

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN THE MATTER OF:

BRIDGE INFORMATION SYSTEMS, INC., et al.,

Debtors.

) CASE NUMBER 01-41593-293

)

) IN PROCEEDINGS UNDER

) CHAPTER 11

)

)

) HONORABLE DAVID P. MCDONALD

) UNITED STATES BANKRUPTCY JUDGE

)

) **VERIFIED MOTION OF DEBTORS FOR**

) **ENTRY OF AN ORDER PURSUANT**

) **TO SECTIONS 105(a), 363, 365 AND**

) **1146(c) OF THE BANKRUPTCY**

) **CODE (i) AUTHORIZING THE**

) **DEBTORS' SALE OF**

) **SUBSTANTIALLY ALL OR A**

) **SUBSTANTIAL PORTION OF THEIR**

) **ASSETS, FREE AND CLEAR OF**

) **LIENS, CLAIMS AND**

) **ENCUMBRANCES, SUBJECT**

) **TO HIGHER AND BETTER OFFERS;**

) **(ii) APPROVING AN ASSET**

) **PURCHASE AGREEMENT; AND**

) **(iii) APPROVING THE ASSUMPTION**

) **AND ASSIGNMENT OF CERTAIN**

) **EXECUTORY CONTRACTS AND**

) **UNEXPIRED LEASES IN**

) **CONNECTION WITH SUCH SALE**

)

) Gregory D. Willard, Esq.

) Lloyd A. Palans, Esq.

) David M. Unseth, Esq.

) Bryan Cave LLP

) 211 North Broadway

) Suite 3600 - BIS

) St. Louis, Missouri 63102

) (314) 259-2000

)

) Hearing Date: April 19, 2001

) Hearing Time: 10:00 A.M.

TO THE HONORABLE DAVID P. MCDONALD
UNITED STATES BANKRUPTCY JUDGE:

Bridge Information Systems, Inc. ("Bridge Inc."), together with the above-referenced debtors and debtors in possession (collectively, the "Debtors"), in these Chapter 11 proceedings (the "Chapter 11 Proceedings"), by their attorneys, hereby move this Court for entry of an order, pursuant to Sections 105, 363, 365 and 1146(c) of chapter 11, title 11 of the United States Code (the "Bankruptcy Code"), (a) authorizing Debtors' sale of substantially all or a substantial portion of their assets, free and clear of liens, claims, and encumbrances, based on the highest and best offer; (b) approving an asset purchase agreement; and (c) approving the assumption and assignment of its executory contracts and unexpired leases in connection with such sale (the "Motion"). In support of the Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. Simultaneously with the beginning of these Chapter 11 Proceedings, the Debtors commenced a marketing process for the sale of substantially all or a substantial portion of the Debtors' assets. This process yielded proposals for the purchase of substantial portions of the Debtors' assets from several interested bidders. The Debtors have determined that the proposal of SunGard Data Systems Inc. ("SunGard") is, as of the date of this Motion, the highest and best of these proposals, and in the best interest of the Debtors and their creditors. The Debtors now bring this Motion seeking approval of a sale of a substantial portion of the Debtors' assets to SunGard pursuant to the letter of intent between Bridge Inc. and SunGard, dated March 21, 2001 (the "Letter of Intent"), a copy of which is attached hereto as Exhibit A, or a sale of substantially all or a substantial portion of the Debtors' assets to such

other bidder (or group of bidders) as is determined pursuant to the bidding procedures detailed in Standing Order #4 (as defined below) to offer the highest and best offer (an “Alternative Transaction”).

JURISDICTION

2. On February 15, 2001 (the “Petition Date”), the Debtors filed with the Clerk of this Court their respective voluntary petitions for relief under the Bankruptcy Code. They are now operating their business and managing their property as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner.

3. In March 2001, the Office of the United States Trustee for the Eastern District of Missouri (the “Trustee”) appointed the official committee of unsecured creditors in these cases.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Local District Court Rule 9.01(B)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for relief sought herein are Sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code.

BACKGROUND TO CHAPTER 11 PROCEEDINGS

5. The Debtors are leading providers of financial information and related services in North America and worldwide. The Debtors, with their principal operating units, Bridge Inc., Bridge Information Systems America, Inc., Telerate, eBridge, Bridge Trading Technologies and Bridge News, supply a wide range of information and news products, including real-time financial data, news and analytical tools, to international financial markets and news media in over 65 countries. The Debtors use a broad variety of technologies, including computer workstations, market data connections and Internet-based applications, in disseminating such financial information and news products.

6. The Debtors are comprised of Missouri, New York and Delaware corporations with operational locations including the Bridge Trading and Technology Center in St. Louis, Missouri and major regional centers throughout the United States and in Europe, the Middle East, Africa and the Pacific Rim. As of the Petition Date, the Debtors had approximately 4300 employees and approximately 250,000 users (the “Customers”), including investment professionals at investment and commercial banks, money managers, investment advisors, broker/dealers, traders, exchanges, corporations and governmental agencies. These Customers rely on the Debtors’ information distribution network, through which the Debtors provide them with instant “real-time” financial information and analysis.

7. In 1995, investment partnerships sponsored by Welsh, Carson, Anderson & Stowe (“Welsh, Carson”) acquired Bridge, Inc., which subsequently acquired, either directly or indirectly, many of the other Debtors. Since that purchase the Bridge, Inc. and other Debtors have engaged in a business strategy of acquiring under-performing financial information businesses, including many of the Debtors. Between 1995 and 1999 the Debtors acquired all outstanding shares or substantial business assets of Knight-Ridder, Telesphere Corporation, Dow Jones Market Holdings Inc., ADP Financial Information Services and Savvis Communications Corporation (“Savvis”), among other businesses.

8. The Debtors financed these acquisitions through sale of debt securities and preferred stock and funds from credit facilities. More specifically, the Debtors entered into the Amended and Restated Credit and Guarantee Agreement dated as of July 7, 1998 (as amended, the “Prepetition Credit Agreement”), among Bridge Inc., as borrower; certain subsidiaries of Bridge Inc., as guarantors; and certain banks (the “Prepetition Banks”) as lenders. Bridge, Inc. also issued the following series of subordinated debt: (i) 12% Senior Subordinated Notes due March 31, 2001, (ii) 11% Senior Subordinated Reducible Notes due August 15, 2002, (iii) Junior Subordinated Variable Rate Notes due

December 31, 2005 (collectively, the “Subordinated Notes”). In addition, certain of the Debtors entered into a Master Lease Agreement dated March 18, 1999 and certain related guarantees (the Lease Documents”) with General Electric Capital Corporation for itself and as agents for participants (collectively, the “Lessors”, and together with the Prepetition Banks, the “Prepetition Lenders”). The Debtors’ obligations under the Prepetition Credit Agreement are secured by liens and security interests in a substantial portion of the Debtors’ assets.

9. In September 2000, after a period of substantial costs and operational problems attendant to the rapid acquisition of the foregoing financial information distribution entities, the Debtors failed to be in compliance with the financial covenants under the Prepetition Credit Agreement and Lease Documents. In November 2000, the Debtors began implementing an operational plan intended to restore revenue growth and improve financial performance. As part of that plan, the Debtors improved collection of customer receivables and cut personnel, administrative and other costs. The Debtors determined, however, that their operating cash flow was not sufficient to allow the Debtors to pay their ongoing expenses, make necessary capital expenditures and repay all of their current debts.

10. After extensive discussions with Welsh, Carson, the Prepetition Lenders and their advisors, and following the exploration of numerous alternatives, the Debtors determined that their only reasonable course of action was a Chapter 11 filing that provided the Debtors with the opportunity to obtain debtor in possession financing and the breathing space necessary to explore all of their options, including a sale of the Debtors’ business pursuant to Section 363 of the Bankruptcy Code. On the Petition Date, the Debtors commenced these Chapter 11 Proceedings.

SALE PROCESS

11. Time was of essence from the commencement of these Chapter 11 Proceedings because of the nature of the Debtors' business and the limited duration of postpetition financing.

12. Customers subscribe to and rely on the Debtors' services because of the Debtors' ability to provide constant distribution of "real-time" financial information through its network. Therefore the success of the Debtors' business is reliant on continuous data feeds from its information providers and continuous operation of Internet and telephone circuits through which the Debtors transmit financial information to Customers. Even a temporary breakdown of the Debtors' data feed and circuits would seriously impair the Debtors' ability to provide service to its Customers, rendering dark computer screens broadcasting Debtors' financial products. The Debtors determined that a process designed to produce a quick equity infusion or sale of the Debtors' business would best prevent disruption of the Debtors' services, thereby preserving the value of the Debtors' business and protecting the interests of the Debtors' creditors, employees and Customers.

13. Additionally, the Debtors' postpetition financing only continues through April 30, 2001. A partial consortium of the Prepetition Banks (the "Postpetition Lenders") provided the Debtors with up to \$30,000,000 in post-petition financing pursuant to Section 364 of the Bankruptcy Code and certain financing documents (the "Postpetition Credit Documents"). The maturity date of the Postpetition Credit Documents is April 30, 2001. On March 14, 2001, this Court entered the Final Order (i) Authorizing Postpetition Financing Pursuant To 11 U.S.C. §§ 364, (ii) Granting Senior Liens And Super-Priority Administrative Expense Claim Status Pursuant To 11 U.S.C. §§ 105, 364, 503(B) And 507, (iii) Authorizing Use Of Cash Collateral Pursuant To 11 U.S.C. § 363, And (iv) Granting Adequate Protection Pursuant To 11 U.S.C. §§ 363 And 364.

14. The Debtors took immediate action to allow for a quick and successful sale of the Debtors' business as a going concern. In February 2001, the Debtors retained Bear, Stearns & Company ("Bear, Stearns") as its financial advisor charged with marketing the Debtors' business. Thereafter, this Court authorized the Debtors' retention of Bear, Stearns as financial advisors pursuant to Section 327(a) of the Bankruptcy Code.

15. Immediately after the Petition Date, Bear, Stearns began the marketing process by contacting numerous companies in the financial information business and other potential purchasers of the Debtors' business. Since late February interested parties have been conducting due diligence investigations of the Debtors' business. The Debtors' management actively met with potential purchasers throughout this period to discuss the potential value of the Debtors' business. Bear, Stearns, Debtors' counsel and several potential purchasers extensively negotiated offers for the sale of all or a substantial portion of the Debtors' business.

16. At the end of this pre-auction marketing period, the Debtors determined that the offer of SunGard was the highest and best of the proposals it had received to date for the purchase of either substantially all or a substantial portion of the Debtors' business. The Debtors and SunGard extensively negotiated the Letter of Intent, which they executed on March 21, 2001. The Letter of Intent requires the Debtors to obtain, inter alia, (1) an order of this Court approving bidding procedures, and (2) an order of this Court authorizing and approving the sale pursuant to the Letter of Intent and the definitive agreement to be negotiated (the "Purchase Agreement"), free and clear of all liens, claims and encumbrances.

17. On Thursday, March 29, 2001, this Court entered Standing Order #4 (“Standing Order #4”), pursuant to which this Court approved certain bidding procedures and bidder protections for SunGard (the “Bidding Procedures”).

18. The Debtors now seek entry of an order approving either a sale of a substantial portion of the Debtors’ business to SunGard or a sale of substantially all or a substantial portion of the Debtors’ business pursuant to an Alternative Transaction under Sections 105, 363, 365 and 1146 of the Bankruptcy Code. In support thereof, the Debtors have determined that, in their business judgment, it is in the best interests of their creditors and Chapter 11 estates to sell a substantial portion of their assets to SunGard or, in accordance with the Bidding Procedures, to the bidder making the highest and best offer for substantially all or a substantial portion of the Debtors’ assets. As set forth herein, the Letter of Intent represents the best offer the Debtors negotiated for substantially all or a substantial portion of their assets and business as a going concern as of the date hereof.

19. Additionally, the Debtors submit that the sale of a substantial portion of their business is necessary for several reasons. First, the Debtors’ business is not generating sufficient revenue to continue operating as a going concern without additional credit support. Second, a prompt sale will aid in minimizing administrative expenses of the estates. Finally, this sale will increase the probability that the jobs of many of the Debtors’ 4300 employees will be preserved and that service to Customers will not be disrupted. Therefore, the Debtors have determined that the sale of a substantial portion of their business to SunGard pursuant to the Purchase Agreement is in the best interest of their estates and creditors.

THE LETTER OF INTENT

20. The Letter of Intent provides for the sale of a substantial portion of the Debtors' business, free and clear of all liens, claims and encumbrances, for a purchase price of \$140,000,000 in cash plus the assumption of certain cure costs relating to the executory contracts and unexpired leases to be assigned to SunGard, subject to a cap of \$25,000,000 (the "Purchase Price"). The following is a summary of the pertinent provisions of the Letter of Intent. This description is intended as a summary only and is qualified in its entirety by reference to the Letter of Intent (and the exhibit attached thereto), which is attached hereto as Exhibit A. Capitalized terms used but not described in this Motion have the meanings ascribed to them in Exhibit A:

(i) the Purchase Price for the sale of a substantial portion of the Debtors' assets is \$140,000,000 in cash, plus the assumption of 50% of cure costs under executory contracts and unexpired leases that are assigned to SunGard, subject to a cap of \$25,000,000 with respect to SunGard's contribution;

(ii) the Debtors will retain all accounts receivable earned prior to Closing, but will not retain any accounts receivable for services to be provided on or after Closing;

(iii) the purchased Assets consist of a substantial portion of the Debtors' assets, including (a) assets used in Bridge Information Systems' domestic business, (b) the Debtors' equity in specified businesses, including the Bridge Trading, EJV Brokerage, Bridge Ventures, eBridge and ADP business (in the case of the Bridge Trading business, subject to making of an election under Internal Revenue Code § 338(h)(10) with respect to such transfer, and in the case of the ADP business, subject to certain other conditions), (c) certain assets held by the purchased businesses, including all contracts, all licenses, all names, all intellectual property rights, certain real estate and leases, certain equipment, certain stock exchange contracts, certain third-party revolving agreements and certain customer contracts, and (d) Bridge News Livewire;

(iv) the purchased Assets do not include Excluded Assets, such as (a) Bridge News (except Bridge News Livewire), Bridge Commodity Research Bureau, Inc., Bridge Commodity News International and other specified businesses, including the Minex, INET, BondsinAsia, WebFN and Telerate businesses, (b) the Debtors' shares in Savvis and DFS, (c) all foreign assets (except those used in the Bridge Trading and eBridge businesses), (d) all equipment not used in the purchased businesses, (e) claims by or against the Debtors in litigation, arbitration or bankruptcy, and (f) all accounts receivable earned prior to Closing, except prebilled accounts receivable for periods on or before Closing;

(v) SunGard will not assume any obligations of the Debtors accruing prior to Closing (except for prospective obligation arising under certain assumed contracts, in which SunGard will pay up to 50% of any cure costs, subject to a cap of \$25,000,000);

(vi) with respect to the Debtors' employees retained by SunGard, SunGard agrees to make available all employee benefit plans normally made available to other SunGard employees, will credit employees for past service, and will recognized accrued vacation not to exceed \$5,000,000 in the aggregate;

(vii) SunGard made a cash deposit of \$5,000,000 in an escrow account upon signing the Letter of Intent, which deposit shall be applied against the Purchase Price at Closing; such deposit shall be forfeited if definitive sale agreements are not signed on or before April 11, 2001 as a result of SunGard's failure to negotiate in good faith, unless the Closing occurs at a later date;

(viii) signature of a definitive purchase agreement is subject to SunGard's continued due diligence review; in the event of negative due diligence findings or that SunGard is unable to complete due diligence to its reasonable satisfaction due to inaccurate or incomplete records, SunGard shall give the Debtors a reasoned notice and a five (5) day cure period; absent such cure, SunGard may withdraw and receive a full refund of the deposit;

(ix) the definitive purchase agreement is subject to the receipt of higher and better bids as provided by the Bidding Procedures approved by the Court;

(x) as a condition to completion of the transaction, (a) by April 11, 2001, the Court must have entered an order(s) approving (i) a break-up fee of \$5,000,000, (ii) a minimum topping bid value equal to \$1,000,000 plus the value of SunGard's bid, plus the break-up fee, with the requirement that such bidder provide at least a \$5,000,000 nonrefundable deposit if the bidder is determined to be the successful bidder by the Court and (iii) such other customary bidding procedures that are reasonably satisfactory to SunGard and (b) by April 30, 2001, the Court must have entered an order(s) approving the sale of the Assets and the assumption and assignment of the assumed contracts free and clear of all liens, claims and encumbrances in a manner reasonably satisfactory to SunGard; and

(xi) as a condition to completion of the transaction, (a) the network infrastructure and servicing agreement between the Debtors and Savvis shall have been renegotiated on terms to the reasonable satisfaction of SunGard to cover the footprint of the acquired businesses, (b) the parties shall have received all necessary regulatory approvals that are reasonably deemed material, (c) SunGard shall have entered into employment contracts with a specified number of the Debtors' key employees under market conditions, (d) there shall have been no material adverse change to the acquired businesses, (e) the Court's order approving the sale shall be final and nonappealable and (f) the satisfaction of other conditions customarily required for the completion of such transactions.

**THE PROPOSED TRANSACTION
SATISFIES ALL APPLICABLE LEGAL STANDARDS**

21. Section 363 of the Bankruptcy Code vests this Court with sufficient authority to approve a sale pursuant to the Letter of Intent and the ultimate Purchase Agreement. Section 363(b)(1) provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” See also Fed. R. Bankr. Proc. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”). This section generally permits a debtor to sell property of the estate outside of the ordinary course of its business where the proposed sale is a sound exercise of the debtor’s business judgment and when such sale is proposed in good faith and for fair value. See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Channel One Comm., Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); In re Apex Oil Co., 92 B.R. 847 (Bankr. E.D. Mo. 1988).

22. Here, a sale of a substantial portion of the Debtors’ business as a going concern will maximize the value of the Debtors’ estate and best protect the Debtors’ creditors. In the absence of a prompt sale of a substantial portion of the Debtors’ business, the value of the Debtors’ assets will likely deteriorate and the Debtors will likely run out of postpetition financing and be unable to continue operating their business. Of all of the offers the Debtors have received, the Letter of Intent currently brings the greatest consideration to the Debtors’ creditors and allows for the continued operation of the Debtors’ business subsequent to the consummation of the transaction.

23. The Debtors submit that the factors described herein, which require a prompt sale of the Debtors’ business to preserve value for the estates, are consistent with the traditional rationale for authorizing a sale outside of a Chapter 11 plan of reorganization. See Committee of Equity Security

Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Channel One Communications, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (authorizing a Section 363 sale in the absence of a Chapter 11 plan of reorganization and disclosure statement where the sale proponent proves the elements necessary for authorization of the sale). In light of the Debtors' extensive efforts to market their assets and business, the Debtors believe that this transaction will realize the greatest consideration for the Debtors' assets.

SALE FREE AND CLEAR OF ALL LIENS

24. Section 363(f) of the Bankruptcy Code authorizes a debtor to use, sell or lease property of the estate outside of the ordinary course of business free and clear of any interest in such property. The Letter of Intent provides for a sale of the Debtors' assets free and clear of all liens, claims and encumbrances. Any such liens, claims and encumbrances would attach to the net sale proceeds with the same validity, priority, force and effect that such liens, claims and encumbrances had on such assets prior to the closing of the transaction.

25. Here, the Prepetition Lenders and Postpetition Lenders have liens and security interests on the Debtors' assets securing the Debtors' indebtedness incurred pursuant to the Prepetition Credit Agreement, the Lease Documents and the Postpetition Credit Documents.

26. Under Section 363(f)(2) of the Bankruptcy Code a sale free and clear of all liens is permissible if all secured lienholders consent. The Debtors are providing proper notice, pursuant to Standing Order #4, to all creditors, including those creditors who may be secured, giving them the opportunity to object to this transaction. Provided that no secured creditors object to this transaction, Section 363(f)(2) will be satisfied. See, e.g., Veltman v. Whetzal, 93 F.3d 517, 521 n.5 (8th Cir. 1996) (In a Chapter 7 case, stating that "some courts have found implied consent, however, when a party with

an interest in the bankruptcy estate fails to object after receiving notice of the sale under subsection 363(f)(2)”) (citing In re Tabone, Inc., 175 B.R. 855, 858 (Bankr.D.N.J.1994); In re Elliot, 94 B.R. 343, 345 (E.D.Pa.1988)).

**THE LETTER OF INTENT DOES NOT DICTATE
THE TERMS OF A PLAN OF REORGANIZATION**

27. The Letter of Intent does not dictate the terms of a plan or reorganization, as it does not attempt to restructure the rights of creditors. A sale of assets may not be approved where such sale dictates the terms of a plan or reorganization, thereby denying creditors the procedural protections of the plan process, see Institutional Creditors of Continental Air Lines v. Continental Air Lines (In re Continental Air Lines, Inc.), 780 F.2d 1223, 1227-28 (5th Cir. 1986).

28. In the instant case, there are no conditions in the Letter of Intent that predetermine the rights of creditors under a plan. The Letter of Intent’s sole impact is to transform the composition of the Debtor’s assets to cash and relieve the estates of significant liabilities. The distribution of the Debtor’s assets will be managed consistent with the Bankruptcy Code and pursuant to Chapter 11 plan. See In re Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr. D. Md. 1988) (“sales proposed here is not a sub rosa plan because it seeks only to liquidate assets, and the sale will not restructure the rights of creditors”).

**THE LETTER OF INTENT WAS NEGOTIATED
AT ARM’S LENGTH AND IN GOOD FAITH**

29. The terms of the Letter of Intent were negotiated at arm’s length, without collusion, and in good faith and the Debtors accordingly requests the Court determine SunGard to be acting in good faith and entitled to the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code. See In re Apex Oil Co., 92 B.R. 847, 874 (Bankr. E.D. Mo. 1988).

30. In the Debtors' view, the Letter of Intent represents substantial value to the Debtors' estates inasmuch as it provides favorable terms for the disposition of assets at a price that represents fair and reasonable consideration having a certain value. See id. at 869. See also Mellon Bank, N.A., v. Metro Communications, Inc. 945 F.2d. 635 (3d. Cir. 1991) (reasonably equivalent value under the Bankruptcy Code), cert. denied, 503 U.S. 937 (1992); Salisbury v. Texas Commerce Bank-Houston, N.A. (In re WCC Holding Corp.), 171 B.R. 972, 984 (Bankr. N.D. Tex. 1994) (reasonably equivalent value under Texas law) (citing Besing v. Hawthorn (In re Besing), 981 F.2d 1488, 1495 (5th Cir.) cert. denied, 510 U.S. 821 (1993) and Southmark Corp. v. Riddle (In re Southmark Corp.), 138 B.R. 820, 829 (N.D. Tex. 1992)).

31. Based upon the foregoing, the Debtors submit that to preserve and maximize the value of their principal assets and insulate them from any financial uncertainties surrounding the Debtors, the sale pursuant to the Letter of Intent or an Alternative Transaction is an exercise of sound business judgement, is in the best interests of the Debtors and their estates, and should be approved in all respects.

**ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE**

32. Assumption and assignment or rejection of certain executory contracts and unexpired leases are an integral part of the proposed sale and should be approved by the Court. Section 365(a) of the Bankruptcy Code¹ authorizes a debtor in possession to assume in executory contract or

¹ Section 365(a) of the Bankruptcy Code provides:

- (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

unexpired lease subject to the bankruptcy court's approval. Section 365(b) of the Bankruptcy Code² requires such debtor in possession to satisfy certain requirements at the time of assumption if a default exists under the contract to be assumed.

33. The standard for determining whether an executory contract or unexpired lease should be assumed is the debtor's "business judgment" that assumption is in its economic best interests. In re Food Barn Stores, Inc., 107 F.3d 558, 567 n.16 (8th Cir. 1996). The Debtors will show at the hearing to consider this Motion that adequate business justifications exist that merit judicial approval of the proposed assumptions and assignments.

34. For any contract actually assumed and assigned, the Debtors will pay 50% of all cure amounts accrued as of the date of assumption and assignment (the "Cure Amounts") and in accordance with the Purchase Agreement, except that SunGard has agreed in the Letter of Intent to pay 50% of the cure, up to a cap of \$25 million, above and over the \$140,000,000 cash price for the assets.

35. The Debtors move to assume and assign all of their executory contracts and unexpired leases (except for those executory contracts and unexpired leases rejected by the Debtors pursuant to Court order prior to the Sale Hearing, as defined in Standing Order #4) to SunGard or a Competitive Bidder pursuant to an Alternative Transaction. These executory contracts and unexpired

² Section 365(b) of the Bankruptcy Code states, in relevant part:

- (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –
 - (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
 - (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

leases are set forth on Exhibit B hereto. In accordance with Standing Order #4, SunGard and each Competing Bidder (as defined in Standing Order # 4) will notify the Debtors by April 11, 2001, of all executory contracts and unexpired leases, not previously rejected pursuant to Court order by such date, it wishes to have assigned to it or of which assignment it is in good faith continuing to evaluate. Shortly after April 11, 2001, the Debtors shall provide notice to each party to an executory contract and unexpired lease so identified by SunGard and each Competing Bidder of the status and Cure Amount of each such executory contract and unexpired lease. By April 16, 2001, SunGard and each Competing Bidder shall provide the Debtors with final notification of all executory contracts and unexpired leases it wished to have assigned to it. The Debtors shall not assume and assign to SunGard or a Competitive Bidder those executory contracts and unexpired leases rejected by the Debtors pursuant to Court order prior to the Sale Hearing. The Court's findings as to the Cure Amounts at the Sale Hearing shall be final and binding on parties to all assumed executory contracts and unexpired leases, and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment (to the extent such assumed executory contract or unexpired lease contains an audit clause).

36. Based on the foregoing, the Debtors respectfully request that this Court approve the assumption and assignment of the executory contracts and unexpired leases to be purchased by SunGard or in an Alternative Transaction at the closing of the transaction.

**THE DEBTORS REQUEST THAT THE
COURT ELIMINATE OR REDUCE THE 10-DAY STAY UNDER
RULE 6004(G) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

37. Pursuant to Rule 6004(g) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), unless the court orders otherwise, all orders authorizing the sale of property

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

pursuant to section 363 of the Bankruptcy Code are automatically stayed for 10 days after entry of the order. Fed. R. Bankr. P. 6004(g) (added by the 1999 Amendments to the Federal Rules of Bankruptcy Procedure) (emphasis added). The purpose of Bankruptcy Rule 6004(g) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(g).

38. Although Bankruptcy Rule 6004(g) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 10 day stay period, Collier on Bankruptcy suggests that the 10 day period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy ¶6004.09 (15th ed. 1999). Furthermore, Collier on Bankruptcy provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. Id.

39. The Debtors need to close this sale as soon as possible after all closing conditions have been met or waived as the postpetition credit facility terminates on April 30, 2001. Accordingly, the Debtors hereby request that the Court eliminate the 10-day stay period under Bankruptcy Rule 6004(g) or, in the alternative, if an objection to the transaction is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal in order to permit the sale to close as provided under the Agreement.

VERIFICATION

I certify under penalty of perjury that the facts contained in the foregoing Verified Motion Of Debtors For Entry Of Order, Pursuant To Sections 105, 363, 365 And 1146(C) Of Chapter 11, Title 11 Of The United States Code (A) Authorizing Debtors' Sale Of Substantially All Or A Substantial Portion Of Their Assets, Free And Clear Of Liens, Claims, And Encumbrances, Subject To Higher And Better Offers; (B) Approving An Asset Purchase Agreement; And (C) Approving The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases In Connection With Such Sale are true and correct to the best of my knowledge.



Sankar Krishnan
Chief Restructuring Officer,
Bridge Information Systems, Inc.

Dated: New York, New York
March 28, 2001