser in connection with the preparation, execution, delivery and

administration (including periodic auditing not to exceed two times in any twelve (12) month period) of this Agreement, the other documents to be delivered in connection herewith and any amendments thereto including, without limitation, the reasonable fees and out-of-pocket expenses of counsel (including fees allocable to in-house counsel) for Purchaser with respect thereto and with respect to advising Purchaser as to their respective rights and remedies under this Agreement, and all reasonable costs and expenses (including such reasonable counsel fees and expenses) incurred in connection with the enforcement of this Agreement and/or the other documents to be delivered in connection herewith.

SECTION 12.08. Netting of Payments. Payments hereunder may be made on a net basis.

SECTION 12.09. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

SECTION 12.10. Payments due on Non-Business Days: Past-Due Amounts. Whenever any payment to be made under this Agreement shall be stated to be due on a day other than a Business Day such payment shall be made on the next succeeding Business Day. Amounts not paid when due in accordance with the terms of this Agreement shall bear interest equal, at all times, to the Prime Rate plus two percent, payable on demand.

SECTION 12.11. Consent to Jurisdiction. SELLER AND PURCHASER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND SELLER AND PURCHASER HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVE ANY OBJECTION EITHER OF THEM MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.

SECTION 12.12. Waiver of Jury Trial. SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. SELLER AND PURCHASER ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF PURCHASER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. SELLER AND PURCHASER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND

THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. SELLER AND PURCHASER FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

SECTION 12.13. Severability. The invalidity, illegality, or unenforceability in any jurisdiction of any provision of this Agreement shall not affect or impair the remaining provisions of this Agreement, or such provision or obligation in any other jurisdiction.

SECTION 12.14. Headings. Section and subsection headings are included herein for convenience of reference only and shall not constitute a part of this Agreement for any-other purposes or be given substantive effect.

SECTION 12.15. Prior Agreements. This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and the terms of any letters and other documentation entered into between the parties prior to the execution of this Agreement.

SECTION 12.16. Single Transaction. The Parties acknowledge and agree (i) that this Agreement only contemplates the one time purchase of the Purchased Receivables (which may include a Second Closing) and not a series of purchases of Receivables, and (ii) that the Parties have no obligation whatsoever to enter into any further transactions or agreements.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

FANSTEEL, INC.

By:_____
Name:
Title:

THE CIT GROUP / COMMERCIAL SERVICES, INC.

By: Martha A. Allen
Name:
Title: SVP

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

FANSTEEL, INC.

By: _____
Name:
Title: CEO

THE CIT GROUP / COMMERCIAL SERVICES, INC.

By: _____
Name:
Title:

Table of Exhibits

Schedule A

EXISTING POOL

Capitalized terms used herein without definition have the meanings ascribed thereto in the Accounts Receivable Purchase Agreement between Fansteel, Inc., Wellman Dynamics, Escast Inc., Washington Manufacturing, American Sintered Technologies, Inc., Fansteel Schulz Products, Inc., and The CICT Group/Commercial Services, Inc., dated as of January 14, 2002.

*Aggregate Amount Only

The information required on this form may be computer generated.

	Balance 12/31/2001
Fansteel Inc	
Williams International	$ 10,023
Daimler Chyrsler	48,673
Ferguson Enterprises	44,656
Quality Mill Supply	88,406
Manhattan Supply Company	84,637
Pratt & Whitney - Canada	101,986
Barnes Aerospace	31,600
Beckman Coulter Inc.	164,626
Boeing	25,286
Goodrich Landing Gear	117,890
Goodrich Canada	256,898
Hamilton Sundstrand	219,146
Northrup Grumman Vought	52,812
Rolls Royce Allison	198,349
	1,444,988
Schulz Products	
Lockheed Aeronautical	168,682
Lockheed Martin	236,311
	404,993
Washington Mfg.	
Electrolux Home Products	484,290
John Deere	196,896
	681,186
Escast Inc.	
Caterpillar Inc	31,118
Caterpillar Engine System Inc.	252,385
Michigan Wheel Corporation	47,111
	330,614
American Sintered Technologies	
Dana Corporation	58,119
Electrolux Home Products	100,056
	158,175
Welmman Dynamics	
Rolls Royce Allison	316,586
Middleton Aeropsace	204,270
Bell Helicoptor Textron	356,673
Boeing	132,302
Alpha Q Inc	196,496
Teledyne Continental Motors	64,498
United Technologies - Sikorsky Aircraft	590,234
Pratt & Whitney - Canada	209,188
Williams International	48,715
Gardner Denver	-
	2,118,962
	5,138,918

Schedule B

LIST OF APPROVED OBLIGORS

Fansteel Inc	
	Williams International
	Daimler Chyrsler
	Ferguson Enterprises
	Quality Mill Supply
	Manhattan Supply Company
	Pratt & Whitney - Canada
	Barnes Aerospace
	Beckman Coulter Inc.
	Boeing
	Goodrich Landing Gear
	Goodrich Canada
	Hamilton Sundstrand
	Northrup Grumman Vought
	Rolls Royce Allison
Schulz Products	
	Lockheed Aeronautical
	Lockheed Martin
Washington Mfg.	
	Electrolux Home Products
	John Deere
Escast Inc.	
	Caterpillar Inc
	Caterpillar Engine System Inc.
	Michigan Wheel Corporation
American Sintered Technologies	
	Dana Corporation
	Electrolux Home Products
Welmman Dynamics	
	Rolls Royce Allison
	Middleton Aeropsace
	Bell Helicoptor Textron
	Boeing
	Alpha Q Inc
	Teledyne Continental Motors
	United Technologies - Sikorsky Aircraft
	Pratt & Whitney - Canada
	Williams International
	Gardner Denver

Exhibit A

BILL OF SALE

The undersigned hereby sells, transfers, assigns and conveys on the date hereof all its right, title and interest in and to the Purchased Receivables identified in the attached Schedule of Receivables, including all Related Security, if any, in existence as of the date hereof and as described in the attached Schedule of Receivables and all moneys due or to become due with respect thereto, to The CIT Group/Commercial Services, Inc., ("Purchaser") pursuant to the Accounts Receivable Purchase Agreement between Fansteel, Inc.,("Seller") and Purchaser, dated as of January 14, 2002 (the "Purchase Agreement").

This Bill of Sale is made in consideration of the payment of $_____.

This sale is made without recourse except as described in the Purchase Agreement.

All the capitalized terms used and not otherwise defined herein have the same meaning as they have in the Purchase Agreement.

This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be duly executed and delivered by its duly authorized officer on the date specified below.

FANSTEEL, INC.

By:_____

Name:

Title:

[Date]

Exhibit B

ADDRESS LIST

Chief Executive Office:	Fansteel, Inc. Number One Tantalum Place North Chicago, IL 60064 ATTN: Gary L. Tessitore, Chief Executive Officer Fax: (847) 689-0307
Principal Place of Business:	Fansteel, Inc. Number One Tantalum Place North Chicago, IL 60064 ATTN: Gary L. Tessitore, Chief Executive Officer Fax: (847) 689-0307

Exhibit C

[Seller Letterhead]

NOTIFICATION LETTER

Re: Notice of Purchase and Sale of Receivables

Dear Obligor:

We will be selling, transferring, assigning and conveying to The CIT Group/Commercial Services, Inc. ("CIT") all of our right to receive payments from you for the invoices listed on Schedule I hereto (the "Scheduled Receivables"). Schedule I lists the correct invoice number, invoice date, terms of sale, payable date, and amount due of such invoices. Please be further advised that we will be selling, transferring, assigning and conveying all of our security interests securing the aforementioned payment.

We believe that there are no Adverse Claims[1] against the Scheduled Receivables and that they are due in full on the dates, and in the amounts, set forth on Schedule I. In that regard, the sale to CIT will be made pursuant to a Bankruptcy Court order and pursuant to such order the Scheduled Receivables (and any Collections or proceeds thereof) will be sold to CIT free and clear of all Adverse Claims. Pursuant to the order of the Bankruptcy Court, dated February __, 2002 (the "Procedures Order"),[2] if you believe you have an Adverse Claim of any kind with respect to the Scheduled Receivables you must file a notice of such Adverse Claim with the Bankruptcy Court in accordance with the Procedures Order. If the Bankruptcy Court determines that you have a valid Adverse Claim, you will receive a priority administrative expense claim against us in our bankruptcy cases, but in no event will you be able to assert any Adverse Claim against the Scheduled Receivables (or any Collections or proceeds thereof) or CIT.

Pursuant to the Procedures Order entered by the Bankruptcy Court, you are required to send, from the date hereof, all payments due on any of our invoices, including, without limitation, the aforementioned invoices and all proceeds of any related security to The CIT Group/Commercial Services, [Lock box address], or wired into [wire info]. This

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1 "Adverse Claim" means with respect to any of the Scheduled Receivables, a lien, security interest, offset, deduction, defense, dispute, claim, counterclaim, adjustment, setoff, right of recoupment or any charge, encumbrance, or interest or any other right or claim of any Person (including, without limitation, an Obligor), whether related or not to the Receivable, including, without limitation, (i) any claim or defense resulting from the sale of merchandise or rendering of services related to such Receivable or the furnishing or failure to furnish such merchandise or service and (ii) any other claim, defense, basis or reason (that is not solely related to the creditworthiness of an Obligor) for the Obligor not to pay a Scheduled Receivable in cash, in full, when due.

2 A copy of the Procedures Order is attached hereto for your reference.

letter supersedes any and all payment instructions you have previously received (including, but not limited to, those instructions set forth on any of our invoices) and cannot be superseded or modified in any way except in a writing that is expressly acknowledged by CIT. Any correspondence regarding payment of the Scheduled Receivables should be forwarded to CIT at the aforementioned address.

Please sign below to acknowledge (i) your receipt of this letter, (ii) the accuracy of all the information on Schedule I, (iii) that you are the obligor with respect to the Scheduled Receivables, (iv) the new payment instructions set forth above, and (v) your agreement that no Adverse Claims may be asserted against the Scheduled Receivables (or any Collections or proceeds thereof) or CIT. You are authorized to rely on a photocopy of this letter.

Thank you for your support and assistance.

Very truly yours,

[SELLERS]

By:_____
Name:
Title:

Read, Acknowledged and Agreed

[Obligor]

By:_____
Name:
Title:

Exhibit D

FORM OF BID PROCEDURES ORDER

Exhibit D

FORM OF BID PROCEDURES ORDER

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
FANSTEEL INC., et al.,[3]	)	Case No. 02-_____ ( )
	)	(Jointly Administered)
	)	
Debtors.	)	

ORDER (A) SCHEDULING A HEARING ON THE PROPOSED ASSET SALE FREE AND CLEAR OF ADVERSE CLAIMS; (B) APPROVING AUCTION AND BIDDING PROCEDURES; AND (C) APPROVING TERMINATION FEE AND EXPENSE REIMBURSEMENTS

Upon consideration of the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of orders[4]: (A) scheduling the date, time and place for a hearing on and establishing the notice procedures for Debtors' motion (made in the Motion) seeking the issuance and entry of an order of the Court, *inter alia*, authorizing and approving sale by the Debtors identified in the Motion of their A/R (as that term is defined in the Motion) free and clear of all Adverse Claims to the CIT Group/Commercial Services, Inc. ("CIT") under the CIT Agreement (as such term is defined in the Motion); (B) approving auction and bidding procedures; (C) approving a Termination Fee and expense reimbursements; and (D) approving the sale of the A/R in accordance with the terms of the CIT Agreement to CIT or any purchaser (the "Purchaser") who makes the highest and best offer at

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[3] The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

[4] All capitalized terms used but not defined herein shall have the meanings set forth in that certain Accounts Receivable Purchase Agreement, dated January 14, 2002, among certain of the Debtors and The CIT Group/Commercial Services, Inc. (the "CIT Agreement").

the Auction (as such term is defined in the Motion) in accordance with the terms hereof; and the Court having reviewed the Motion and any responses thereto; and sufficient cause appearing therefor; IT IS HEREBY ORDERED THAT:

1. The Motion is granted and the Termination Fee, expense reimbursement, and proposed Auction Procedures attached as Exhibit B to the Motion, including the Overbid requirements and bidding increments, are hereby approved.

2. The auction will be held at the offices of Pachulski Stang Ziehl Young & Jones, P.C., 919 Market Street, 16th Floor, Wilmington, Delaware 19899-8705, at 9:00 a.m., prevailing Eastern time, on February __, 2002 (the "Auction").

3. The form of notice of sale annexed to the Motion as Exhibit C is hereby approved.

4. The form of notification letter (the "Notification Letter"), which letter is annexed as Exhibit C to the CIT Agreement (which is annexed as Exhibit A to the Motion) is hereby approved.

5. Debtors shall provide notice of the Auction in accordance with the Motion on or about January __, 2002 or as soon thereafter as possible. Debtors shall have served copies of the Motion no later than February __, 2002 on (a) the Office of the United States Trustee; (b) counsel to the Official Committee of Creditors Holding Unsecured Claims (if and when such a committee is appointed); (c) counsel for Debtors' prepetition lenders; (d) the entities who have requested notice pursuant to Bankruptcy Rule 2002; (e) the Nuclear Regulatory Commission, the Securities and Exchange Commission and those government agencies required to receive notice

of proceedings under the Bankruptcy Rules and the Local Bankruptcy Rules; (f) potential qualified bidders known to Debtors (including, but not limited to, all entities who had signed confidentiality agreements with Debtors in connection with a sale of the A/R); (g) Debtors' postpetition lenders; (h) each of the account Debtors on the A/R; and (i) other entities Debtors desire to receive notice.

6. Any objection on any basis any such party has to that portion of the Motion seeking approval of the Sale, except as provided herein, must be filed and served on Debtors' co-counsel so it is received no later than 4:00 p.m., prevailing Eastern time, on February __, 2002.

7. The payment to CIT by the Debtors of (i) the Termination Fee in the amount of 3% of the Purchase Price (but in no event less than $150,000) under the circumstances and as in the manner provided for in the CIT Agreement, and (ii) expense reimbursement to the Purchaser pursuant to Section 12.07 of the CIT Agreement, is hereby approved. These obligations shall survive the termination of the CIT Agreement, shall constitute administrative expenses of the Sellers' bankruptcy estates under Section 503(b) and 507(a)(1) of the Bankruptcy Code, and shall be payable in cash in full within one (1) Business Day of a Termination Fee Event.

8. The Notification Letters will be mailed via overnight courier and sent via facsimile to each of the account debtors on the A/R that is proposed to be sold (the "Notified Account Debtors") by no later than January __, 2002.

9. All obligations under the Bridge DIP shall be satisfied in full on or before the Closing Date and all liens and security interests granted under the Bridge DIP, including, without limitation, on the Purchased Receivables, the Collections or other proceeds thereof shall be terminated and released.

10. Regardless of whether the Notified Account Debtors have acknowledged the Notification Letters, the Purchased Receivables (and all Collections or other proceeds thereof) shall be sold to Purchaser free and clear of (i) all liens, claims, encumbrances and interests pursuant to Section 363(f) and (ii) all other Adverse Claims pursuant to Sections 363(f) and 105(a) of the Bankruptcy Code. An Adverse Claim means, with respect to any A/R, a lien, a security interest, offsets, deduction, defense, dispute, claim, counterclaim, adjustment, setoff, right of recoupment or any charge or encumbrance or interests or any other right or claim of any Person (including, without limitation, an Obligor), whether related or not to the A/R, including, without limitation, (i) any claim or defense resulting from the sale of merchandise or rendering of services related to such A/R or the furnishings or failure to furnish such merchandise or service and (ii) any other claim, defense, basis or reason (that is not solely related to the creditworthiness of an Obligor) for the Obligor not to pay a receivable in cash, in full, when due. All persons and entities holding (i) liens, claims, interests, or encumbrances or (ii) any other Adverse Claim, of any kind or nature with respect to the Purchased Receivables (or any Collections or other proceeds thereof) are barred from asserting such liens, claims, encumbrances or other Adverse Claims of any kind or nature against the Purchaser, its successors or assigns, the Purchased Receivables or any Collections or other proceeds thereof.

11. Each Notified Account Debtor is entitled to file a statement of Adverse Claims ("Statement of Adverse Claims") with the claims agent appointed in these cases (the "Claims Agent"), notwithstanding any other bar date established for claims in the case, no later than 4:00 p.m., prevailing Eastern time, on the date that is 30 days after the date of mailing of the Notification Letter (the "Account Debtor Bar Date"), as set forth in the Notification Letter.

12. Notified Account Debtors must file their statements of Adverse Claims so that they are received by the Claims Agent by the time set forth above on the Account Debtor Bar Date, or be deemed to have waived or released such defenses and claims against Debtors and their property.

13. With respect to any A/R that is purchased by the Purchaser, any Adverse Claim that is asserted in a Statement of Adverse Claim, to the extent ultimately allowed by the Court, shall be enforceable against the appropriate Debtor's estate, and shall hereby be a superpriority administrative expense claim against the applicable Debtor's estate. No Adverse Claim (whether or not asserted or allowed) shall be enforceable against the Purchaser, the Purchased Receivables or any Collections or other proceeds thereof.

14. Each of the Notified Account Debtors are hereby ordered to send all payments with respect to any invoices owed to any of the Debtors and all proceeds of any related security to a Purchaser lockbox, which shall be identified in the Notification Letter (the "Purchaser Lockbox"). If any of the Debtors, the Northern Trust Company, American National Bank, M&I Bank, Bank of Woukegan, or any other party receives any payments from the Notified Account Debtors with respect to any invoices owed to any of the Sellers or any

proceeds of any related security, such party shall not commingle such payments with any other monies, shall hold such payments and proceeds in trust for CIT and shall immediately, but in no event more than one (1) Business Day after receipt, deliver such payments and proceeds (in the form received) to CIT.

15. All payments received in the Purchaser Lockbox (the "Collections") shall be deposited into an account of CIT. Until the Closing Date, (a) CIT shall hold the deposited Collections in constructive trust for the Debtors in accordance with the CIT Agreement and subject to the liens under the Bridge DIP, and (b) CIT shall not use, transfer, apply or otherwise affect in any manner the Collections; provided however that CIT shall deliver to the Sellers three (3) Business Days after the funds clear the Federal Reserve (or if such day is not a Business Day, the next Business Day), any Collections which would have been distributed to the Sellers pursuant to Section 2.02(c) of the Agreement if such Collections had been received by CIT after the Closing Date. If the Closing Date occurs, on the Closing Date (x) CIT shall no longer hold the Collections in constructive trust for the Debtors or any other party, (y) the Collections shall not be subject to any liens or other Adverse Claims of any party, and (z) CIT shall apply the Collections as set forth in Section 2.02(c) of the Agreement. If the Agreement is terminated prior to the Closing Date, CIT shall deliver the Collections deposited in the account of CIT (less any amounts owed by Sellers to CIT, including, without limitation, pursuant to sections 10.02 and 12.07 of the Agreement; provided, however, that all obligations of the Debtors under the Bridge DIP have been satisfied in full prior thereto) to an account directed by the Sellers. Upon

termination of the CIT Agreement (whether prior to or after the Closing Date), unless otherwise agreed to in writing by the Sellers and CIT, CIT shall close the Purchaser Lockbox.

16. CIT and its officers, employees, designees and agents shall have no liability arising from any act or acts contemplated by this Order or in furtherance thereof, whether of omission or commission, and whether based upon any error of judgment or mistake of law or fact, except for acts of bad faith or willful misconduct.

17. Debtors will pay CIT the fees and expenses related to the maintenance and administration of the Purchaser Lockbox (including, but not limited to, wire charges incurred in connection with the delivery of money to the Debtors) and set forth on Exhibit E attached to the CIT Agreement.

18. Neither the effectiveness of this Order or any other order on the motion is stayed for any period after the entry of such order or orders. The stay under Bankruptcy Rule 6004(g) shall not apply to this Order or any other Order.

Dated: _____, 2002

_____
Judge

Exhibit E

FORM OF LOCKBOX AGREEMENT

Exhibit E

FORM OF LOCKBOX AGREEMENT

[Purchaser's Letterhead]

January __, 2002

_____
_____
_____
_____

Ladies and Gentlemen:

The CIT Group/Commercial Services, Inc. ("CIT") has entered into that certain Accounts Receivable Purchase Agreement with Fansteel, Inc., Wellman Dynamics, Escast Inc., Washington Manufacturing, American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc (collectively, the "Company"), dated January __, 2002 (the "Agreement"), pursuant to which CIT has agreed to purchase certain accounts receivable from the Company (the "Purchased Receivables"). The Agreement requires that all collections with respect to the Company's accounts receivable from any Approved Obligors[5] be forwarded to a CIT lockbox and applied pursuant to section 2.02(a) of the Agreement. To effectuate this arrangement, CIT and the Company agree as follows:

1. CIT shall establish a lockbox at post office box _____ in Charlotte, North Carolina (the "Lockbox") to which the Company shall direct the Approved Obligors (through the delivery of the Notification Letter and the Bid Procedures Order) to make payment of their accounts receivable owing to the Company, and from which CIT shall collect and process such payments (checks, items of payment and other remittances received in the Lockbox are hereinafter known as the "Payment Items").

2. All Payment Items received in the Lockbox shall be deposited by CIT in CIT's bank account (the "CIT Account"). Funds from such Payment Items shall be applied in accordance with Section 2.02(a) of the Agreement.

3. Promptly after the deposit of the Payment Items into the CIT Account, CIT shall forward copies of unapplied Payment Items to the Company. CIT shall prepare a monthly statement for the Company that provides an accounting for the Payment Items and all fees charged to the Company hereunder.

4. The Company will be responsible for all costs and expenses charged by the Bank in connection with the Lockbox and the CIT Account. In addition, the Company shall pay CIT the fees set forth in Schedule A attached hereto as the same may be amended and

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5 Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Agreement.

in effect from time to time. All such charges shall be payable by the Company directly to CIT, or CIT may charge the Company's accounts with CIT directly for such charges.

5. Subject to the Bid Procedures Order, the Company recognizes CIT's continuing ownership interest in the Lockbox, the CIT Account and all Payment Items deposited in the CIT Account and the proceeds thereof. CIT reserves the right to assert any claim and exercise any right of deduction, set off, lien or other right or claim with respect to the Lockbox or the CIT Account or the funds therein, with regard to any obligations of the Company to CIT, pursuant to the terms and conditions of this agreement, the Agreement, or any other agreement by and between the Company and CIT. CIT shall also be entitled to set off, debit or otherwise charge against any of the Company's accounts with CIT, without notice to the Company, the face amount of any Payment Item received in the Lockbox and deposited into the CIT Account that is subsequently returned for any reason and all fees, costs and service charges relating to the returned Payment Item.

6. The Company hereby agrees to indemnify CIT against, and save CIT harmless from, any and all losses, liabilities, claims, costs, expenses and damages of any nature in any way arising out of or relating to the Lockbox and the CIT Account, including any disputes or legal actions concerning deposit of the Payment Items into the CIT Account, except for instances due solely and directly to CIT's gross negligence or willful misconduct. The foregoing indemnity shall survive the termination of this agreement.

7. CIT shall have no liability to the Company, either directly or indirectly, for any damages arising out of this agreement, except for instances due solely and directly to CIT's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. CIT shall not be liable in any event for indirect or consequential damages even if CIT has been informed of the possibility of such damages.

8. This agreement may not be terminated or canceled by the Company so long as CIT has any interest in the Purchased Receivables. CIT may terminate this Agreement at any time upon at least thirty (30) days prior written notice.

9. This agreement supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof other than the Agreement and Bid Procedures Order.

10. This agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which, taken together, shall constitute but one and the same instrument.

11. This agreement may be amended only in a writing signed by the Company and CIT.

12. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR ANY OTHER AGREEMENT OR TRANSACTION BETWEEN THE PARTIES.**

13. This Agreement shall be governed by and construed in accordance with the internal laws and judicial decisions of the State of North Carolina.

If this letter correctly states the terms of our Agreement, please so indicate by signing in the space provided below.

Very truly yours,

THE CIT GROUP/COMMERCIAL SERVICES, INC.

By: _____
Title: _____

AGREED AND ACCEPTED:

_____

By: _____
Title: _____

EXHIBIT B

AUCTION PROCEDURES

AUCTION PROCEDURES

1. Written bids for the acquisition of Debtors' accounts receivable (the "A/R") must be received by Debtors' counsel no later than 4:00 p.m., prevailing Eastern time, on February __, 2002 (the "Bid Date"). Unless Debtors in their sole and absolute discretion determine otherwise, only those parties who submit timely written bids will be entitled to bid at the auction of the A/R (the "Auction").

2. To be considered a "Qualified Bidder," the party's written bid must be accompanied by: (a) notice of the identity of such potential bidder and an officer or authorized agent who will appear on behalf of such bidder; (b) a minimum deposit of $25,000 in a cashier's check or other immediately available funds for the A/R or otherwise demonstrate to the satisfaction of the Debtors its financial ability to close the purchase; (3) an acknowledgment that the offer is not subject to any financing contingencies; and (4) evidence of such potential bidder's financial ability to consummate the proposed transaction — whether or not the evidence provided is sufficient to show such potential bidder's financial viability is within the sole and absolute discretion of Debtors. Any and all overbids shall be on the same terms and conditions in all material respects to those set forth in the CIT Agreement; provided, however, that Debtors, in their sole and absolute discretion, shall determine whether an overbid is on the same terms and conditions as those set forth in the CIT Agreement.

3. Furthermore, Debtors reserve the right to consider and accept such offers as Debtors in their sole and absolute discretion determine is in the best interest of Debtors and

their estates even after the Auction is concluded but before the conclusion of the hearing on the Motion.

4. The deposit shall be credited to the purchase price if such Qualified Bidder is the successful bidder or, if not, returned to the Qualified Bidder. In the event that the successful bidder does not close, the earnest money deposit will be retained as liquidated damages and Debtors shall seek to close with the next highest bidder, whose bid shall remain open and whose deposit shall be held until such time as Debtors are able to consummate their transaction with the successful bidder.

5. A live oral auction will be conducted at the offices of Pachulski, Stang, Ziehl, Young & Jones, P.C., commencing at 9:00 a.m., prevailing Eastern Time, on February __, 2002, (the "Auction Date") for the sale of the A/R, and any Qualified Bidder may appear and submit its highest and final bid for the A/R.

6. The initial overbid for the A/R shall not be less than $_____ in cash greater than the Purchase Price under the CIT Agreement. All subsequent bids must exceed the prior bid by not less than $_____.

7. All written offers and other bids submitted on the Bid Date, as modified by a Qualified Bidder at the Auction, shall remain open and irrevocable through the closing of the transaction for the sale of the A/R. Acceptance of a Bid shall, in all respects, be subject to entry of an Order by the Bankruptcy Court which, among other things, authorizes Debtors to consummate the sale with the successful Bidder.

8. This proposed sale may be withdrawn, without liability (other than any liability to CIT under the CIT Agreement), prior to, during or at the conclusion of the Auction for any reason, including a determination that a sale pursuant to the terms and conditions offered at the Auction is not in the best interest of Debtors.

9. All of Debtors' rights, title and interests in and to the A/R to be sold and assigned shall be sold and assigned free and clear of all Adverse Claims (as such term is defined in the Sale Procedures Order). The Order shall provide for, among other things, that Adverse Claims of account debtors shall be superpriority administrative expenses of the Debtors' estates to the extent allowed.

10. Debtors reserve the right to: (a) determine in their sole and absolute discretion which offer, if any, for the A/R is the highest and best offer; and (b) reject at any time prior to entry of an order of the Court approving an offer, any offer which Debtors, in their discretion, deem to be: (i) inadequate or insufficient; (ii) not in conformity with the requirement of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the terms and conditions of sale set forth herein; or (iii) contrary to the best interests of Debtors and their estates. Debtors have no obligation to accept or submit for Court approval any offer presented at the Auction.

EXHIBIT C

NOTICE OF SALE

Auction Date: _____ **at 9:00 a.m. Eastern Time**
Deadline to Submit Bids: _____ **at 4:00 p.m. Eastern Time**
Hearing on Motion: _____ **at 12:30 p.m. Eastern Time**
Deadline to Object to Motion: _____ **at 4:00 p.m. Eastern Time**

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
FANSTEEL INC., et al.,[1]	)	Case No. 02-_____ ( )
	)	(Jointly Administered)
	)	
Debtors.	)	

NOTICE OF SALE

PLEASE BE ADVISED that on January ___, 2002, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Sale Procedures Order") approving the auction procedures attached hereto as Exhibit A (the "Auction Procedures"), which procedures are to be applied in connection with the proposed disposition by sale of certain of Debtors' accounts receivable (the "A/R"). The A/R will be sold free and clear of all Adverse Claims (as such term is defined in the Sale Procedures Order. A copy of the Sale Procedures Order is attached hereto as Exhibit B.

[1] The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

PLEASE BE FURTHER ADVISED that all interested bidders should read carefully the Auction Procedures. To the extent there are any inconsistencies between the Auction Procedures as set forth in Exhibit A hereto and the summary description of its terms and conditions contained in this Notice, the terms of the Auction Procedures control.

PLEASE BE FURTHER ADVISED that, pursuant to the Auction Procedures, a public auction of the A/R will be conducted at the office of Pachulski, Stang, Ziehl, Young & Jones, P.C., 919 Market Street, 16th Floor, Wilmington, Delaware 19899-8705 at 9:00 a.m., prevailing Eastern time on February __, 2002 or such later date as Debtors may agree (the "Auction").

PLEASE BE FURTHER ADVISED that, pursuant to the Auction Procedures, any bidder desiring to submit a bid at the Auction (a "Bid") must send a letter of interest to Debtors' undersigned counsel and must first be qualified by Debtors (a "Qualified Bidder"). Qualified Bidders must deliver their bids in writing to: (a) Debtors' undersigned counsel at their respective specified addresses such that the Bid is actually received no later _____ at 4:00 p.m., prevailing Eastern time, on February __, 2002. Bids received after this deadline may be rejected or considered in Debtors' discretion.

PLEASE BE FURTHER ADVISED that, pursuant to the Auction Procedures, Debtors reserve the right to: (a) determine in their sole and absolute discretion which offer, if any, for the A/R is the highest and best offer; and (b) reject at any time prior to entry of an order of the Court approving an offer, any offer which Debtors, in their discretion, deem to be: (a) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy

Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the terms and conditions of sale set forth herein; or (iii) contrary to the best interest of Debtors and their estates. Debtors will have no obligation to accept or submit for Court approval any offer presented at the Auction.

PLEASE BE FURTHER ADVISED THAT Debtors reserve the right to consider and accept such offers as Debtors in their sole and absolute discretion determine is in the best interest of Debtors and their estates even after the Auction is concluded but before the conclusion of the hearing on the Motion.

PLEASE BE FURTHER ADVISED that, all written offers and other bids submitted on the Bid Date, as modified by a Qualified Bidder at the Auction, shall remain open and irrevocable through the closing of the transaction for the sale of the A/R. Acceptance of a Bid shall, in all respects, be subject to entry of an Order by the Bankruptcy Court which, among other things, authorizes Debtors to consummate the sale with the successful Bidder.

PLEASE BE FURTHER ADVISED that, all requests for information concerning the A/R should be directed to the undersigned counsel for Debtors.

Dated: January ___, 2002

SCHULTE, ROTH & ZABEL LLP
Jeffrey S. Sabin (JSS 7600)
Mark A. Broude (MAB 1902)
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955

-and-

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.

Laura Davis Jones (#2436)
Hamid R. Rafatjoo (CA Bar No. 181564)
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

[Proposed] Co-Counsel to Debtors and Debtors in Possession

Exhibit D

FORM OF BID PROCEDURES ORDER

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
FANSTEEL INC., et al.,[3]	)	Case No. 02-_____ ( )
	)	(Jointly Administered)
	)	
Debtors.	)	

ORDER (A) SCHEDULING A HEARING ON THE PROPOSED ASSET SALE FREE AND CLEAR OF ADVERSE CLAIMS; (B) APPROVING AUCTION AND BIDDING PROCEDURES; AND (C) APPROVING TERMINATION FEE AND EXPENSE REIMBURSEMENTS

Upon consideration of the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of orders[4]: (A) scheduling the date, time and place for a hearing on and establishing the notice procedures for Debtors' motion (made in the Motion) seeking the issuance and entry of an order of the Court, *inter alia*, authorizing and approving sale by the Debtors identified in the Motion of their A/R (as that term is defined in the Motion) free and clear of all Adverse Claims to the CIT Group/Commercial Services, Inc. ("CIT") under the CIT Agreement (as such term is defined in the Motion); (B) approving auction and bidding procedures; (C) approving a Termination Fee and expense reimbursements; and (D) approving the sale of the A/R in accordance with the terms of the CIT Agreement to CIT or any purchaser (the "Purchaser") who makes the highest and best offer at

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[3] The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

[4] All capitalized terms used but not defined herein shall have the meanings set forth in that certain Accounts Receivable Purchase Agreement, dated January 14, 2002, among certain of the Debtors and The CIT Group/Commercial Services, Inc. (the "CIT Agreement").

the Auction (as such term is defined in the Motion) in accordance with the terms hereof; and the Court having reviewed the Motion and any responses thereto; and sufficient cause appearing therefor; IT IS HEREBY ORDERED THAT:

1. The Motion is granted and the Termination Fee, expense reimbursement, and proposed Auction Procedures attached as Exhibit B to the Motion, including the Overbid requirements and bidding increments, are hereby approved.

2. The auction will be held at the offices of Pachulski Stang Ziehl Young & Jones, P.C., 919 Market Street, 16th Floor, Wilmington, Delaware 19899-8705, at 9:00 a.m., prevailing Eastern time, on February __, 2002 (the "Auction").

3. The form of notice of sale annexed to the Motion as Exhibit C is hereby approved.

4. The form of notification letter (the "Notification Letter"), which letter is annexed as Exhibit C to the CIT Agreement (which is annexed as Exhibit A to the Motion) is hereby approved.

5. Debtors shall provide notice of the Auction in accordance with the Motion on or about January __, 2002 or as soon thereafter as possible. Debtors shall have served copies of the Motion no later than February __, 2002 on (a) the Office of the United States Trustee; (b) counsel to the Official Committee of Creditors Holding Unsecured Claims (if and when such a committee is appointed); (c) counsel for Debtors' prepetition lenders; (d) the entities who have requested notice pursuant to Bankruptcy Rule 2002; (e) the Nuclear Regulatory Commission, the Securities and Exchange Commission and those government agencies required to receive notice

of proceedings under the Bankruptcy Rules and the Local Bankruptcy Rules; (f) potential qualified bidders known to Debtors (including, but not limited to, all entities who had signed confidentiality agreements with Debtors in connection with a sale of the A/R); (g) Debtors' postpetition lenders; (h) each of the account Debtors on the A/R; and (i) other entities Debtors desire to receive notice.

6. Any objection on any basis any such party has to that portion of the Motion seeking approval of the Sale, except as provided herein, must be filed and served on Debtors' co-counsel so it is received no later than 4:00 p.m., prevailing Eastern time, on February __, 2002.

7. The payment to CIT by the Debtors of (i) the Termination Fee in the amount of 3% of the Purchase Price (but in no event less than $150,000) under the circumstances and as in the manner provided for in the CIT Agreement, and (ii) expense reimbursement to the Purchaser pursuant to Section 12.07 of the CIT Agreement, is hereby approved. These obligations shall survive the termination of the CIT Agreement, shall constitute administrative expenses of the Sellers' bankruptcy estates under Section 503(b) and 507(a)(1) of the Bankruptcy Code, and shall be payable in cash in full within one (1) Business Day of a Termination Fee Event.

8. The Notification Letters will be mailed via overnight courier and sent via facsimile to each of the account debtors on the A/R that is proposed to be sold (the "Notified Account Debtors") by no later than January __, 2002.

9. All obligations under the Bridge DIP shall be satisfied in full on or before the Closing Date and all liens and security interests granted under the Bridge DIP, including, without limitation, on the Purchased Receivables, the Collections or other proceeds thereof shall be terminated and released.

10. Regardless of whether the Notified Account Debtors have acknowledged the Notification Letters, the Purchased Receivables (and all Collections or other proceeds thereof) shall be sold to Purchaser free and clear of (i) all liens, claims, encumbrances and interests pursuant to Section 363(f) and (ii) all other Adverse Claims pursuant to Sections 363(f) and 105(a) of the Bankruptcy Code. An Adverse Claim means, with respect to any A/R, a lien, a security interest, offsets, deduction, defense, dispute, claim, counterclaim, adjustment, setoff, right of recoupment or any charge or encumbrance or interests or any other right or claim of any Person (including, without limitation, an Obligor), whether related or not to the A/R, including, without limitation, (i) any claim or defense resulting from the sale of merchandise or rendering of services related to such A/R or the furnishings or failure to furnish such merchandise or service and (ii) any other claim, defense, basis or reason (that is not solely related to the creditworthiness of an Obligor) for the Obligor not to pay a receivable in cash, in full, when due. All persons and entities holding (i) liens, claims, interests, or encumbrances or (ii) any other Adverse Claim, of any kind or nature with respect to the Purchased Receivables (or any Collections or other proceeds thereof) are barred from asserting such liens, claims, encumbrances or other Adverse Claims of any kind or nature against the Purchaser, its successors or assigns, the Purchased Receivables or any Collections or other proceeds thereof.

11. Each Notified Account Debtor is entitled to file a statement of Adverse Claims ("Statement of Adverse Claims") with the claims agent appointed in these cases (the "Claims Agent"), notwithstanding any other bar date established for claims in the case, no later than 4:00 p.m., prevailing Eastern time, on the date that is 30 days after the date of mailing of the Notification Letter (the "Account Debtor Bar Date"), as set forth in the Notification Letter.

12. Notified Account Debtors must file their statements of Adverse Claims so that they are received by the Claims Agent by the time set forth above on the Account Debtor Bar Date, or be deemed to have waived or released such defenses and claims against Debtors and their property.

13. With respect to any A/R that is purchased by the Purchaser, any Adverse Claim that is asserted in a Statement of Adverse Claim, to the extent ultimately allowed by the Court, shall be enforceable against the appropriate Debtor's estate, and shall hereby be a superpriority administrative expense claim against the applicable Debtor's estate. No Adverse Claim (whether or not asserted or allowed) shall be enforceable against the Purchaser, the Purchased Receivables or any Collections or other proceeds thereof.

14. Each of the Notified Account Debtors are hereby ordered to send all payments with respect to any invoices owed to any of the Debtors and all proceeds of any related security to a Purchaser lockbox, which shall be identified in the Notification Letter (the "Purchaser Lockbox"). If any of the Debtors, the Northern Trust Company, American National Bank, M&I Bank, Bank of Woukegan, or any other party receives any payments from the Notified Account Debtors with respect to any invoices owed to any of the Sellers or any

proceeds of any related security, such party shall not commingle such payments with any other monies, shall hold such payments and proceeds in trust for CIT and shall immediately, but in no event more than one (1) Business Day after receipt, deliver such payments and proceeds (in the form received) to CIT.

15. All payments received in the Purchaser Lockbox (the "Collections") shall be deposited into an account of CIT. Until the Closing Date, (a) CIT shall hold the deposited Collections in constructive trust for the Debtors in accordance with the CIT Agreement and subject to the liens under the Bridge DIP, and (b) CIT shall not use, transfer, apply or otherwise affect in any manner the Collections; provided however that CIT shall deliver to the Sellers three (3) Business Days after the funds clear the Federal Reserve (or if such day is not a Business Day, the next Business Day), any Collections which would have been distributed to the Sellers pursuant to Section 2.02(c) of the Agreement if such Collections had been received by CIT after the Closing Date. If the Closing Date occurs, on the Closing Date (x) CIT shall no longer hold the Collections in constructive trust for the Debtors or any other party, (y) the Collections shall not be subject to any liens or other Adverse Claims of any party, and (z) CIT shall apply the Collections as set forth in Section 2.02(c) of the Agreement. If the Agreement is terminated prior to the Closing Date, CIT shall deliver the Collections deposited in the account of CIT (less any amounts owed by Sellers to CIT, including, without limitation, pursuant to sections 10.02 and 12.07 of the Agreement; provided, however, that all obligations of the Debtors under the Bridge DIP have been satisfied in full prior thereto) to an account directed by the Sellers. Upon

termination of the CIT Agreement (whether prior to or after the Closing Date), unless otherwise agreed to in writing by the Sellers and CIT, CIT shall close the Purchaser Lockbox.

16. CIT and its officers, employees, designees and agents shall have no liability arising from any act or acts contemplated by this Order or in furtherance thereof, whether of omission or commission, and whether based upon any error of judgment or mistake of law or fact, except for acts of bad faith or willful misconduct.

17. Debtors will pay CIT the fees and expenses related to the maintenance and administration of the Purchaser Lockbox (including, but not limited to, wire charges incurred in connection with the delivery of money to the Debtors) and set forth on Exhibit E attached to the CIT Agreement.

18. Neither the effectiveness of this Order or any other order on the motion is stayed for any period after the entry of such order or orders. The stay under Bankruptcy Rule 6004(g) shall not apply to this Order or any other Order.

Dated: _____, 2002

_____
Judge