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8 Proposed Attorneys for Debtor
9 THE WILKES BASHFORD COMPANY

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re
14 The Wilkes Bashford Company,
15 Debtor.

Case No. 09-33497 TEC

Chapter 11

CORRECTED

**NOTICE OF HEARING ON MOTION
FOR ORDER (I) AUTHORIZING SALE
OF DEBTOR'S ASSETS FREE AND
CLEAR OF LIENS PURSUANT TO
BANKRUPTCY CODE § 363, (II)
AUTHORIZING ASSUMPTION AND
ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES PURSUANT TO
BANKRUPTCY CODE § 365, AND (III)
MAKING FINDINGS PURSUANT TO
BANKRUPTCY CODE § 363(m)**

Date: November 19, 2009

Time: 2:00 p.m.

Place: 235 Pine Street, Courtroom 23
San Francisco, CA

Judge: Honorable Thomas E. Carlson

16 TO THE HONORABLE THOMAS E. CARLSON, UNITED STATES BANKRUPTCY
17 JUDGE AND ALL CREDITORS IN THIS CHAPTER 11 CASE:

18 PLEASE TAKE NOTICE that a hearing will be held on **November 19, 2009 at**
19 **2:00 p.m.**, or as soon thereafter as the matter may be heard, in the courtroom of the Honorable
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1 Thomas E. Carlson, located at 235 Pine Street, San Francisco, California to consider any
2 objections to the *Motion for Order (I) Authorizing Sale of Debtor's Assets Free and Clear of*
3 *Liens Pursuant to Bankruptcy Code § 363, (II) Authorizing Assumption and Assignment of*
4 *Certain Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Code § 365, and*
5 *(III) Making Findings Pursuant to Bankruptcy Code § 363(m)* ("Sale Motion") filed by The
6 Wilkes Bashford Company, Inc. ("Debtor"), debtor and debtor in possession in this chapter 11
7 case.

8 The Sale Motion seeks approval of the sale of substantially all the Debtor's assets
9 to Ed Mitchell West, LLC for the purchase price of \$4,600,000, subject to a purchase price
10 adjustment based on inventory levels. The sale shall be on the terms provided in the Asset
11 Purchase Agreement.

12 The assets to be sold pursuant to the Asset Purchase Agreement include
13 substantially all assets of the Debtor, including the Debtor's interest in certain agreements, real
14 property leases, including those related to the Debtor's San Francisco and Palo Alto locations,
15 furniture, fixtures, equipment, and intellectual property ("Assets"). The Assets will be sold free
16 and clear of liens, except as provided for in the Asset Purchase Agreement, with interests to
17 attach to proceeds of the sale.

18 **PLEASE TAKE FURTHER NOTICE**, any objection to the Sale Motion must be
19 filed and served no later than **November 18, 2009 at 12:00 noon PST**.

20 **PLEASE TAKE FURTHER NOTICE** that the Debtor will hold an auction on
21 November 25, 2009 at 9:30 a.m., in Courtroom 22, pursuant to the bid procedures approved by
22 the Court, to consider proposals from other bidders for some or all of the Debtor's assets. The
23 approved bid procedures are attached to this Notice.

24 The Sale Motion and supporting documents are being served on (1) all parties
25 asserting a security interest in assets of the Debtor, (2) all parties to assumed contracts, (3)
26 creditors holding the twenty largest unsecured claims, (3) the Office of the United States Trustee,
27 (4) all persons having filed requests for special notice, and (5) all entities who have expressed a
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1 bona fide interest in acquiring the Debtor's assets or that the Debtor believes may be interested in
2 proposing a competing bid upon assets of the Debtor.

3 **PLEASE TAKE FURTHER NOTICE** that the Sale Motion and supporting
4 documents are available online at www.friedumspring.com/caseinformation.html or by contacting
5 Katherine Hollander at khollander@friedumspring.com or (415) 834-3800.

6 Dated: November 10, 2009

FRIEDMAN DUMAS & SPRINGWATER LLP

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By: /s/ Cecily A. Dumas

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Cecily A. Dumas

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Proposed Attorneys for Debtor

THE WILKES BASHFORD COMPANY

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NOTICE OF BID PROCEDURES

The following bid procedures for the sale of the assets of the Wilkes Bashford Company ("Debtor") were tentatively approved by Court order entered on November 10, 2009:

1. Sale Hearing: The Debtor shall cause, on or before November 10, 2009, service by first class mail of notice of the hearing on the Sale Motion and notice of the Bidding Procedures approved by the Court on all known creditors.

2. Service of Sale-Related Pleadings:

(a) Notice of Sale Hearing. The Debtor shall cause, on or before November 10, 2009, service by first class mail of notice of the hearing on the Sale Motion and notice of the Bidding Procedures approved by the Court on all known creditors.

(b) Moving Papers. The Debtor shall cause, on or before November 10, 2009, service by first class mail of (a) the Sale Motion (which service shall attach the Agreement and include the Agreement and the order on this Bid Procedures Motion filed by the Court), and all declarations in support, on (1) all parties asserting a security interest in the Debtor's assets, (2) all parties to the unexpired leases and executory contracts proposed to be assumed and assigned under the sale agreement (the "Assumed Contracts") and their counsel, if known, (3) the Debtor's creditors holding the twenty largest unsecured claims, (4) the Office of the United States Trustee, (5) all parties having filed and served request for notice in the Chapter 11 case, (6) Mitchell, and (7) all entities, and if known, their counsel, who have expressed a bona fide interest in acquiring the Assets or that the Debtor believes may be interested in proposing a competing bid upon assets of the Debtor. The Sale Motion shall set forth any amount required to satisfy the requirements of Bankruptcy Code § 365(b)(1)(A) and (B) (the "Cure Amount") according to the Debtor's books and records.

3. Due Diligence. Any party interested in bidding for the Assets may conduct reasonable due diligence upon the signing of an agreement acceptable to the Debtor providing that such party will not disclose to any third party non-public information regarding the Debtor or its affairs and consistent with the terms of any such agreement executed by Mitchell.

4. Objection Bar Dates

(a) Objection to Asset Sale. Any objection to the Sale Motion must be in writing, comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, be filed with the Court on or before November 18, 2009 at 12:00 noon PST, and be served on (1) Debtor's counsel, (2) counsel for Mitchell, and (3) the Office of the United States Trustee no later than November 18, 2009 at 12:00 Noon PST.

(b) Objection to Assumption. Any objection to assumption of the Assumed Contracts must be in writing, comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, be filed with the Court on or before November 18,

2009, at Noon PST, and be served on (1) Debtor's counsel, (2) counsel for Mitchell, and (3) the Office of the United States Trustee no later than November 18, 2009 at Noon PST. Such objection must set forth (a) the basis for the objection, and, if applicable, (b) the amount the party asserts as the Cure Amount. If no such objection is received by November 18, 2009 at Noon PST, then the Debtor shall be determined not to owe any Cure Amount that otherwise could have been asserted by the non-debtor party to the Assumed Contracts against the Debtor, Mitchell or such other Mitchell of the Assets through the effective date of the assumption and assignment in respect of such Assumed Contract.

(c) The Court will hear any objections at a hearing on November 19, 2009 at 2 p.m.

(d) Effect of Failure to Object. The failure of any person to file a timely objection shall bar the assertion at the Sale Hearing or thereafter of any objection to the Sale Motion and the Debtor's consummation and performance of the Agreement with Mitchell or any bidder other than Mitchell who wishes to become a Qualified Bidder ("Prospective Bidder").

(e) Modifications to the List of Assumed Contracts. The Debtor, at the request of Mitchell, may remove any contract from the list of Assumed Contracts at any time prior to the fifth business day prior to the Closing Date. Additional contracts may be added to the list of Assumed Contracts, provided that to the extent contracts are added following service of the Sale Motion and notice of hearing, assumption of any such contracts shall be requested by separate motion.

5. Alternative Bid Deadline. All alternative bids must be submitted to Debtor's counsel by hand delivery or electronic mail not later than 1 p.m. PT on November 23, 2009 (the "Alternative Bid Deadline"). Debtor shall immediately distribute a copy of each alternative bid received to Mitchell, Mitchell's counsel, each alternative bidder and their counsel.

6. Qualified Alternative Bid. An alternative bid will only be considered if the alternative bid is a "Qualified Alternative Bid." To be a Qualified Alternative Bid, the alternative bid must:

(a) Identify the party submitting the alternative bid and such party must be a "Qualified Bidder." A Qualified Bidder shall mean Mitchell and any other person (i) that the Debtor has determined in the exercise of its reasonable business judgment is financially able to consummate the purchase of the Assets if the Court enters an order approving such purchase and (ii) who can give adequate assurance of future performance of the Assumed Contracts through the procedure set forth above;

(b) Propose in writing a transaction that the Debtor determines, in good faith, is not materially more burdensome or conditional than the terms set forth in the Agreement, identifies the assets subject to the offer, provides the proposed closing date, and has a value that exceeds the Asset Purchase Price by \$250,000;

(c) Consist of an agreement in the form of the Agreement, marked to show changes thereto, that is when taken as a whole on terms and conditions no less favorable to Debtor than the terms and conditions contained in the Agreement, including but not limited to price, time of closing and additional financing through closing;

(d) Not be subject to termination by the Prospective Bidder except on the same terms as the Agreement;

(e) Include evidence acceptable to the Debtor of the Prospective Bidder's financial capabilities to fully consummate the purchase, including reference to the Adequate Assurance Package previously provided by the Prospective Bidder;

(f) Not be subject to any contingencies, including any financing, corporate approval or due diligence contingencies;

(g) Be accompanied by an initial deposit in the amount of \$250,000, which deposit is immediately refundable only if the Prospective Bidder is not selected to purchase the Assets; and

(h) Provide for payment in full of any debtor in possession financing at closing.

7. Auction, Bidding Increments and Bids Remaining Open

(a) If the Debtor receives at least one Qualified Alternative Bid, the Debtor shall conduct an auction (the "Auction") at the Sale Hearing. Only Mitchell and Qualified Bidders shall be allowed to make any additional bids ("Subsequent Bids") at the Auction. The Debtor may announce at the Auction procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures.

(b) At the Auction, bidding shall begin with the highest Qualified Alternative Bid and continue in minimum increments of at least \$100,000 higher than the previous bid. Mitchell shall have the right but not the obligation to participate in the Auction. Mitchell shall have the right to match any overbid and to credit bid the "Break-Up Fee" (defined below) in the Auction.

(c) At the conclusion of the bidding, the Debtor shall announce its determination as to the Qualified Bidder submitting the successful bid, and shall seek approval of the Court for such bid at the Sale Hearing, or shall determine that it will not proceed with a sale, subject to the terms of the Agreement.

(d) If the Debtor does not receive any Qualified Alternative Bids, the Debtor will report the same to the Court and will proceed with the sale to Mitchell on the terms set forth in the Agreement at the Sale Hearing, unless the Debtor terminates the Agreement pursuant to its terms.

(e) Break-up Fee. If the Agreement is terminated for any reason, other than (i) if there has been a material breach by Mitchell of its representations and warranties or in the observance, or in the due and timely performance, of any of the covenants or agreements contained in the Agreement on Mitchell's part to be performed, and such breach shall not have been cured within ten (10) days after written notice thereof, (ii) a termination by Mitchell prior to approval of the Break-up Fee based on its dissatisfaction with its due diligence review of the business and assets to be purchased, or (iii) a termination by Mitchell based on a material adverse effect with respect to Mitchell, then the Debtor shall pay, or cause to be paid to Mitchell a "Break-up Fee" of \$100,000, plus out-of-pocket expenses of Mitchell (not to exceed an additional \$250,000). Such Break-up Fee shall be in addition to the return to Mitchell of its deposit. The obligation of the Debtor to pay the Break-up Fee to Mitchell shall: (a) be entitled to administrative expense claim status under Bankruptcy Code §§ 503(b)(1)(A) and 507(a)(2); (b) not be subordinate to any other administrative expense claim against the Seller, other than any superpriority claim granted under any debtor-in-possession order; (c) survive the termination of the Agreement; and (d) in the event of consummation of a sale to an alternate purchaser be satisfied from the proceeds of such sale. Any payment to Mitchell of a Break-up Fee shall constitute Mitchell's sole and exclusive remedy against the Debtor on account of the termination of the Agreement due to acceptance of a Qualified Alternative Bid.

8. Deposits shall be returned within two (2) days of Court approval of another party's bid.