

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**BORDERS GROUP, INC., *et al.*,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 11-10614 (MG)**

**(Jointly Administered)**

**ORDER PURSUANT TO SECTIONS 105, 363 AND 365 OF THE BANKRUPTCY  
CODE AND RULES 2002, 6004, 6006 AND 9014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE APPROVING SALE PROCEDURES IN  
CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS FREE  
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for an order pursuant to sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking approval of: (I) the sale of substantially all of the Debtors' assets free and clear of all liens, claims, encumbrances and interests and the assumption and assignment of executory contracts and expired leases related thereto, (II) approving the sale procedures and break-up fee, and (III) granting related relief; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

<sup>2</sup> All terms not otherwise defined herein shall have the meanings assigned to them in the Motion.

of the Motion having been given and it appearing that no other notice need be given; and upon the arguments made at the hearing held on July 14, 2011, and having heard the objections made to the relief sought in the Motion; and after due deliberation and sufficient cause therefore,

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

A. The Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105, 363, 364, 365 and 503 and Bankruptcy Rules 2002, 6004, 6006 and 9014. Venue of these cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The relief granted herein is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

C. The notice of the Motion and the hearing given by the Debtors constitutes due and sufficient notice thereof.

D. The Debtors have provided good and sufficient reasons and have demonstrated a compelling and sound business justification for the Court to: (1) approve the Bid Procedures in the form annexed hereto as Exhibit A (hereinafter, the "Bid Procedures"); (2) approve the form and manner of notice of the Motion, the Auction, the Sale Hearing and the assumption and assignment of the Assumed Agreements; and (3) set the date of the Auction and the Sale Hearing.

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<sup>3</sup> The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

E. The Bid Procedures are reasonable and appropriate, and represent the best method of maximizing the realizable value of the Debtors' business and assets.

**THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

**A. Approval of Motion, Bid Procedures.**

1. The Motion is granted to the extent provided herein.
2. All objections filed in response to the relief granted herein, to the extent not resolved as set forth herein or at the Hearing, are hereby overruled.
3. The Bid Procedures, substantially in the form annexed hereto as Exhibit A and incorporated herein by reference, are hereby approved and shall govern all proceedings related to the subject thereof, including: (1) the Modified Purchase Agreement (as defined in the Bid Procedures), if any; (2) the Agency Agreement (as amended), (3) the Modified Agency Agreement (as defined in the Bid Procedures), if any; (4) the Auction, if any; and (5) the sale. Notwithstanding the foregoing, if the Debtors alter the Bid Procedures, which can only be done after consultation with the Committee and the DIP Agents, the Debtors shall provide notice of such changes to: (a) the Committee; (b) the DIP Agents; (c) the Liquidating Agent; and (d) the bidders or the Qualified Bidders (as the case may be). The failure to include or reference a particular provision of the Bid Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.
4. The Debtors are authorized to conduct the Auction as set forth in the Bid Procedures.
5. July 17, 2011 at 5:00 p.m. shall be the deadline (the "Bid Deadline") for the submission of bids in accordance with the terms described in the Bid Procedures (notwithstanding Bankruptcy Rule 9006(a)(1)(C)). Absent irregularities in the conduct of the

Auction, or reasonable and material confusion during the bidding, the Court will not consider bids made after the Auction has been closed.

**B. Notice of and Objections to the Sale.**

6. The Debtors shall file a notice announcing either that there was insufficient interest to conduct the Auction by July 18, 2011 or, in the event an Auction is conducted, the results of the Auction on the Court's docket and the Debtors' restructuring website ([www.bordersreorganization.com](http://www.bordersreorganization.com)) as soon as practicable on or before July 20, 2011. The Court shall hold a hearing on July 21, 2011 at 11:00 a.m. (prevailing eastern time), at which time the Court shall consider the approval of the sale as set forth in the Motion and approve the Winning Bidder and confirm the results of the Auction, if any.

7. Objections, if any, to the sale shall be made in writing, shall state with particularity the grounds therefore, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest, on a 3.5-inch disk or CD-ROM, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-399 or otherwise so as to be actually received no later than July 18, 2011 at 4:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline") by: (i) Kasowitz, Benson, Torres & Friedman LLP, attorneys for the Debtors, 1633 Broadway, New York, New York 10019 (Attn: David M. Friedman, Esq., Andrew K. Glenn,

Esq., and Jeffrey R. Gleit, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, New York, New York 10004 (Attn: Paul K. Schwartzberg, Esq.); (iii) Lowenstein Sandler PC, counsel for the official committee of unsecured creditors, 65 Livingston Avenue, Roseland, New Jersey 07068 (Attn: Bruce D. Buechler, Esq. and Paul Kizel, Esq.), and 1251 Avenue of the Americas, New York, New York 10020 (Attn: Bruce S. Nathan, Esq.); (iv) counsel for the DIP Agents: (a) Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178-0060 (Attn: Wendy Walker, Esq.), and 225 Franklin Street, 16th Floor, Boston, Massachusetts 02110-4104 (Attn: Sandra Vrejan, Esq.), counsel for the Working Capital Agent, and (b) Choate Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin Simard, Esq.), counsel for GA Capital LLC; (v) Kelley Drye & Warren LLP, attorneys for certain landlords, 101 Park Avenue, New York, New York 10178 (Attn: James S. Carr, Esq., Robert L. LeHane, Esq., and Benjamin D. Feder, Esq.); and (vi) Bingham McCutchen LLP, attorneys for Bank of America, N.A., One Federal Street, Boston, Massachusetts 02110-1726 (Attn: Julia Frost-Davies, Esq. and Andrew Gallo, Esq.); provided, however, in the event that the Debtors conduct an Auction in accordance with the Bid Procedures and the results of that Auction yield a Winning Bidder(s) other than the Liquidating Agent, objections as to any issues raised by such Winning Bid(s) or the identity of the Winning Bidder(s) may be filed and served in accordance with the above requirements no later than July 20, 2011 at 3:00 p.m. (prevailing Eastern Time) (the “Supplemental Objection Deadline”).

**C. Assumed Agreements.**

8. The Debtors have served, on or before July 1, 2011, a notice to each Non-Debtor Counterparty to all or nearly all executory contracts and/or unexpired leases of the Debtors,

indicating that such Non-Debtor Counterparty's contract may be assumed and assigned, along with the proposed cure amount (the "Cure Amount") calculated by the Debtors (the "Notice of Assumption and Assignment"), the form of which is attached hereto as Exhibit B. The Notice of Assumption and Assignment is approved and the service of same on the addresses of the Non-Debtor Counterparties by the date the Debtors served such notices constitutes good and adequate service to the Non-Debtor Counterparties; provided, however, the following modifications and/or clarifications shall apply:

- a. Nothing in this Order or the Notice of Assumption and Assignment shall effect any need of the Debtors to obtain prior consent of a lessor of an unexpired lease of non-residential real property to any further extension of the Assumption Deadline under 11 U.S.C. § 365(d)(4)(B)(ii);
- b. In the event that an executory contract or unexpired lease is assumed and assigned in connection with the sale and this Order, the Debtors shall serve on the Non-Debtor Counterparty to an Assumed Agreement a notice indicating the Assumed Agreement that has been assumed, the effective date of the assumption and assignment, and the amount of the Cure Payment, if required, that has been made within three business days of such payment and/or assumption and assignment;
- c. The Debtors will serve the Notice of Non-Assumption to the Non-Debtor Counterparty to a particular executory contract or unexpired lease within ten business days after the Winning Bidder notifies the Debtors that it will not require the Debtors to assume and assign such executory contract or unexpired lease; and
- d. Copies of any notices sent in connection with the assumption and assignment or non-assumption of the Debtors' executory contracts and unexpired leases as set forth herein shall be served on counsel to the Non-Debtor Counterparties that have specifically requested or, in the future request, such service in connection with the Motion.

9. To the extent that any such Non-Debtor Counterparty seeks to object to (a) the assumption and assignment of its respective Assumed Agreement or (b) the Cure Amount, such objection shall be made in writing, shall state with particularity the grounds therefore, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the

Southern District of New York (the “Local Rules”), and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-399 (General Order M-399 and the User’s Manual for the Electronic Case Filing System can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court’s case filing system, and by all other parties in interest, on a 3.5-inch disk or CD-ROM, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-399 or otherwise so as to be actually received no later than July 18, 2011 at 4:00 p.m. (prevailing Eastern Time); provided, however, in the event that the Debtors conduct an Auction and the results of that Auction yield a Winning Bidder(s) other than the Liquidating Agent, objections as to any issues raised by such Winning Bid(s) or the identity of the Winning Bidder(s) may be filed and served in accordance with the above requirements no later than the Supplemental Objection Deadline.

10. If an objection challenges a Cure Amount, the objection must set forth the cure amount being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof.

**D. Additional Provisions.**

11. In the event of any inconsistencies between this Order and the Motion, the Purchase Agreement or the Bid Procedures, this Order shall govern in all respects.

12. Notwithstanding Bankruptcy Rule 6004(h), this Order shall not be stayed for fourteen (14) days after the entry hereof and this Order shall be immediately effective and enforceable upon its entry.

13. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: July 14, 2011  
New York, New York

/s/Martin Glenn  
UNITED STATES BANKRUPTCY JUDGE



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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**BORDERS GROUP, INC., *et al.*,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 11-10614 (MG)**

**(Jointly Administered)**

**BID PROCEDURES FOR SALE OF ALL  
OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

On July 14, 2011, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered that certain order (the "Sale Procedures Order"), which granted the *Debtors' Motion for Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto, (II) Approving the Sale Procedures and Break-Up Fee, and (III) Granting Related Relief* (the "Sale Motion") and authorized the Debtors to follow

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

certain procedures governing the sale of the above captioned debtors and debtors-in-possession's (collectively, the "Debtors") business and substantially all of their assets in accordance with the procedures provided herein.

## I. FORMS OF SALES

Pursuant to these Bid Procedures, the Debtors are soliciting bids for the purchase of substantially all of their assets under the terms and conditions set forth in the Sale Motion and as set forth herein.

The Debtors will consider the following types of bids: (i) the purchase, in one or a series of related transactions, of all or a substantial portion of the Debtors' business as a going concern (which may include a liquidation of a portion of the Debtors' assets) (a "GC Sale"); (ii) the purchase to liquidate, in one or a series of related transactions, substantially all or any portion of the Debtors' assets not subject to a GC Sale, including, but not limited to, inventory, furniture, fixtures and equipment, intellectual property, leases, executory contracts and substantially all other assets (a "Remainder Chain Liquidation"); and (iii) the purchase to liquidate, in one or a series of related transactions, substantially all of the Debtors' assets, including, inventory, furniture, fixtures and equipment, executory contracts and substantially all other assets (a "Full Chain Liquidation"), excluding intellectual property, leases and all other assets of the Debtors not included in the Agency Agreement (as amended). A Bidder may submit one or more of the foregoing types of bids, or if applicable, a combination of the foregoing.<sup>2</sup>

In the event there is no GC Sale, the Debtors will be filing a motion to conduct a separate sale process(es) for all assets that are excluded from the Agency Agreement, including, but not limited to, intellectual property, leases, notes and receivables.

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<sup>2</sup> To the extent permitted under the Second Amendment and Waiver to DIP Credit Agreement, the Debtors reserve their right to exclude their intellectual property and interests in leases in or from a sale transaction other than as agreed to in the Purchase Agreement.

The sale shall be pursuant to the terms and conditions of that certain Agency Agreement dated June 30, 2011 (as amended on July 13, 2011), and/or that certain Asset Purchase Agreement dated June 30, 2011, as applicable, each as may be modified pursuant to these Bid Procedures, the forms of which will be subject to approval by the Bankruptcy Court at the Sale Hearing, subject to higher and better bids to be submitted by a Qualified Bidder under the terms of these Bid Procedures.

## **II. BID PROCEDURES**

### **A. Notice of Sale.**

The Debtors will provide notice of the proposed sale to the Liquidating Agent,<sup>3</sup> and the Bid Procedures, the Sale Objection Deadline and the date and time of the Sale Hearing to all parties in interest, every party that has previously expressed any interest in the potential purchase or liquidation of the Debtors' business, and any other party that the Debtors believe might be interested in a possible purchase or liquidation of some or all of the Debtors' business.

### **B. Diligence Room.**

The Debtors have made and will continue to make available until the conclusion of the Auction information concerning the Debtors' business and assets to all prospective Bidders for a GC Sale, Full Chain Liquidation and/or Remainder Chain Liquidation that execute a confidentiality agreement acceptable to the Debtors in their sole and absolute discretion; provided, however, that the Debtors reserve the right to deny access to any Bidder if the Debtors determine, in their sole and absolute discretion, that such denial is necessary to protect the Debtors' trade secrets, including with respect to the Debtors' competitors, or if the prospective Bidder does not provide a reasonable showing that it has the ability to consummate a sale.

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<sup>3</sup> Any capitalized term not defined shall have the definitions as set forth below, or, if not defined below, shall have the same definitions as provided in the Sale Motion.

By submitting a Bid, each Bidder shall be deemed to acknowledge and represent that it has had a reasonable opportunity to conduct due diligence on the Debtors' business and assets before submitting its Bid, that in making its Bid, it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Debtors' assets in making its Bid, and that in making its Bid, it did not rely upon any written or oral statement, representation, promise, warranty or guaranty whatsoever, whether express or implied, by operation of law, or otherwise, regarding the Debtors, or the completeness of any information provided in connection therewith.

**C. Qualified Bidder.**

A "Qualified Bidder" is a Bidder on the Debtors' assets that provides the following on or before the Bid Deadline, together with the items set forth in Section G:

- (i) An executed confidentiality agreement acceptable to the Debtors;
- (ii) Current audited financial statements or such other form of financial disclosure acceptable to the Debtors demonstrating the ability to close the proposed transaction;
- (iii) A bid summary describing the purchase price and structure of the Bid and sufficient evidence regarding the Bidder's ability to obtain financing for the proposed transaction; and
- (iv) A complete Bid fulfilling all the requirements set forth in these Bid Procedures including the requisite deposit as defined herein.

The Debtors will notify each Bidder whether it is a Qualified Bidder promptly upon receipt of the information listed above.

**D. Purchase Price and Consideration of Bids.**

All Bids submitted by a bidder (each, a "Bidder") must state the total proposed purchase price (the "Purchase Price"), in U.S. dollars for a GC Sale, including any cash to be paid and any liabilities to be assumed, or the amount of the Guaranty Percentage (as defined in the Agency Agreement) for a Full Chain Liquidation or a Remainder Chain Liquidation, and, in each case, must exceed the consideration provided in the Agency Agreement by at least \$1 million and include at least \$215.1 million in cash and an additional \$15 million in cash or equivalent consideration. Bids for portions of the Debtors' assets will be considered, but, when added to the value that the Debtors' estates will otherwise receive for its assets, must exceed the consideration in the Agency Agreement by at least \$1 million and must include at least \$215.1 million in cash. A Bidder who bids on two or all three of the following: a GC Sale, a Full Chain Liquidation and/or a Remainder Chain Liquidation (a "Multiple Transaction Bidder"), must specify the Purchase Price for each of the proposed transactions.

**E. Bidding Deadline for Bids.**

The deadline (the "Bid Deadline") for submission of a final and binding written proposal for a GC Sale, a Full Chain Liquidation and/or a Remainder Chain Liquidation (each, a "Bid") is 5:00 p.m. (prevailing Eastern Time) on July 17, 2011 (notwithstanding Bankruptcy Rule 9006(a)(1)(C)). Bids must be emailed to:

Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, New York 10019  
Attn: Andrew K. Glenn, Esq. (aglenn@kasowitz.com)  
Jeffrey R. Gleit, Esq. (jgleit@kasowitz.com)  
Facsimile: (212) 506-1800

with a copy to:

Jefferies & Company, Inc.  
Investment Banking  
520 Madison Ave, 7<sup>th</sup> Floor  
New York, NY 10022  
Attn: Richard Klein, Sr. Vice President (rklein@jefferies.com)

**F. Deposit.**

All Bids must include a deposit of seven and a half percent (7.5%) of the Purchase Price in cash, to be deposited in an escrow account at Citibank, N.A. (the “Escrow Agent”); provided, however a Multiple Transaction Bidder need only submit one deposit for all of its proposed transactions. Additionally, each Bidder shall submit any other documentation that may be reasonably required by the Escrow Agent. Such deposit shall not be subject to the liens or claims of any creditors of the Debtors and shall not be property of the Debtors’ estates.

In the event that a Bid is determined by the Debtors not to be a Qualified Bid, the Debtors shall cause the return of such Bidder’s deposit within five (5) business days after the Bid Deadline. Other than with respect to the Winning Bidder and the Back-Up Bidder, all other Deposits not already returned to the respective Qualified Bidder shall be returned no later than five (5) business days after the Auction.

If the Winning Bidder (or the Back-Up Bidder, if necessary) timely closes the transactions contemplated in the Winning Bid (or the Back-Up Bid, if necessary), such bidder’s deposit shall be credited towards its cash payment due on Closing. In the event that the Winning Bidder (or the Back-Up Bidder, if necessary) fails to consummate the sale because of a breach or failure to perform on the part of such Winning Bidder (or the Back-Up Bidder, if necessary), the Debtors will not have any obligation to return such Bidder’s or Bidders’ deposit. Retention of such deposit(s) shall constitute liquidated damages, shall be one of the Debtors’ remedies at law and in equity against the Winning Bidder (or the Back-Up Bidder, if necessary), and, upon failure to close by the Winning Bidder, the Debtors shall be free to consummate the sale

proposed by the Back-Up Bidder (to the extent applicable) without the need for an additional hearing or order of the Bankruptcy Court.

**G. Content of Bids.**

In addition to the purchase price, consideration and deposit, as discussed above, each Bid must contain the following information:

(1) With respect to a GC Sale:

(a) A copy of the Purchase Agreement, marked electronically to show any changes, and a clean, executed version of the Purchase Agreement (the “Modified Purchase Agreement”)<sup>4</sup> and a representation that the Bidder, if deemed a Qualified Bidder, can execute a further modified version of the Modified Purchase Agreement reflecting any changes made during the Auction and/or any other changes that may be agreed upon by such Bidder and the Debtors promptly upon being notified of its selection as the Winning Bidder without need for further approval(s), if any;

(b) Disclosure of the regulatory, shareholder or other approvals, consents or filings required to consummate and close the GC Sale, or the identity of the shareholders or beneficial owners of the Bidder if privately held;

(c) Details of any agreements or understandings between the Bidder and any third-party with respect to the GC Sale, the Bid, the Debtors’ business or with respect to any possible or contemplated transaction involving any of the Debtors’ assets;

(d) The identity of any outside advisors, including financial and legal advisors, engaged or planned to be engaged to assist the Bidder in the GC Sale, including the names of individuals at such advisors contemplated to be working on the GC Sale, and their contact information;

(e) A statement as to the extent to which the Bid for the Debtors is a GC Sale, Full Chain Liquidation or Remainder Chain Liquidation. With respect to a GC Sale, a statement by the Bidder identifying which stores it intends to operate as a going concern and which stores, if any, it intends to liquidate;

(f) Information sufficient to demonstrate to the Debtors’ satisfaction that the Bidder has the necessary financial capacity to consummate the GC Sale, as proposed in its Bid, and to provide landlords and parties to executory contracts with adequate assurance of future performance under the leases and contracts it intends to assume;

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<sup>4</sup> The amount and character of any such changes will be a significant consideration in Debtors’ selection of the Winning Bid from among the Bids.

(g) A statement acknowledging that the Debtors must close the GC Sale on or before July 29, 2011 (with time being of the essence), with a representation and warranty that the Bidder knows of no reason why it cannot close the GC Sale on or before that date, as well as either a representation and warranty that it either has obtained Hart Scott Rodino approval or a summary of the reasons why such approval will be obtained.

(2) With respect to Bids for the Full Chain Liquidation or Remainder Chain Liquidation (the “Liquidation Sale Bids”):

(a) To the extent the Bid is a Remainder Chain Liquidation, the Bid must comply with Section G(1) above, as well as this Section G(2).

(b) A copy of the Agency Agreement, marked electronically to show any changes, a clean, executed version of the Agency Agreement (the “Modified Agency Agreement”)<sup>5</sup> and a representation that the Bidder, if deemed a Qualified Bidder, can execute a Modified Agency Agreement reflecting any changes made during the Auction and/or any other changes that may be agreed upon by such Bidder and the Debtors, promptly upon being notified of its selection as the Winning Bidder, without need for further approval(s), if any;

(c) The background of the Bidder, including details of previous experience conducting going out of business sales (*e.g.*, the size and nature of the business and the assets subject to the going out of business sale, the results of the sale);

(d) Details of any agreements or understandings between the Bidder and any third-party with respect to the Full Chain Liquidation or Remainder Chain Liquidation or with respect to any possible or contemplated transaction involving any of the Debtors’ assets; and

(e) A statement acknowledging that the Debtors must close the Full Chain Liquidation or Remainder Chain Liquidation on or before July 22, 2011 (with time being of the essence), with a representation and warranty that the Bidder knows of no reason why it cannot close such Full Chain Liquidation or Remainder Chain Liquidation on or before such date.

## **H. Closing Conditions to Bids.**

All conditions to closing required by a Bidder must be set forth in the Modified Purchase Agreement and/or the Modified Agency Agreement, provided, however, that no Bid may be subject to any financing, due diligence or other material conditions. To the extent a Bid relies on one or more third-party financing sources, the Bid must include a signed, binding and irrevocable

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<sup>5</sup> The amount and character of any such changes will be a significant consideration in Debtors’ selection of the Winning Bid from among the Bids.



commitment letter from such third-party financing source(s) or comparable commitment from any equity source. To the extent a Bid relies on financing sources of affiliates of the Bidder, the Bid must include sufficient evidence of financial capacity to consummate the sale and satisfy all obligations and potential obligations pursuant to the Modified Purchase Agreement and/or the Modified Agency Agreement. Other than those conditions set forth in the Modified Purchase Agreement and/or the Modified Agency Agreement, each Bid shall be irrevocable until and unless (i) such Bid is rejected or (ii) if deemed a Qualified Bid, the Debtors select a higher or otherwise better Qualified Bid and such Qualified Bidder is not selected as the Back-Up Bidder.

**I. Joint Bids.**

The Debtors will be authorized to approve joint Bids in the Debtors' discretion, after consultation with the Committee and the DIP Agents, on a case-by-case basis.

**J. Evaluation of Bids.**

Each Bid will be evaluated by the Debtors and their advisors to determine if it is a Qualified Bid, in their discretion, after consultation with the Committee and the DIP Agents. The Debtors, in their discretion, after consultation with the Committee and the DIP Agents, may accept a single Qualified Bid or multiple Qualified Bids for non-overlapping material portions of the Debtors' business and assets.

If the Debtors determine that a Bid is not a Qualified Bid, the Debtors will inform such bidder as soon as practicable after such determination is made. To the extent a Bid does not satisfy the applicable requirements, the Debtors reserve the right, but have no obligation, to contact a Bidder to obtain any necessary further information, documentation, deposit or other modification of such Bidder's proposed Bid package that would allow the Bid to be a Qualified Bid. Without the written consent (by letter, email or facsimile) of the Debtors, which consent may be granted or denied in the Debtors' discretion after consultation with the Committee and

the DIP Agents, a Bidder that the Debtors determine to be a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except as such Bid may be increased or improved at the Auction.

Notwithstanding anything else herein to the contrary, the Liquidating Agent is a Qualified Bidder and the Agency Agreement is a Qualified Bid.

In evaluating the Bids, the Debtors will take into consideration, among other factors, the form and amount of the consideration, the extent to which the Bid involves a GC Sale and/or a liquidation, the presence of any closing conditions, the need and availability of financing, the extent of financial wherewithal to meet all commitments under the Bid, the required approvals (if any), and the transaction structure and execution risk.

At least one (1) day prior to the Auction, the Debtors will provide copies of all Qualified Bids to the DIP Agents and the Committee.

**K. Auction.**

If, after the examination of all Qualified Bids, the Debtors, after consultation with the Committee and the DIP Agents, will determine that an auction (the "Auction") is appropriate and will generate an offer for the purchase of the Debtors' assets that is higher and better than the Agency Agreement, the Debtors will conduct an auction on July 19, 2011, beginning at 1:00 p.m. (prevailing Eastern Time) at a location of which the Debtors will inform each Qualified Bidder. Each Qualified Bidder will be invited to participate as soon as practicable after the Debtors make the determination to conduct an Auction. Only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction; provided, however, that representatives of the Committee, the DIP Lenders and the DIP Agents may attend the Auction. Each Qualified Bidder, by participating in the Auction, agrees to keep the Auction, the bids at the Auction, and all details concerning Auction confidential (including its location), unless and

until the Debtors file the Notice of Results of Sale Process or to the extent such information is otherwise public information. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe all of the Bid Procedures conducted at the Auction.

The minimum interval for bidding at the auction (the “Auction Bidding Interval”) shall be of a value of at least \$1 million; provided, however, the Debtors, in consultation with the Committee and the DIP Agents, may increase or decrease the Bidding Interval at or before the Auction, in which case the Debtors will so inform each of the Qualified Bidders.

The Debtors may have one Auction for all Qualified Bidders or may separate the Auction into separate Auctions for Qualified Bidders for each of a GC Sale, Full Chain Liquidation and/or Remainder Chain Liquidation, or any combination thereof, as the Debtors may determine in consultation with the Committee and the DIP Agents. The Auction shall continue until there is no further bidding in response to the Qualified Bid(s) (as may be increased at the Auction) that the Debtors determine, after consultation with the Committee and the DIP Agents, is/are the highest or otherwise best Qualified Bid(s) (the “Winning Bid”), at which point the Auction will be closed. As set forth herein, the terms “Winning Bid” and “Winning Bidder” encompasses both a single Winning Bid and Winning Bidder, if there is a single, undivided Auction, and two Winning Bids and Winning Bidders, if there are separate auctions and a Winning Bid is accepted by the Debtors for a GC Sale and a Remainder Chain Liquidation. Use of the singular “Winning Bid” or “Winning Bidder” herein includes the possibility of multiple Winning Bids and Winning Bidders. Acceptance of the Winning Bid (or the Back-Up Bid, if necessary) by the Debtors is conditioned on approval of the Bankruptcy Court at the Sale Hearing.

If there is an Auction, the Bidder with the Qualified Bid that is next-highest or otherwise second best to the Winning Bid (the “Back-Up Bid”), as determined by the Debtors, after consultation with the Committee and the DIP Agents, subject to Bankruptcy Court approval at the Sale Hearing, shall be required to be the back-up bidder (the “Back-Up Bidder”). As set forth herein, the terms “Back-Up Bid” and “Back-Up Bidder” encompasses both a single Back-Up Bid and Back-Up Bidder, if there is a single, undivided Auction, and two Back-Up Bids and Back-Up Bidders, if there are separate auctions and a Winning Bid is accepted by the Debtors for a GC Sale and a Remainder Chain Liquidation. Use of the singular “Back-Up Bid” or “Back-Up Bidder” herein includes the possibility of multiple Back-Up Bids and Back-Up Bidders.

The identity of the Bidder who submits the Winning Bid (the “Winning Bidder”) and the Back-Up Bidder and the amount and material terms of the Winning Bid and the Back-Up Bid shall be announced by the Debtors at the conclusion of the Auction. The Winning Bidder and the Back-Up Bidder shall be required to keep their respective Bids open and irrevocable until and including July 29, 2011; provided, however, if the sale closes with the Winning Bidder, the Back-Up Bidder’s Back-Up Bid may be revoked after such closing.

If, at any time prior to or on July 29, 2011, the Winning Bidder cannot consummate the GC Sale as proposed in the Winning Bid, the Debtors may close the GC Sale with the Back-Up Bidder by accepting the Back-Up Bid. To the extent the Winning Bid is for a Full Chain Liquidation or a Remainder Chain Liquidation (as the case may be) and such transaction cannot be consummated as proposed in the Winning Bid on or before July 22, 2001 for a Full Chain Liquidation or a Remainder Chain Liquidation, the Debtors may close a GC Sale, a Full Chain Liquidation or a Remaining Chain Liquidation (as the case may be) with the Back-Up Bidder by accepting the Back-Up Bid, provided, in any event, that the transaction(s) pursuant to which a

GC Sale (with or without a Remaining Chain Liquidation) or a Full Chain Liquidation will be consummated, shall close no later than July 29, 2011. Notwithstanding anything else herein to the contrary, the deposit of the Back-Up Bidder may be held by the Debtors until the earlier of three (3) business days after (a) July 29, 2011 and (b) the closing of the sale with the Winning Bidder, at which time the deposit must be refunded.

**L. Fiduciary Out.**

Upon the determination by the Debtors, and upon advice of counsel, no term or provision of the Modified Purchase Agreement or the Modified Agency Agreement shall prevent, amend, alter, or reduce the Debtors' ability to exercise their fiduciary duties under applicable law.

**M. Reservation of Rights.**

Notwithstanding anything herein to the contrary, the Debtors reserve the right, in consultation with the Committee and the DIP Agents to modify these Bid Procedures at any time, with notice to the Qualified Bidders, the Committee and the DIP Agents, that is reasonable under the circumstances, to facilitate the submission of value-maximizing Bids, to adjourn the Auction one or more times for any reason, and/or to terminate these Bid Procedures at any time to pursue an alternative restricting strategy that maximizes value for the Debtors' estates.

**N. Consultation.**

The Debtors will consult with the Creditors' Committee and the DIP Agents on an ongoing basis throughout the sale and auction process.

**O. Jurisdiction.**

Each Bidder, by submitting the Bid, is deemed to have submitted itself to the jurisdiction of the Bankruptcy Court. The Bankruptcy Court shall have exclusive jurisdiction over any disputes arising out of or related to the Bid Procedures, and each Bidder, by submitting the Bid, has acknowledged and consented to such jurisdiction and has waived any right to trial by jury in connection with any disputes related to Debtors' qualification of Bids, the Auction and the construction and enforcement of these Bid Procedures.

**Assumption and Assignment Objection Deadline: July 14, 2011 at 4:00 p.m. (prevailing Eastern Time)**  
**Supplemental Objection Deadline: July 20, 2011 at 3:00 p.m. (prevailing Eastern Time)**  
**Hearing Date: July 21, 2011 at 11:00 a.m. (prevailing Eastern Time)**

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*Attorneys for Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**BORDERS GROUP, INC., et al.,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 11-10614 (MG)**

**(Jointly Administered)**

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES IN CONNECTION WITH SALE OF  
SUBSTANTIALLY ALL OF THE DEBTORS' BUSINESS AND ASSETS**

**PLEASE TAKE NOTICE** that in connection with the above captioned debtors and debtors-in-possession's (collectively, the "Debtors") *Motion* (the "Motion") *for an Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Approving the Sale* (the "Sale") *of Substantially All of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances and Interests and the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto, (II) Approving the Sale Procedures and Break-Up Fee, and (III) Granting*

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

*Related Relief*, a hearing (the “Sale Procedures Hearing”) shall be held to approve the sale procedures (the “Sale Procedures”), break-up fee and related relief before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green, New York, New York 10004 (the “Bankruptcy Court”) on **July 14, 2011 at 11:00 a.m. (prevailing Eastern Time)** (the “Hearing Date”), or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that a hearing shall be held on the Motion to approve the Sale before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green, New York, New York 10004 (the “Bankruptcy Court”) on **July 21, 2011 at 11:00 a.m. (prevailing Eastern Time)** (the “Hearing Date”), or as soon thereafter as counsel may be heard, at which the Debtors may seek authority to assume all or substantially all of its executory contracts and unexpired leases (the “Assumed Agreements”) and assign them to the Stalking Horse Bidder (as defined in the Motion) or the winning bidder (the “Winning Bidder”) at an auction the Debtors may hold pursuant to the Sale Procedures (the “Auction”), including the Assumed Agreement(s) listed on Exhibit A hereto.

**PLEASE TAKE FURTHER NOTICE** that Exhibit A lists the “Cure Amount” for the Assumed Agreement(s), which are agreement(s) to which you are, or are the agent of, the counterparty to such agreement(s) (the “Non-Debtor Counterparty”). This Cure Amount is the amount, based on the Debtors’ books and records, which the Debtors assert is necessary to cure any defaults existing under such Assumed Agreement(s).<sup>2</sup> You may have been sent additional Notices of Assumption and Assignment of Executory Contracts and Unexpired Leases in

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<sup>2</sup> The Debtors expressly reserve the right to challenge the status of any Assumed Agreement as to its status as an executory contract or unexpired lease and the Cure Amount, up until the Assumption Deadline.



Connection with Sale of Substantially All of the Debtors' Business and Assets, listing additional executory contracts and unexpired leases.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, by a Non-Debtor Counterparty to (a) the assumption and assignment of its respective Assumed Agreement(s) and/or (b) the Cure Amount shall be made in writing, shall set forth, with specificity, the legal and factual bases of the objection, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest, on a 3.5-inch disk or CD-ROM, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-399 or otherwise so as to be actually received **no later than July 14, 2011 at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline"), by: (i) Kasowitz, Benson, Torres & Friedman LLP, attorneys for the Debtors, 1633 Broadway, New York, New York 10019 (Attn: Andrew K. Glenn, Esq. and Jeffrey R. Gleit, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, New York, New York 10004 (Attn: Tracy Davis, Esq. and Linda Riffkin, Esq.); (iii) Lowenstein Sandler PC, counsel for the official committee of unsecured creditors, 65 Livingston Avenue, Roseland, New Jersey 07068 (Attn: Bruce D. Buechler, Esq. and Paul Kizel, Esq.), and 1251 Avenue of the Americas, New York, New York 10020 (Attn: Bruce S. Nathan, Esq.); (iv) counsel for the DIP Agents: (a) Morgan, Lewis & Bockius LLP, 101 Park Avenue,

New York, New York 10178-0060 (Attn: Wendy Walker, Esq.), and 225 Franklin Street, 16th Floor, Boston, Massachusetts 02110-4104 (Attn: Sandra Vrejan, Esq.), counsel for the Working Capital Agent, and (b) Choate Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin Simard, Esq.), counsel for GA Capital LLC; (v) Kelley Drye & Warren LLP, attorneys for certain landlords, 101 Park Avenue, New York, New York 10178 (Attn: James S. Carr, Esq., Robert L. LeHane, Esq., and Benjamin D. Feder, Esq.); and (vi) Bingham McCutchen LLP, attorneys for Bank of America, N.A., One Federal Street, Boston, Massachusetts 02110-1726 (Attn: Julia Frost-Davies, Esq. and Andrew Gallo, Esq.); provided, however, in the event that the Debtors conduct an Auction and the results of that Auction yield a Winning Bidder other than the Stalking Horse Bidder, objections as to any issues raised by such Winning Bid (as defined in the Motion) or the identity of the Winning Bidder may be filed and served in accordance with the above requirements **no later than July 20, 2011 at 3:00 p.m. (prevailing Eastern Time)** (the “Supplemental Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that objections that challenge a Cure Amount must set forth the cure amount being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof. Upon receipt of an objection to a Cure Amount, the Winning Bidder or the Stalking Horse Bidder (if there is no Auction) (the “Purchaser”) and/or the Debtors (in consultation with each other) may, prior to assuming and assigning the applicable unexpired lease or executory contract to the Winning Bidder, hold an amount equal to the Claimed Cure Amount in reserve, pending further order of the Court or agreement between the Debtors and the objecting party, with such agreement being consented to by the Purchaser. So long as the Purchaser or the Debtors hold the Claimed Cure Amount in reserve, the Debtors will be able, without further delay, to assume, assign and sell an Assumed

Agreement, notwithstanding an objection to such Assumed Agreement's Cure Amount. If there is an objection to the Cure Amount as to an Assumed Agreement and the Debtors and/or the Purchaser holds the Claimed Cure Amount in reserve, the Debtors and/or the Purchaser will make payment upon resolution of the dispute as to the proper Cure Amount as may be agreed to by the Debtors and/or the Purchaser and the applicable Non-Debtor Counterparty or as may be provided in an order of this Court.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF THE EXECUTORY CONTRACT(S) AND/OR UNEXPIRED LEASE(S) LISTED ON EXHIBIT A, INCLUDING WITH RESPECT TO THE CURE AMOUNT FOR SUCH EXECUTORY CONTRACT(S) AND/OR UNEXPIRED LEASE(S), THE DEBTORS WILL BE ABLE TO ASSUME, ASSIGN AND SELL SUCH EXECUTORY CONTRACT(S) AND/OR UNEXPIRED LEASE(S) TO THE PURCHASER, AND THE CURE AMOUNT SET FORTH IN THIS NOTICE WILL BE BINDING UPON YOU AS THE NON-DEBTOR CONTRACTING PARTY TO SUCH EXECUTORY CONTRACT(S) AND/OR UNEXPIRED LEASE(S) FOR ALL PURPOSES IN THE DEBTORS' CHAPTER 11 CASES. IN SUCH EVENT, YOU, AS THE RESPECTIVE NON-DEBTOR COUNTERPARTY, WILL BE FOREVER BARRED FROM OBJECTING TO THE CURE AMOUNT, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO ASSERT ANY ADDITIONAL CURE OR OTHER AMOUNT WITH RESPECT TO SUCH EXECUTORY CONTRACT(S) AND/OR UNEXPIRED LEASE(S), AS WELL AS OBJECTING TO THE DEBTORS' ASSUMPTION AND ASSIGNMENT OF SUCH EXECUTORY CONTRACT(S) AND/OR UNEXPIRED LEASE(S) TO THE PURCHASER.**

**PLEASE TAKE FURTHER NOTICE** that this Notice of Assumption and Assignment is not binding on the Debtors and/or the Purchaser and does not constitute the final decision to assume and assign the Debtors' executory contracts and unexpired leases, as the Stalking Horse Bidder has the right (and the Winning Bidder, if different from the Stalking Horse Bidder, may have the right) to defer any final decisions on assumption and assignment until: (a) the deadline to assume and assign each unexpired lease of non-residential real property under section 365(d)(4) of the Bankruptcy Code, as such deadline has been or may be extended by the Court and/or by agreement with a Non-Debtor Counterparty for any unexpired lease of non-residential real property; or (b) October 31, 2011 for any executory contract or any unexpired lease of property other than non-residential real property (as applicable, the "Assumption Deadline").

**PLEASE TAKE FURTHER NOTICE** that the following procedure will govern the Debtors in connection with notifying you as to the final decision whether to assume and assign each of the Debtors' executory contract(s) and unexpired lease(s) listed on Exhibit A, and to make payment of the Cure Amounts, if any, owed on each such executory contract(s) or unexpired lease(s):

- (i) *If there is an objection to the assumption and assignment of an executory contract or unexpired lease:*
  - (a) If such objection is granted and not appealed, the Debtors may not assume and assign such contract or lease (unless such objection was limited to the Cure Amount, in which case the Debtors reserve the right to assume and assign such contract or lease by paying the Cure Amount approved by the Court) and will provide no notice of such non-assumption.
  - (b) If such objection is outstanding on the Assumption Deadline, the Debtors maintain the right to assume and assign such contract or lease until a final order is issued (or a settlement is reached) resolving the objection and allowing the assumption and assignment. The Debtors will be required to maintain a reserve for the Claimed Cure Amount until such time as a final order is issued (or settlement is reached).

- (ii) *If there is no objection to the assumption and assignment of an executory contract or unexpired lease:*
- (a) The executory contract(s) and unexpired lease(s) on Exhibit A will be deemed assumed and assigned upon payment of the Cure Amount by the Debtors and/or the Winning Bidder, which payment must be sent on or before the Assumption Deadline. Such payment of the Cure Amount will constitute notice to you of the assumption and assignment.
  - (b) To the extent the Winning Bidder determines not to have the Debtors assume and assign the executory contract(s) and unexpired lease(s) on Exhibit A, the Debtors will serve to you a notice indicating that your contract or lease will not be assumed (the “Notice of Non-Assumption”) no later than one day following the Assumption Deadline.
  - (c) The Debtors may extend the Assumption Deadline by filing a notice with the Court prior to the expiration of the Assumption Deadline.

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion, the procedures governing the bidding in connection therewith, the proposed order approving such procedures, and the break-up fee, the proposed order approving the Sale, and the form of the purchase agreement governing the potential sale of all or substantially all of the Debtors’ assets to the Stalking Horse Bidder is available at [www.bordersreorganization.com](http://www.bordersreorganization.com).

Dated: June 30, 2011  
New York, New York

KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP

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**EXHIBIT A**

**Schedule of Assumed Agreements and Cure Costs**