

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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:
In re: : Chapter 11
:
VION PHARMACEUTICALS, INC.,¹ : Case No. 09-14429 (CSS)
:
Debtor. : **Hearing date: January 20, 2010 at 3:00 p.m. (ET)**
: **Objections Deadline: January 12, 2010 at 4:00 p.m. (ET)**
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NOTICE OF MOTION

PLEASE TAKE NOTICE THAT, on January 5, 2010, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed the *Debtor’s Motion for Entry of an Order Approving Procedures for the Sale, Transfer or Abandonment of De Minimis Assets* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned proposed counsel at a date on or before **4:00 p.m. on January 12, 2010 (EST)**.

PLEASE TAKE FURTHER NOTICE that if any objections or responses are received, a hearing with respect to the Motion will be held on **January 20, 2010 at 3:00 p.m. (EST)** before The Honorable Christopher S. Sontchi at the United States Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom #6, Wilmington, Delaware 19801.

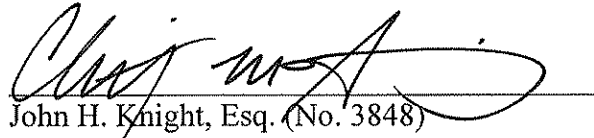
IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT

¹ The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Vion Pharmaceuticals, Inc. (1221). The Debtor’s corporate offices are located at 4 Science Park, New Haven, Connecticut 06511.

THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 5, 2010
Wilmington, Delaware

Respectfully submitted,



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*Proposed Attorneys for the Debtor and
Debtor in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11
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VION PHARMACEUTICALS, INC., : Case No. 09-14429 (CSS)
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Debtor.¹ : Hearing date: January 20, 2010 at 3:00 p.m. (ET)
: Objections due: January 12, 2010 at 4:00 p.m. (ET)
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**DEBTOR'S MOTION FOR ENTRY OF AN ORDER
APPROVING PROCEDURES FOR THE SALE,
TRANSFER OR ABANDONMENT OF *DE MINIMIS* ASSETS**

The above-captioned debtor and debtor in possession (the "Debtor") hereby submits this motion (the "Motion") seeking the entry of an order (the "Order"), substantially in the form attached hereto as Exhibit A, approving procedures for the sale, transfer or abandonment of *de minimis* assets. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION

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

2. The statutory bases for the relief requested herein are sections 105(a), 363(b) and 363(f) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

¹ The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Vion Pharmaceuticals, Inc. (1221). The Debtor's corporate offices are located at 4 Science Park, New Haven, Connecticut 06511.

BACKGROUND

3. On December 17, 2009 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On January 4, 2010, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Committee").

6. No request for appointment of a Chapter 11 trustee or examiner has been made.

7. A more complete description of the Debtor's corporate structure and business and the events leading to this Chapter 11 case are set forth in the Declaration of Alan Kessman in Support of Chapter 11 Petition and First Day Pleadings, filed on December 17, 2009 (as the same may be supplemented or amended from time to time, the "Kessman Declaration"), which is incorporated herein by reference and shall constitute, in part, the evidentiary support for this Motion. However, a brief description of the Debtor's business, as relevant to this Motion, is provided below.

8. The Debtor is a development-stage pharmaceutical company that develops therapeutics for the treatment of cancer. The Debtor's research and product development activities to date have consisted primarily of conducting preclinical trials of product candidates, obtaining regulatory approval for human clinical trials, conducting human clinical trials, preparing to file and filing for regulatory approval of the Debtor's lead product candidate, Onrigin™ (laromustine) Injection ("Onrigin™"), conducting pre-commercialization activities,

negotiating and obtaining collaborative agreements and obtaining financing in support of these activities.

9. As stated more fully in the Kessman Declaration, the U.S. Food and Drug Administration (“FDA”) has required that a new Phase III randomized study be conducted prior to any decision on approval of Onorigin™, the Debtor’s most significant asset, and the Debtor does not have sufficient funds to conduct such a trial.

10. On or about October 12, 2009, the Debtor hired the investment banking firm Merriman Curhan Ford & Co. (“Merriman”) to assist in evaluating its strategic alternatives, including any combination of a restructuring of the Debtor and its outstanding indebtedness or a sale of the Debtor or its assets. On December 9, 2009, the Debtor terminated its agreement with Merriman and on December 11, 2009 engaged Roth Capital Partners, LLC (“Roth”) to assist in evaluating strategic alternatives after John W. Chambers and Michael A. Margolis, the leaders of the Debtor’s efforts at Merriman, left Merriman to join Roth. By separate motion, the Debtor has sought authority to retain Roth to continue assisting the Debtor in these regards post-petition.

11. The Debtor has identified certain assets of *de minimis* value (the “De Minimis Assets”) for which it has no use and that it does not believe will be integral to any investment in, or sale of the Debtor or its assets as may be contemplated or structured by Roth. Accordingly, the Debtor is seeking authority from the Court to sell, transfer or abandon these *De Minimis Assets*, when appropriate, pursuant to the procedures herein.

RELIEF REQUESTED

12. By this Motion, the Debtor respectfully requests entry of an order authorizing the implementation of a procedure to (a) effectuate, from time to time, sales or transfers of *De Minimis Assets* in any individual transaction or series of related transactions to a single buyer or group of related buyers with a selling price equal to or less than \$50,000 free and

clear of all liens, claims, interests and encumbrances (collectively, the “Liens”) with such Liens attaching to the proceeds with the same validity, extent and priority as had attached to the assets immediately prior to the sale or transfer or (b) abandon *De Minimis* Assets to the extent that a sale thereof cannot be consummated at value greater than the cost of liquidating such *De Minimis* Asset.

The *De Minimis* Asset Sale/Transfer Procedures

13. The Debtor proposes to sell or transfer each of the *De Minimis* Assets for the highest and best offer received, taking into consideration the exigencies and circumstances in each such sale or transfer, under the following procedures (the “*De Minimis* Asset Sale Procedures”):

- a. With regard to sales or transfers of the *De Minimis* Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a selling price² equal to or less than \$50,000:
 - i. The Debtor is authorized to consummate such transactions if the Debtor determines in the reasonable exercise of its business judgment that such sales or transfers are in the best interests of the estate, without further order of the Court, subject to the procedures set forth herein;
 - ii. Any such transactions shall be free and clear of all Liens, with such Liens attaching only to the sale or transfer proceeds with the same validity, extent and priority as had attached to the assets immediately prior to such sale or transfer;
 - iii. The Debtor shall give written notice of such sale or transfer (the “Sale Notice”) to (a) the U.S. Trustee; (b) counsel to the Committee; (c) any known affected creditor(s), including counsel to any

² For purposes of these procedures, selling price shall refer to the Debtor’s estimate of the net proceeds of any sale transaction.

creditor asserting a Lien on the relevant *De Minimis* Asset(s); and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”) at least ten days prior to closing such sale or effectuating such transfer;

- iv. The content of the Sale Notice shall consist of (a) identification of the *De Minimis* Assets being sold or transferred; (b) identification of the purchaser of the assets; (c) the purchase price and (d) the significant terms of the sale or transfer agreement;
- v. If no written objections are filed with this Court by any of the Notice Parties within ten days of the date of such notice, the Debtor is authorized to immediately consummate such sale or transfer; and
- vi. If a written objection is filed with the Court by a Notice Party within such ten day period that cannot be resolved, the relevant *De Minimis* Asset(s) shall only be sold or transferred upon further order of this Court or resolution of the objection by the parties in question.
- vii. The Debtor will provide a written report to the Court, the U.S. Trustee, counsel to the Committee and those parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), beginning with the period ending on March 30, 2010, and at three-month intervals thereafter, no later than 30 days after the end of such period, concerning any such sales made during the period pursuant hereto, including the names of the purchasing parties and the types and amounts of the sales (a “Quarterly Report”). If no sales are made during any given period, no report need be provided.

14. Notwithstanding the foregoing, the Debtor is not seeking the authority to sell *De Minimis* Assets to “insiders,” as that term is defined in section 101 of the Bankruptcy Code.

15. To the extent such *De Minimis* Assets cannot be sold at a price greater than the cost of liquidating such assets, the Debtor seeks authority to abandon such *De Minimis*

Assets in accordance with the following procedures (the “De Minimis Asset Abandonment Procedures”):

- a. The Debtor shall give written notice of the abandonment (the “Abandonment Notice”) to the Notice Parties;
- b. The Abandonment Notice shall contain a description in reasonable detail of the *De Minimis* Assets to be abandoned and the Debtor’s reasons for such abandonment;
- c. If no Notice Party objects to an abandonment in writing within ten business days of service of the Abandonment Notice, the Debtor may immediately proceed with the abandonment; and
- d. If an objection is timely received, and cannot be resolved consensually, then such *De Minimis* Asset will not be abandoned except upon further order of the Court after notice and a hearing.

BASIS FOR RELIEF REQUESTED

A. The *De Minimis* Asset Sale Procedures Are Appropriate Under Section 363(b).

16. 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, property of the estate.” Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); In re Trans World Airlines, Inc., No. 01-00056, 2001 Bankr. LEXIS 980, at *29 (Bankr. D. Del. Apr. 2, 2001).

17. The Debtor currently possesses (and may identify in the future) certain *De Minimis* Assets that it wants to sell or transfer because such assets are no longer needed by the Debtor. To defray any operational, carrying or storage expenses associated with these assets, the Debtor has determined in its business judgment that it is in the best interests of the estate to sell or transfer the *De Minimis* Assets. To that end, the Debtor has proposed the *De Minimis* Asset Sale Procedures, whereby it can consummate the sale or effectuate the transfer of *De Minimis* Assets during the pendency of this Chapter 11 case. Under these proposed procedures, parties with an interest in the *De Minimis* Assets are fully protected by the opportunity to object and to attend a hearing, if desired.

B. The Shortened Notice is Appropriate.

18. The notice and hearing requirements contained in section 363(b)(1) of the Bankruptcy Code are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. See 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing” to mean such notice and an opportunity for hearing “as [are] appropriate in the particular circumstances”). Generally, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of 21 days’ notice of proposed sales of property outside the ordinary course of business be provided by mail to “the debtor, the trustee, all creditors and indenture trustees” and any committee appointed under section 1102 of the Bankruptcy Code.

19. Courts are authorized to shorten the 21-day notice period generally applicable to asset sales, or direct another method of giving notice, upon a showing of “cause.” See Fed. R. Bank. P. 2002(a)(2). The usual process of obtaining court approval of each sale of *De Minimis* Assets (a) would create costs to the Debtor’s estate that may undermine or eliminate the economic benefits of the underlying transactions; and (b) in some instances, may hinder the Debtor’s ability to take advantage of sale opportunities that are available only for a limited time.

The Debtor therefore proposes to streamline the process and shorten the applicable notice periods as described herein to maximize the net value realized from sales of *De Minimis* Assets.

C. The *De Minimis* Asset Sale Procedures Are Appropriate Under Section 363(f).

20. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a "free and clear" sale; (b) the holder of the interest consents; (c) the interest is a lien and the sales price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest.

21. The Debtor proposes to sell or transfer the *De Minimis* Assets in a commercially reasonable manner, and expects that the value of the proceeds from such sales or transfers will fairly reflect the value of the property sold. The Debtor further proposes that any party with a lien on a *De Minimis* Asset sold or transferred pursuant to this Motion shall have a corresponding security interest in the proceeds of such sale or transfer. Moreover, the Debtor proposes that no objection to the entry of the order approving this Motion along with no timely objection under the *De Minimis* Asset Sale Procedures, in each case following the provision of notice, be deemed "consent" to any sales or transfers pursuant to the Order within the meaning of section 362(f)(2) of the Bankruptcy Code. As such, the requirements of section 363(f) of the Bankruptcy Code would be satisfied for any proposed sales or transfers free and clear of liens, encumbrances and other interests.

D. The *De Minimis* Asset Abandonment Procedures Are Appropriate Under Section 554(a).

22. Section 554(a) of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or

that is of inconsequential value and benefit to the estate.” The Debtor expects to take all reasonable steps to sell *De Minimis* Assets not needed in its operations. However, the costs associated with sales of certain *De Minimis* Assets may exceed any possible proceeds thereof. The inability to consummate a commercially reasonable sale of *De Minimis* Assets would indicate that these Assets have no meaningful monetary value to the Debtor’s estate. Further, the costs of storing and maintaining such *De Minimis* Assets may burden the Debtor’s estate. Accordingly, the Debtor contends that, in such circumstances, the abandonment of *De Minimis* Assets pursuant to the Abandonment Procedures is in the best interest of the Debtor’s estate.

23. In light of the demonstrable benefits of streamlined procedures to sell, transfer or abandon *De Minimis* Assets, courts in this district and other districts have approved similar procedures in other chapter 11 cases. See, e.g., In re Supplements LT, No. 08-10446 (KJC) (Bankr. D. Del. Apr. 7, 2008); In re Buffets Holdings, Inc., No. 08-10141 (MFW) (Bankr. D. Del. Feb. 13, 2008); In re American Home Mortgage Holdings, Inc., No. 07-11047 (CSS) (Bankr. D. Del. Oct. 17, 2007); In re Hancock Fabrics, Inc., No. 07-10353 (BLS) (Bankr. D. Del. Sept. 24, 2007); In re Tweeter Home Entertainment Group, Inc., No. 07-10787 (PJW) (Bankr. D. Del. June 27, 2007); In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. Apr. 25, 2007). For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interests of its estate and its creditors.

NOTICE

24. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) the Debtors’ thirty (30) largest unsecured creditors, including U.S. Bank, N.A., the Trustee under the trust indenture corresponding to the Debtor’s 7.75% Convertible Senior Notes due 2012; and (iii) any parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

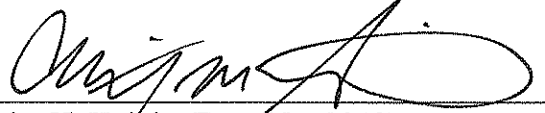
NO PRIOR REQUEST

25. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, approving procedures for the sale, transfer or abandonment of *De Minimis* Assets.

Dated: January 5, 2010
Wilmington, Delaware

Respectfully submitted,



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Proposed Counsel to the Debtor and Debtor-In-Possession

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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<i>In re:</i>	:
	:
VION PHARMACEUTICALS, INC.,	:
	:
Debtor. ¹	:
-----	X

Chapter 11
Case No. 09-14429 (CSS)
Re: Docket No. _____

**ORDER APPROVING PROCEDURES FOR
THE SALE, TRANSFER OR ABANDONMENT OF *DE MINIMIS* ASSETS**

Upon the motion (the "Motion") of the above-captioned debtor and debtor in possession (collectively, the "Debtor") for entry of an order (this "Order") approving procedures of the sale, transfer or abandonment of *de minimis* assets; and it appearing that the relief requested is in the best interests of the Debtor's estate, its creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, that the Motion is granted; and it is further

¹ The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Vion Pharmaceuticals, Inc. (1221). The Debtor's corporate offices are located at 4 Science Park, New Haven, Connecticut 06511.

ORDERED, that pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized to sell or transfer the *De Minimis* Assets² in accordance with the following procedures (the “*De Minimis* Asset Sale Procedures”):

- a. With regard to sales or transfers of the *De Minimis* Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a selling price³ equal to or less than \$50,000:
 - i. The Debtor is authorized to consummate such transactions if the Debtor determine in the reasonable exercise of its business judgment that such sales or transfers are in the best interests of the estate, without further order of the Court, subject to the procedures set forth herein;
 - ii. Any such transactions shall be free and clear of all Liens, with such Liens attaching only to the sale or transfer proceeds with the same validity, extent and priority as had attached to the assets immediately prior to such sale or transfer;
 - iii. The Debtor shall give written notice of such sale or transfer (the “Sale Notice”) to (a) the U.S. Trustee; (b) counsel to the Committee; (c) any known affected creditor(s), including counsel to any creditor asserting a Lien on the relevant *De Minimis* Asset(s); and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”) at least ten days prior to closing such sale or effectuating such transfer;
 - iv. The content of the Sale Notice shall consist of (a) identification of the *De Minimis* Assets being sold or transferred; (b) identification of the purchaser of the assets; (c) the purchase price and (d) the significant terms of the sale or transfer agreement;

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

³ For purposes of these procedures, selling price shall refer to the Debtor’ estimate of the net proceeds of any sale transaction.

- v. If no written objections are filed with this Court by any of the Notice Parties within ten days of the date of such notice, the Debtor is authorized to immediately consummate such sale or transfer; and
- vi. If a written objection is filed with the Court by a Notice Party within such ten day period that cannot be resolved, the relevant *De Minimis* Asset(s) shall only be sold or transferred upon further order of this Court or resolution of the objection by the parties in question.
- vii. The Debtor will provide a written report to the Court, the U.S. Trustee, counsel to the Committee and those parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), beginning with the period ending on December 31, 2008, and at three-month intervals thereafter, no later than 30 days after the end of such period, concerning any such sales made during the period pursuant hereto, including the names of the purchasing parties and the types and amounts of the sales (a "Quarterly Report"). If no sales are made during any given period, no report need be provided.

and it is further

ORDERED, that sales to "insiders," as that term is defined in Section 101 of the Bankruptcy Code, are not covered by this order; and it is further

ORDERED, that no objection to the relief requested in the Motion combined with no timely objection to the sale or transfer of the *De Minimis* Assets in accordance with the terms of this Order shall be determined to be "consent" to such sale or transfer within the meaning of 11 U.S.C. § 363(f)(2), and it is further

ORDERED, that the Debtor is authorized pursuant to section 554(a) of the Bankruptcy Code to abandon *De Minimis* Assets in accordance with the following procedures (the "De Minimis Asset Abandonment Procedures"):

- a. The Debtor shall give written notice of the abandonment (the "Abandonment Notice") to the Notice Parties;
- b. The Abandonment Notice shall contain a description in reasonable detail of the *De Minimis* Assets to be abandoned and the Debtor's reasons for such abandonment;
- c. If no Notice Party objects to an abandonment in writing within ten business days of service of the Abandonment Notice, the Debtor may immediately proceed with the abandonment; and
- d. If an objection is timely received, and cannot be resolved consensually, then such *De Minimis* Asset will not be abandoned except upon further order of the Court after notice and a hearing.

and it is further

ORDERED, that the Debtor is authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this order in accordance with the Motion; and it is further

ORDERED, that the terms and conditions of this Order shall be immediately effective and enforceable upon entry of the Order; and it is further

ORDERED, that the procedures in this Order do not authorize the Debtor to sell the following: (i) personally identifiable information or (ii) property not owned by the Debtors and/or property leased by the Debtors from third parties; and it is further

ORDERED, that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2010
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE