

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re: : Chapter 11
  
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THQ INC., *et al.*, : Case No. 12-13398 (MFW)
  
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Debtors.<sup>1</sup> : Jointly Administered
  
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: Proposed Objection Deadline: At the Hearing
  
: Proposed Hearing Date: February 19, 2013 at 9:30 a.m. (ET)
  
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**DEBTORS’ MOTION PURSUANT TO SECTIONS 105 AND 363 OF THE  
BANKRUPTCY CODE, BANKRUPTCY RULES 2002 AND 6004, AND LOCAL  
RULES 2002-1 AND 6004-1, REQUESTING ENTRY OF AN ORDER  
AUTHORIZING THE SALE OF THE MISCELLANEOUS ASSETS LOCATED  
AT THE DEBTORS’ CORPORATE HEADQUARTERS PURSUANT TO AN  
AUCTION FREE AND CLEAR OF ALL LIENS, CLAIMS, AND  
ENCUMBRANCES PURSUANT TO THE SALE PROCEDURES**

THQ Inc. (“**THQI**”) and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) seeking entry of an order in accordance with Sections 105 and 363 of Title 11 of Chapter 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) authorizing the Debtors’ sale of certain miscellaneous assets (the “**HQ Assets**”), including inventory, equipment and machinery, provided however that the HQ Assets will not include personal computers currently being used

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

by the Debtors or equipment leased from third parties, located at the Debtors' corporate headquarters at 29903 Agoura Road, Agoura Hills, CA 91301 ("**Headquarters**") free and clear of all liens, claims, and encumbrances pursuant to the sale procedures (the "**Sale Procedures**") set forth in detail below. In support of this Motion, the Debtors respectfully represent as follows:

**PRELIMINARY STATEMENT**

1. On January 31, 2013, the Debtors filed a motion seeking Court approval to sell certain miscellaneous assets including the HQ Assets. A hearing to consider the miscellaneous asset sale motion is currently scheduled for February 19, 2013. At the time of the filing of that motion, the Debtors anticipated negotiating an arrangement with the Landlord (as defined herein) that would provide for the transfer of the HQ Assets to the Landlord pursuant to the proposed miscellaneous assets sale procedures. Despite diligent efforts, such a transaction has not yet materialized.

2. As a result, the Debtors now seek approval of a truncated auction and sale process to monetize the HQ Assets and avoid paying burdensome and unnecessary March rent under the Lease in the event an agreement cannot be reached between the Debtors and the Landlord. Specifically, the Debtors seek to retain a top-notch, seasoned liquidation firm, Great American Group, LLC ("**Great American**"), to conduct a live webcast auction for the sale of the HQ Assets on or about February 21, 2013. Upon the completion of the auction, the Debtors will submit under certification of counsel a proposed form of sale order detailing the results of the auction and seeking Court approval of the sale of such HQ Assets. The Debtors submit that the proposed sale process will maximize the value of the HQ Assets while minimizing administrative expenses to the Debtors' estates.

## JURISDICTION

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1 and 6004-1.

## BACKGROUND

### **A. General Background of the Chapter 11 Cases**

5. On December 19, 2012 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

6. The Debtors’ chapter 11 cases (the “**Chapter 11 Cases**”) are consolidated for procedural purposes only and are jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules. No trustee or examiner has been appointed in the Chapter 11 Cases.

7. On January 3, 2013, the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors (the “**Committee**”) [D.I. 80].

8. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the

commencement of these Chapter 11 Cases can be found in the *Declaration of Brian Farrell in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* filed on the Petition Date [D.I. 2].

9. On December 19, 2013, the Debtors filed the *Motion of Debtors for Entry of (I) an Order (A) Authorizing and Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Authorizing and Approving Stalking Horse Protections, (C) Authorizing and Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With the Sale, (D) Scheduling Auction and Sale Approval Hearing, (E) Approving the Form and Manner of the Notice of the Sale Hearing, and (F) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of Substantially All of the Debtors Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Certain Related Relief* [D.I. 19] (the "Sale Motion").

10. On January 13, 2013, the Court entered the *Corrected Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of the Operating Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (d) Related Relief* [D.I. 152] (the "Bid Procedures Order").

11. In accordance with the Bid Procedures Order, the Debtors held an auction for substantially all of their assets on January 22 and 23, 2013. Subsequent to the conclusion of the auction, the Debtors filed the *Notice of Auction Results* [D.I. 230], which indicated the various prevailing bids and backup bids for each category of acquired assets.

12. On January 23, 2013, the Court held a hearing and approved on the record the sale of each category of acquired assets (collectively, the "Sale"). On January 24, 2013, the

Court entered orders approving the Sale to the various buyers [D.I. 239, 240, 241, 242, and 243] (collectively, the “Sale Orders”).

13. While substantially all of the Debtors’ assets were sold pursuant to the Sale Orders, certain assets remain with the Debtors’ estates (the “Residual Assets”), including, the HQ Assets.

14. On January 31, 2013, the Debtors filed the *Debtors’ Motion for an Order to Establish Procedures for the Sale or Abandonment of Certain Miscellaneous Assets Outside the Ordinary Course of Business Free and Clear of Liens, Claims, and Encumbrances* [D.I. 288] (the “**Miscellaneous Asset Sale Motion**”).

15. The Debtors currently are working to maximize the value of the Residual Assets and wind-down their business operations. The HQ Assets are not essential to winding down the Debtors’ business operations.

**B. Factual Background Specific to the Request for Relief**

16. On about December 22, 2004, THQI entered into that certain Lease by and between Force-Agoura Road, LLC and Dennis B. Jacobsen Family Holdings II, LLC (collectively, the “**Landlord**”) of the Headquarters (as amended, the “**Lease**”). THQI currently pays Landlord approximately \$300,000 per month under the Lease.

17. THQI is in the process of negotiating with the Landlord to occupy a smaller portion of the Headquarters in exchange for, among other things, reduced rent and transfer of certain of the HQ Assets to the Landlord. However, as of the date of filing this Motion, THQI and the Landlord have not reached an agreement and THQI must act to maximize the value of its assets for the benefit of creditors.

18. THQI requested three reputable liquidators of furniture, fixtures, and equipment to provide proposals to THQI for the liquidation of the HQ Assets, including timing, fees and expenses, and expected recoveries. THQI held discussions with each of the three liquidators to assess their ability and the associated costs to maximize value to the Debtors in a sale of the HQ Assets timed to allow THQI to exit the Headquarters by February 28, 2013. After evaluating the abilities of each liquidator, THQI believes that retention of Great American under the terms described herein maximizes value for the Debtors' estates.

19. Therefore, THQI is seeking the retention of Great American and authority under this Motion to sell the HQ Assets so that THQI, if needed, can vacate the Headquarters and move to reject the Lease as of February 28, 2013.<sup>2</sup>

**RELIEF REQUESTED**

20. By this Motion, the Debtors respectfully request the entry of an order in the proposed form attached hereto as Exhibit B (the "**Order**"), pursuant to sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004 and Local Rules 2002-1 and 6004-1 authorizing the sale of the HQ Assets free and clear of all liens, claims, and encumbrances pursuant to the Sale Procedures as set forth in detail below. The Debtors propose the Sale Procedures as an alternative to the requirements set forth in Bankruptcy Rule 6004 and submits that the requirements of such rule be waived with respect to the sale of the HQ Assets.

21. As a result of the Sales of substantially all of the Debtor's assets pursuant to the Sale Orders, the Debtors are winding down their business operations. In connection with the wind-down, the Debtors concluded that HQ Assets are not necessary to current operations

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<sup>2</sup> The Debtors intend to move to reject the Lease if an agreement is not reached with the Landlord.

and that vacating Headquarters and rejecting the Headquarters Lease by February 28, 2013 is in the best interests of the Debtors' estates.<sup>3</sup>

22. The Debtors requests this authority to minimize administrative expenses and, more importantly, to maximize recoveries for stakeholders. Absent the relief requested herein, the Debtors will be forced to: (i) abandon the HQ Assets to allow the Debtors to vacate the premises and reject the Headquarters Lease by February 28, 2013; (ii) incur additional administrative expenses related to the Headquarters Lease of at least \$300,000; or (iii) incur significant expenses associated with relocating the HQ Assets to an alternative site for sale beyond February 28, 2013.

23. The Sale Procedures are designed to maximize the value of the HQ Assets for the Debtors' estates while eliminating the costs associated with maintaining the Headquarters Lease and relocating the HQ Assets.

### **PROPOSED SALE PROCEDURES**

24. The Debtors requests that the following Sale Procedures be implemented in connection with the sale of the HQ Assets.

a. **Notice of Sale to Interested Parties.** The Debtors submit that the mailing of this Motion shall serve as notice of the proposed sale of the HQ Assets. The Debtors shall serve the Motion on the following parties: (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) any party that may claim to have an interest in the HQ Assets; and (iv) any party who has requested notice pursuant to Local Rule 2002-1.

b. **Objections to the Procedures Set Forth Herein and the Relief Herein Requested.** The proposed deadline for filing an objection (the "Objection") to the proposed Sale Procedures contained herein, and more

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<sup>3</sup> In the event that the Debtors and Landlord are able to reach an agreement by February 15, 2013, regarding modification of the Lease and use of the Headquarters, THQI shall have the right pursuant to the Consulting Agreement (defined below) until February 15, 2013, to (i) provide written notice to Consultant of termination of the Sale and the Consulting Agreement in which case THQI shall be solely responsible for expense reimbursement to Great American up to \$7,500, or (ii) provide written notice to Consultant that the Sale will occur in March, 2013, and extend the Sale Termination Date to March 30, 2013.

particularly to the sale of the HQ Assets, is at the hearing on February 19, 2013, at 9:30 A.M. Prevailing Eastern Time (the “**Objection Deadline**”).

c. **Employment of the Liquidating Consultant.** Upon entry of the Order approving the relief requested in this Motion, the Debtors shall have the authority to enter into that certain Consulting Agreement (the “**Consulting Agreement**”) with Great American Group, LLC (the “**Consultant**”), substantially in the form attached to the Motion as Exhibit A. The Consultant specializes in matching buyers with sellers of used equipment and has the expertise necessary to appropriately market and sell the HQ Assets.

d. **The Marketing Procedures.** The Consultant shall market the HQ Assets through a variety of sales channels including brochures, web site listings and email notices (the “**Sales Channels**”) as described in detail in the Consultant Agreement Listing Services Agreement. The Consultant shall conduct a live webcast auction (the “**Auction**”) of the HQ Assets, which the Consultant anticipates will occur on or about February 21, 2013 with a one-day preview.

e. **Consummation of a Sale.** In conjunction with the Auction, the Consultant shall have the ability to enter into agreement(s) to sell the HQ Assets, free and clear of all Liens (the “**Purchase Agreements**”), to the party or parties who at that time has submitted the highest and best offer (the “**Purchasers**”). Following the execution of the Purchase Agreements, the Debtors will submit an order to the Court (the “**Sale Order**”), under certification of counsel, authorizing the Purchase Agreements and the proposed sale of the HQ Assets to the Purchasers.

f. **Payment of the Consultant’s Fees.** Upon the entry of the Sale Order and consummation of the sale to the Purchasers, the Debtors, consistent with the Order, may reimburse the Consultant for fees associated with its sale efforts of the HQ Assets as set forth in the Consulting Agreement.<sup>4</sup>

### **BASIS FOR RELIEF**

#### **A. Approval of the Sale is Warranted under Sections 363(b) and 105(a) of the Bankruptcy Code**

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

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<sup>4</sup> As denoted in detail in the Consulting Agreement, the Consultant receives a buyer’s premium of 13% from all Purchasers. Any such buyer’s premium collected shall not be considered proceeds under the Consulting Agreement.



property of the estate....” 11 U.S.C. § 363(b)(1). Whether a sale of assets pursuant to Section 363(b) of the Bankruptcy Code should be approved in a particular case is a matter addressed to the Court’s discretion, giving due consideration to the sound business judgment of the proponent of the sale. *See generally Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991).

26. In determining whether a sale satisfies the business judgment standard, courts in this Circuit require (i) that there be sound business reasons for the sale; (ii) that accurate and reasonable notice of the sale be given; (iii) that the sale yield an adequate price (i.e., one that is fair and reasonable); and (iv) that the parties to the sale have acted in good faith. *See In re Decora Indus., Inc.*, No: 00-4459 (JJF), 2002 WL 32332749 at \*2-6 (Bankr. D. Del. May 20, 2002); *Titusville Country Club v. PennBank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

27. This Court may also grant the relief requested herein under section 105(a) of the Bankruptcy Code. Section 105(a) grants broad authority to bankruptcy courts to enforce the provisions of the Bankruptcy Code under equitable common law doctrines, providing, in relevant part, that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

28. The Sale Procedures will facilitate the orderly sale of the HQ Assets and eliminate the costs, which are currently accruing as administrative expenses, associated with the Headquarters Lease and storing the HQ Assets

29. Moreover, the Sale Procedures provide for the Consultant to conduct an Auction for the HQ Assets on February 21, 2013. The Sale Procedures, therefore, will yield a

fair and reasonable price under the circumstances, while allowing any sales of the HQ Assets to be consummated in time for the Debtors to vacate Headquarters by February 28, 2013 and to eliminate the accrual of March rent. Indeed, the Sale Procedures represent the most efficient and cost-effective way to capitalize on the value of the HQ Assets while protecting the best interests of the Debtors, their estates, and their creditors and stakeholders.

30. The Debtors, in consultation with the Committee's professionals, have evaluated the merits of alternative approaches and have concluded, in their business judgment, that entry of an order approving the Sale Procedures described herein represents the most efficient and expedient manner in which to maximize the value of the HQ Assets for the benefit of their creditors and stakeholders absent a consensual resolution with the Landlord.

**B. The Sale of the Assets Free and Clear of Liens or Interests is Warranted**

31. Under section 363(f) of the Bankruptcy Code, a trustee may sell property "free and clear of any interest in such property of an entity other than the estate" if any of the following conditions are satisfied:

- a. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. 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;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

32. The Debtors believes that one or more of the tests of section 363(f) of the Bankruptcy Code are satisfied with respect to the transactions contemplated by this Motion.

Section 363(f)(5) permits the sale of the HQ Assets free and clear of such interest, if it exists. Therefore, to the extent an entity asserts any type of lien on the HQ Assets, the Debtors believe that such entity will consent or that the rights of such claimant can be valued and allowed as a claim against the Debtors' estates, and thus the claimant can be compelled to accept a money satisfaction of its interest in property, thus satisfying section 363(f)(5). *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289, 291 (3d Cir. 2003) (holding that section 363(f)(5) was satisfied in respect of successor liability claims because if the debtor's assets had been liquidated under Chapter 7 of the Bankruptcy Code, the claims at issue would have been converted to dollar amounts and the claimants would have received the distribution provided to other general unsecured creditors on account of their claims).

**C. The Alternative Procedures Contained Herein are Warranted**

33. Bankruptcy Rule 2002(a)(2) provides that, for cause shown, the court may direct another method of giving notice of a proposed sale of property of the estate. As set forth above, on January 31, 2013, the Debtors provided notice of the contemplated sale of miscellaneous assets including, but not limited to the, the HQ Assets. While the Debtors seeks approval of certain sale procedures not contemplated in the Miscellaneous Asset Sale Motion, the proposed sale of the HQ Assets has been noticed since January 31, 2013, effectively providing nineteen days' notice of the proposed sale of the HQ Assets. For the reasons set forth above, the Debtors submit that good cause has been shown for approval and implementation of the Sale Procedures as an alternative to the notice procedures of Bankruptcy Rule 2002.

**D. Relief from the Fourteen Day Stay is Warranted**

34. Bankruptcy Rule 6004(h) provides that an order authorizing the use, sale, or lease of property is stayed until the expiration of fourteen (14) days after entry of the order,

unless the court orders otherwise. The Debtors submit that the order approving the Sale Procedures, and any sale consummated pursuant to those procedures, be effective immediately. It is in the best interests of the Debtors' estates, absent a consensual resolution with the Landlord, to facilitate the closing of the sale transactions to allow the Debtors to vacate Headquarters and reject the Headquarters Lease, thereby eliminating the accrual of administrative expenses. Moreover, the often difficult task of securing a buyer will be facilitated by the Debtors' ability to consummate a sale transaction quickly. Accordingly, the Debtors submit that the fourteen-day stay set forth in Bankruptcy Rule 6004(h) should be waived in connection with the sale of the HQ Assets pursuant to the Sale Procedures.

**NOTICE**

35. Pursuant to Bankruptcy Rule 2002 and Delaware Local Rule 2002-1(b), notice of this Motion has been given to (i) the United States Trustee for the District of Delaware, (ii) counsel to the Committee, (iii) any party that may claim to have an interest in the HQ Assets, and (iv) parties who have filed notices of appearance in the Debtors' Chapter 11 Cases, in accordance with Bankruptcy Rule 2002.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached as Exhibit B, granting this Motion and such other and further relief as the Court deems just and proper and further relief as it deems just and proper.

Dated: February 12, 2013  
Wilmington, Delaware

/s/ Jaime Luton Chapman  
Michael R. Nestor (No. 3526)  
M. Blake Cleary (No. 3614)  
Jaime Luton Chapman (No. 4936)  
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*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**CONSULTING AGREEMENT**

## AUCTION AGREEMENT

This Consulting Agreement, dated as of February \_\_, 2013 (together with any Schedules, Exhibits and attachments hereto, collectively, the "Agreement"), is made by and between Great American Group, LLC, a California limited liability company with a principal place of business at 21860 Burbank Boulevard, Woodland Hills, CA 91367 (the "Consultant") and THQ Inc., a Delaware corporation with a principal place of business at 29903 Agoura Road, Agoura Hills CA 91301 (Federal Employer Identification Number 13-3541686) (the "Company").

### WITNESSETH:

**WHEREAS**, the Company operates a facility at 29903 Agoura Road, Agoura Hills CA 91301 (the "Facility");

**WHEREAS**, on December 19, 2012, the Company, THQ Wireless Inc., Volition, Inc. and Vigil Games, Inc. (the "Debtors") filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code (each a "Bankruptcy Case" and collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

**WHEREAS**, the Company desires to retain Consultant to provide consulting services to the Company with respect to the disposition of certain excess assets (as described below); and

**WHEREAS**, Consultant is willing to serve as the Company's consultant, for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. DEFINITIONS

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

1.1 "Assets" shall mean all of the Company's tangible personal property located at the Facility, including inventory, equipment and machinery, and shall specifically include at a minimum those items set forth on **Exhibit A** hereto, provided however that the Assets will not include personal computers currently being used by Company personnel or equipment leased from third parties.

1.2 "Auction" or "Sale" shall mean a live webcast auction of the Assets which the Consultant anticipates will occur on or about February 21, 2013 with a one-day preview.

1.3 “Sale Expenses” shall mean, with respect to the Auction, direct operating expenses incurred in connection with the Auction, but does not include any occupancy expenses with regard to the Facility (as outlined in Section 8.1 hereof).

1.4 “Sale Term” shall mean the period of time beginning with the execution of this Agreement and ending on the Sale Termination Date.

1.5 “Sale Termination Date” shall mean February 28, 2013, unless mutually agreed by Consultant and Company.

1.6 “Services” shall mean the services to be performed by Consultant pursuant to Section 2.2 of this Agreement.

1.7 “Supervisors” shall mean the individual(s) that will provide Services at the Facilities as set forth in Sections 2.2 and 2.3 of this Agreement.

## **2. RETENTION**

2.1 Subject to the entry of the Sale Procedures Order, Company hereby retains Consultant, and Consultant hereby agrees to serve, as an independent consultant to Company in connection with the conduct of the Sale as set forth herein. With respect to the Sale, Consultant shall serve as Company’s sole and exclusive consultant relative thereto throughout the Sale Term.

2.2 On the terms and conditions set forth herein, commencing after execution of this Agreement and satisfaction of the conditions precedent hereunder, Consultant shall provide Company with the following Services with respect to the conduct of the Sale:

- (i) Provide full time Supervisors to supervise and conduct the Auction as further described in Section 2.3 below;
- (ii) Oversee the liquidation and removal of the Assets from the Facility; provided however, Consultant reserves the right to abandon at the Facility any Assets that have not been sold by the end of the Sale Term;
- (iii) Determine and implement commercially reasonable advertising (including brochures, web site listings and email notices) to sell the Assets during the Sale Term;
- (iv) Provide such other related service deemed necessary or prudent by Company and Consultant under the circumstances presented; and
- (v) Provide Company with reporting and reconciliation of accounting information in form reasonably acceptable to Company as set forth herein.



2.3 In connection with the Sale, Consultant shall directly retain and engage the Supervisors. The Supervisors are independent contractors engaged as agents of Consultant, and are not and shall not be deemed to be employees of Company in any manner whatsoever. In consideration of Consultant's engagement of the Supervisors, Sale Expenses shall include the Supervisor's compensation and expenses.

2.4 All sales of Assets shall be made by Consultant as agent in fact for Company. Title to the Assets shall remain with the Company throughout the Sale Term.

2.5 Subject to this Agreement and entry of the Sale Procedures Order, Consultant shall be the sole party authorized to sell the Assets. The Assets will be sold in such lots as Consultant may determine.

2.6 Consultant is authorized to accept cash, wire transfers or guaranteed checks as payment for the Assets sold.

2.7 Consultant shall sell the Assets "as is", without any representations of any kind or nature whatsoever, including as to merchantability or fitness, and without warranty or agreement as to the condition of such Assets. The Company acknowledges that Consultant is acting solely in the capacity of Consultant for the Company and has no knowledge with respect to the fitness or usability of any of the Assets. Consultant will not use, alter or repair any of the Assets for any particular purpose or otherwise. The Company indemnifies and holds Consultant harmless against any claim with regard to merchantability or use of the Assets.

2.8 The Company shall have the right until February 15, 2013, to (i) provide written notice to Consultant of termination of the Sale and this Agreement in which case Company shall be solely responsible for expense reimbursement to Consultant up to \$7,500, or (ii) provide written notice to Consultant that the Sale will occur in March, 2013, and to extend the Sale Termination Date to March 30, 2013.

### **3. EXPENSES**

3.1 Sale Expenses shall be subtracted from the proceeds of sale as set forth in Section 4 hereof. To the extent that Sale Expenses must be paid in advance of receipt of proceeds of the Sale, subject to satisfaction of the conditions precedent hereunder, Consultant shall be responsible for the payment of such Sale Expenses subject to recovery as provided in Section 4.2 below.

### **4. CONSULTANT'S FEES**

4.1 Consultant shall advance all Auction Expenses and shall pay such expenses on or prior to the date on which they are due. Consultant shall be reimbursed for all Auction Expenses up to \$25,000 from the proceeds of the Auction. Subject to Section 2.8 above, in the event that the Company terminates or breaches this Agreement, Consultant may collect Sale Expenses directly from the Company.

4.2 All proceeds of the Sale shall be deposited in a segregated sale proceeds account (the "Sale Proceeds Account"). Consultant may withdraw proceeds from the Sale Proceeds Account to fund Sale Expenses as they become due.

4.3 Consultant shall be entitled to charge and retain a buyer's premium of 13% to all buyers. Any such buyer's premium collected shall not be considered proceeds hereunder and will not be subject to deposit in the Sale Proceeds Account as provided in Section 4.2 of this Agreement.

## **5. REPRESENTATIONS AND WARRANTIES OF CONSULTANT**

5.1 Consultant hereby represents, warrants and covenants in favor of Company as follows:

- (a) Consultant has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
- (b) This Agreement is a valid binding obligation of Consultant enforceable in accordance with its terms; and
- (b) To the best of Consultant's knowledge, no action or proceeding has been instituted or threatened affecting the consummation of this Agreement or the transactions contemplated herein.

## **6. REPRESENTATIONS AND WARRANTIES OF COMPANY**

6.1 Company hereby represents, warrants and covenants in favor of Consultant as follows:

- (a) Subject to the entry of the Sale Procedures Order, Company has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and has taken all steps necessary and has good and valid authority to consummate the transactions contemplated hereby, including the conduct of the Sale;
- (b) Company has legal title to the Assets and, subject to the entry of the Approval Order, has legal authority to sell the Assets to the general public free and clear of any liens, claims or encumbrances;
- (c) Subject to the entry of the Sale Procedures Order, this Agreement is a valid and binding obligation of the Company enforceable in accordance with its terms;
- (e) No action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or government body has been instituted by or

against the Company or has been settled or resolved, or to the Company's knowledge, is threatened against the Company or the Company's business or properties, that questions the validity of this Agreement or that, if adversely determined, would adversely affect the conduct of the Sale;

- (f) To the best of Company's knowledge, the Assets are in compliance with all applicable federal, state, or local product safety laws, rules and standards;
- (g) Throughout the Sale Term, as reasonably required by Consultant, Consultant shall have the right to the use and occupancy of, and peaceful and quiet possession of, the Facility to prepare for the Auction and to allow the removal of the Assets from the Facility through the Sale Termination Date; and
- (h) Throughout the Sale Term, Company shall maintain in good working order, condition and repair, at its sole expense, all heating systems, air conditioning systems, and all other mechanical devices reasonably necessary to allow for the conduct of the Sale and the removal of the Assets from the Facility.

## **7. AFFIRMATIVE DUTIES OF CONSULTANT**

7.1 Consultant shall reimburse, indemnify, defend and hold the Company and its officers, directors, agents, and employees, harmless from and against any damage, loss, expense (including reasonable attorneys' fees) or penalty, or any claim or action therefore, by or on behalf of any person, arising out of Consultant's breach of this Agreement, as well as any claims asserted by the Consultant's employees or agents, including the Consultant's employees' or agents' payroll claims (wage claims, claims for taxes required to be withheld from wages, social security, etc.), or unemployment compensation claims.

7.2 Consultant shall be responsible for obtaining, in the name of and with the assistance of the Company, any permits or licenses necessary to conduct the Sale.

7.3 Consultant shall provide sufficient labor and Supervisors for the set up and conduct of the Auction, including accounting support, and personnel.

7.4 Consultant shall provide Company with an accounting of the Auction within twenty business days after completion of the Auction, if possible. With such accounting, Consultant shall also deliver any funds due and payable to the Company.

## **8. AFFIRMATIVE DUTIES OF COMPANY**

8.1 The Company shall be solely liable for any expenses (other than the Sale Expenses) incurred in connection with the maintenance or operation of the Facility, including but

not limited to occupancy costs, utilities (including the cost of turning utilities back on), security, local telephone, trash services (including dumpsters as needed), property taxes and any other related costs.

8.2 Consultant shall prepare all reporting forms, certificates, reports and other documentation required in connection with the payment of applicable sales taxes to the appropriate taxing authorities and Company shall process all of the foregoing. Consultant shall pay any applicable sales taxes to the appropriate taxing authorities in accordance with applicable law.

8.3 The Company shall and hereby agrees to defend, indemnify, and hold harmless Consultant and its agents, employees, principals and Supervisors from any and all known or unknown losses, damages (including without limitation, any personal injury, death or property damage), liabilities, claims, actions (including removal of toxic waste), judgments, penalties and fines, court costs and legal or other expenses which the Consultant may incur as a direct or indirect consequence in whole or in part of: (i) the environmental condition of the real property on which either Facility is located, and/or any asserted damage, if any, to adjacent land owners; (ii) any defect or failure not caused by the grossly negligent and/or intentional misconduct of Consultant in product design or materials or storage, manufacture, distribution, sale or use by any person or entity of any product or goods; (iii) Company's failure to pay over to the appropriate taxing authority any taxes required to be paid during the Sale Term in accordance with applicable law or to pay any liability referred to in Section 8.2 hereof; (iv) negligent or intentional acts or omissions of Company or its agents, employees, representatives and principals in connection with the Sale; (v) liens, claims, interests and encumbrances asserted against the Assets; and/or (viii) the breach by Company of any of its representations, warranties or other obligations under this Agreement.

8.4 Consultant shall be authorized to use the name "THQ" in its advertising of the sale of the Assets and in its promotional materials.

## **9. CONDITIONS PRECEDENT**

9.1 The willingness of Consultant and the Company to enter into the transactions contemplated under this Agreement, are directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable party:

- (a) All representations and warranties of Consultant and Company hereunder shall be true and correct in all material respects, and no Event of Default (as defined below) shall have occurred as of the date hereof and as of the Sale Commencement Date;
- (b) The specific Assets set forth on Exhibit A shall be available for sale by Consultant;

- (c) Prior to the Sale, the Company shall have obtained an order of the Bankruptcy Court that authorizes retention and payment of the Consultant and procedures for the Sale of Assets (the “Sale Procedures Order”); and
- (d) Company shall have obtained an order of the Bankruptcy Court that authorizes and approves the Sale of Assets free and clear of liens, encumbrances and other interests (the “Approval Order”).

## **10. INSURANCE**

10.1 The Company warrants that it will maintain throughout the Sale Term liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the operation of the Facility, as well as casualty insurance in an amount no less than \$1,000,000 on the Assets. The Company shall be responsible for the payment of all deductibles, self-insurance and other amounts payable in connection with any claim asserted under such policies, except for any claims arising directly from the gross negligence or willful misconduct of Consultant, or its employees, representatives, agents or Supervisors. The proceeds of any insurance resulting from a casualty or loss to the Assets shall constitute proceeds hereunder.

## **11. DEFAULTS**

11.1 The following shall constitute “Events of Default” hereunder:

- (a) The failure by Consultant or Company to perform any of the respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting party; or
- (b) Any representation or warranty made by Company or Consultant proves untrue in any material respect as of the date made and throughout the Sale Term; or
- (c) The Sale is terminated, materially interrupted or impaired at the Facility for any reason other than (i) an Event of Default by Consultant or (ii) any other material breach or action by Consultant not authorized hereunder.

11.2 In the event of an Event of Default, the non-defaulting party may, in its discretion, elect to terminate this Agreement upon three (3) business day’s written notice to the other party.

## **12. MISCELLANEOUS**

12.1 Any notice or other communication under this Agreement shall be in writing and may be delivered personally or sent by facsimile or by prepaid registered or certified mail, addressed as follows:

(i) in the case of Consultant:

Great American Group  
Nine Parkway North Suite 300  
Deerfield, IL 60015  
Attn: Mark P. Naughton  
Senior Vice President/General Counsel  
Fax: (847) 444-1401  
Email: mnaughton@greatamerican.com

(ii) in the case of Company:

THQ, Inc.  
29903 Agoura Road  
Agoura Hills, CA 91301  
Attn: Sheryl Longo  
Fax: (818) 871-7426  
Email: Sheryl.longo@thq.com

12.2 In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.

12.3 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by Company and Consultant.

12.4 Neither Company nor Consultant shall assign this Agreement without the express written consent of the other, except that Consultant may joint venture with other entities to fulfill its obligations hereunder. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

12.5 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.

12.6 Nothing contained hereof shall be deemed to create any relationship between Consultant and Company other than an agency relationship. It is stipulated that the parties are not partners or joint venturers.

**GREAT AMERICAN GROUP, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THQ, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**ASSETS**



## Certain IT Equipment

QUANTITY	ITEM
35	APC 24 SOCKET RACK PDU
1	ARCHION SYNERGY HDU STORAGE SHELF
1	ARCHION SYNERGY UXE STORAGE SHELF
1	AVID 15" KVM CONSOLE
21	DELL 4 POST RACKS
2	DELL EMC AX 100 SATA STORAGE CONTROLLER
1	DELL EMC CLARIION STORAGE CONTROLLER
6	DELL EMC CLARRION DISK CHASSIS
2	DELL KVM SWITCH 2161DS
2	DELL POWEREDGE 1850 SERVER
3	DELL POWEREDGE 1855 BLADE SERVER
1	DELL POWEREDGE 1855 BLADE SERVER CHASSIS
2	DELL POWEREDGE 1950 SERVER
5	DELL POWEREDGE 2650 SERVER
4	DELL POWEREDGE 2850 SERVER
4	DELL POWEREDGE 2950 SERVER GEN I
4	DELL POWEREDGE 2950 SERVER GEN II
2	DELL POWEREDGE 2950 SERVER GEN III
1	DELL POWEREDGE 750 SERVER
2	DELL POWEREDGE R610 SERVER
3	DELL POWEREDGE R710 SERVER
6	DELL POWEREDGE R805 SERVER
5	DELL POWEREDGE R810 SERVER
2	DELL POWEREDGE RACK CONSOLE F15P
1	DELL POWERVAULT 124T ROBOTIC TAPE LIBRARY LTO4
1	DELL POWERVAULT 128T ROBOTIC TAPE LIBRARY (LTO UNKNOWN)
2	DELL POWERVAULT TL4000 ROBOTIC TAPE LIBRARY LTO3
10	EMC DISK CHASSIS
2	EMC STORAGE CONTROLLERS
4	NETAPP DS14 MK2 AT DISK SHELF
7	NETAPP DS14 MK2 FC DISK SHELF
4	NETAPP DS4243 AT DISK SHELF
2	NETAPP FAS 3020C STORAGE CONTROLLER
1	NETAPP FAS 3160 STORAGE CONTROLLER
2	NETGEAR READYNAS 3200
1	QLOGIC SANBOX 5600 FC SWITCH
1	QUALYS SCANNER
4	DELL POWEREDGE 6850 SERVER
2	APC SMART-UPS 750 RACK MOUNT UPS
3	CISCO CATALYST 4506 SWITCH CHASSIS WITH REDUNDANT POWER SUPPLIES
15	CISCO WS-4548-GB-RJ45V 48 PORT GIGABIT POE (Power Over Ethernet) blades
1	CISCO 3560G 48 PORT SWITCH WITH ONE FIBER GBIC
1	GE DVMRE PRO
1	GE DVMRE TRIPLEX
2	CISCO CATALYST 6509 SWITCH CHASSIS WITH REDUNDANT POWER SUPPLIES\
4	CISCO WS-X6416-GBIC GIGABIT FIBER SWITCH BLADES
10	CISCO WS-6418A-GE-TX 48 PORT RJ 45 GIGABIT ETHERNET SWITCH BLADES
2	WS-SUP720-EB 720 SUPERVISOR MODULE (FOR 6509 CHASSIS)
2	CISCO CATALYST 2950 24 PORT SWITCH
1	CISCO CATALYST 3550 SWITCH
1	APC SC 450 RACK MOUNT UPS
2	CISCO 3750 SWITCH 24 PORT WITH 4 GBIC PORTS
1	DIGI TS8 PORT SERVER
1	CISCO ASA 5550 ADAPTIVE SECURITY APPLIANCE

1 CISCO ASA 5510 ADAPTIVE SECURITY APPLIANCE  
8 DIGI INTERNATIONAL DIGI RJ45 SUN NETRA/CIS-6FT CAB 8 pak  
1 DIGI INTERNATIONAL DIGI RJ45 SUN NETRA/CIS-6FT CAB 16 pak  
1 DIGI TS8 PORT SERVER  
4 CISCO ASA 5510 ADAPTIVE SECURITY APPLIANCE  
3 CISCO VPN 3000 CONCENTRATOR  
1 CISCO PIX 515E FIREWALL  
1 CISCO RPS 300  
5 CISCO CATALYST 3560G 48 PORT SWITCH WITH 4 GBIC PORTS  
1 CISCO CATALYST 3560G 48 PORT SWITCH POE WITH 4 GBIC PORTS  
1 CISCO CATALYST 3550 48 PORT SWITCH WITH 2 FC PORT  
1 CISCO CATALY 3750 24 PORT SWITCH WITH 4 GBIC PORTS  
2 VVIC-WMFT-T1 T1 ROUTER WIC  
1 CISCO CATALYST 3550G 24 PORT SWITCH WITH 4 GBIC PORTS  
1 CISCO CATALYST 3550G 24 PORT SWITCH WITH 2 GBIC PORTS  
1 CISCO CATALYST 2950 12 PORT SWITCH WITH 2 FC PORTS  
2 CISCO CATALYST 2950 12 PORT SWITCH  
3 CISCO CATALYST 2950 24 PORT SWITCH 100MB  
2 CISCO 2960-S 48 PORT SWITCH WITH 24 GBIC PORTS  
4 WS-X4548-GB-RJ45V 48 PORT GIGABIT POE (Power Over Ethernet) blades  
1 WS-X4548-GB-RJ45V 48 PORT GIGABIT blade  
1 CISCO 2800 SERIES ROUTER  
1 CISCO 3825 ROUTER WITH 1 DUAL PORT T1 WIC  
1 CISCO 1700 SERIES ROUTER WITH 2 T1 DSU/CSU MODULES  
1 CISCO WS-6148-GE-TX 48 PORT GIGABIT ETHERNET CHASSIS BLADE  
3 CISCO WIC-1DSU-T1 1-PORT T1 DSU/CSU WAN INTERFACE CARD  
1 CISCO WIC-1DSU-56K4 1-PORT R-WIRE 56KBPS DSU/CSU WAN INTERFACE CARD  
3 CISCO WIC-1T 1-PORT SERIAL WAN INTERFACE CARD  
3 CISCO CATALYST 4006 SWITCH CHASSIS  
3 WSX4013 SUPERVISOR II MODULE  
21 WS-X4148-RJ 48 PORT SWITCH BLADE  
13 WS-X4148-RJ45 48 PORT SWITCH BLADE  
1 WS-X45-Sup6-E SUPERVISOR ENGINE 6-3  
5 WSX4515 SUPERVISOR II MODULE  
1 WS-X4515-10GE SUPERVISOR ENGINE v-10GE  
1 DELL POWEREDGE 1900 FLOOR SERVER  
1 NEC NEAX 2400 IME PBX  
1 APPLE XSERV RAID 14X400G STORAGE CHASSIS  
8 APC AP9550 10 SOCKET PDU  
1 [DELL OEM] APC AP6121 PDU  
2 [DELL OEM] APC AP9558 PDU  
1 [DELL OEM] APC AP6121 PDU  
4 [DELL OEM] APC AP6020 PDU  
1 [DELL OEM] APC AP6031 PDU  
1 DELL DM07RM-W0T PDU  
2 APC FM SERIES NETWORKAIR AP9617 DATA CENTER COOLING UNIT  
2 APC FM35-50 NETWORKAIR MANAGEMENT MODULE  
1 DELL EQUALLOGIX PS6000 STORAGE CHASSIS 8X100GB SSD SATA DRIVES  
1 APC Smart-UPS RT 6000VA Rack Tower 208V  
1 QUANTUM SCALAR MODEL 50 ROBOTIC TAPE LIBRARY (LTO UNKNOWN)  
1 DELL POWEREDGE 1850 SERVER  
1 Overland Data 103636-001 Neo 2000 Tape Library with 2x SCSI LVD LTO-3 FH Drives  
1 DELL POWEREDGE R710 SERVER  
3 CISCO ASA5510-BUN-K9 Cisco ASA 5510 Appliance IPS Edition Bundle [BRAND NEW IN FACTORY SEALED BOX]  
4 CISCO WS-X6348 -GE-TX  
1 CISCO WS-X6248-RJ45

2 EMC CLARIION 005048494 15 DISK ARRAY ENCLOSURE WITH 15 320 GB SATA 5400 RPM DISKS  
1 EMC CLARIION 005048494 15 DISK ARRAY ENCLOSURE WITH 5 500 GB SATA 5400 RPM DISKS  
1 DELL POWEREDGE 2650 SERVER

**High Level Description of Certain Furniture and Fixtures**

Approximately 61 Offices with Paoli "Revolve" Furniture

Approximately 69 standard offices

Approximately 236 standard cubicles with approximately 350 standard Allsteel chairs

**EXHIBIT B**

**PROPOSED ORDER**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X  
:
  
In re: : Chapter 11
  
:
  
THQ INC., *et al.*, : Case No. 12-13398 (MFW)
  
:
  
Debtors.<sup>1</sup> : Jointly Administered
  
:
  
: RE: Docket No. \_\_\_\_
  
:
  
-----X

**ORDER AUTHORIZING THE SALE OF SALE OF THE MISCELLANEOUS ASSETS LOCATED AT THE DEBTORS' CORPORATE HEADQUARTERS PURSUANT TO AN AUCTION FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES PURSUANT TO THE SALE PROCEDURES**

Upon the Motion<sup>2</sup> for entry of an order in accordance with Sections 105 and 363, of the Bankruptcy Code, Rules 2002 and 6004 of the Bankruptcy Rules and Rules 2002-1 and 6004-1 of the Local Rules establishing certain procedures (as described in the Motion) by which the Debtors may market and sell the HQ Assets; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice under the circumstances of the Motion having been provided; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors, their estates, and their creditors; and the Court

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors' principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

<sup>2</sup> Any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

having reviewed the Motion and the procedures requested therein; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefor, it is ORDERED that:

1. The relief requested in the Motion is hereby granted.
2. The following Sale Procedures shall apply to the proposed sale of the HQ Assets:

- a. **Notice of Sale to Interested Parties.** The Debtors submit that the mailing of this Motion shall serve as notice of the proposed sale of the HQ Assets. The Debtors shall serve the Motion on the following parties: (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) any party that may claim to have an interest in the HQ Assets; and (iv) any party who has requested notice pursuant to Local Rule 2002-1.

- b. **Objections to the Procedures Set Forth Herein and the Relief Herein Requested.** The proposed deadline for filing an objection (the “**Objection**”) to the proposed Sale Procedures contained herein, and more particularly to the sale of the HQ Assets, is at the hearing on February 19, 2013, at 9:30 A.M. Prevailing Eastern Time (the “**Objection Deadline**”).

- c. **Employment of the Liquidating Consultant.** Upon entry of the Order approving the relief requested in this Motion, the Debtors shall have the authority to enter into that certain Consulting Agreement (the “**Consulting Agreement**”) with Great American Group, LLC (the “**Consultant**”), substantially in the form attached to the Motion as Exhibit A. The Consultant specializes in matching buyers with sellers of used equipment and has the expertise necessary to appropriately market and sell the HQ Assets.

- d. **The Marketing Procedures.** The Consultant shall market the HQ Assets through a variety of sales channels including brochures, web site listings and email notices (the “**Sales Channels**”) as described in detail in the Consultant Agreement Listing Services Agreement. The Consultant shall conduct a live webcast auction (the “**Auction**”) of the HQ Assets, which the Consultant anticipates will occur on or about February 21, 2013 with a one-day preview.

- e. **Consummation of a Sale.** In conjunction with the Auction, the Consultant shall have the ability to enter into agreement(s) to sell the HQ Assets, free and clear of all Liens (the “**Purchase Agreements**”), to the party or parties who at that time has submitted the highest and best offer (the “**Purchasers**”). Following the execution of the Purchase

Agreements, the Debtors will submit an order to the Court (the “**Sale Order**”), under certification of counsel, authorizing the Purchase Agreements and the proposed sale of the HQ Assets to the Purchasers.

f. **Payment of the Consultant’s Fees.** Upon the entry of the Sale Order and consummation of the sale to the Purchasers, the Debtors, consistent with the Order, may reimburse the Consultant for fees associated with its sale efforts of the HQ Assets as set forth in the Consulting Agreement.<sup>3</sup>

3. The Sale Procedures satisfy Bankruptcy Rules 2002 and 6007.

4. The provision in Bankruptcy Rule 6004(h) staying an order authorizing the use, sale, or lease of property until the expiration of fourteen days after entry of the order is hereby waived in respect of the sale of the HQ Assets made in accordance with the Sales Procedures.

5. This Order shall be immediately effective and enforceable upon its entry.

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated: \_\_\_\_\_, 2013  
Wilmington, Delaware

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MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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<sup>3</sup> As denoted in detail in the Consulting Agreement, the Consultant receives a buyer’s premium of 13% from all Purchasers. Any such buyer’s premium collected shall not be considered proceeds under the Consulting Agreement.