

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

In re:

FURNITURE BRANDS INTERNATIONAL,
INC., *et al.*,

Debtors.

Chapter 11

Case No. 13-12329 (CSS)

Jointly Administered

Ref. Docket No. 424

**OBJECTION OF NORTHERN WOOD HILL, LLC TO NOTICE TO
COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED
LEASES THE DEBTORS MAY ASSUME AND ASSIGN AS PART OF SALE
OF ALL OR SUBSTANTIALLY ALL OF THE ACQUIRED ASSETS**

Northern Wood Hill, LLC (“**Northern Wood Hill**”), by and through its undersigned counsel, files this Objection (the “**Objection**”) to the *Notice to Counterparties to Executory Contracts and Unexpired Leases the Debtors May Assume and Assign as Part of Sale of All or Substantially All of the Acquired Assets* dated October 18, 2013 [Docket No. 424] (the “**Notice**”). In further support of this Objection, Northern Wood Hill respectfully states as follows:

Background

1. On September 9, 2013 (the “**Petition Date**”), the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).
2. On October 3, 2013, this Court entered an order [Docket No. 313] (the “**Bidding Procedures Order**”) approving certain bidding procedures and related procedures in connection with the proposed sale (the “**Sale**”) by the Debtors of substantially all of their assets.
3. In conjunction with the intended Sale, the Debtors filed the Notice stating their

intention to assume and assign certain executory contracts and expired leases and setting forth the proposed cure amounts for any contracts or leases to be assumed and assigned.

4. Prior to the Petition Date, the Debtors and Northern Wood Hill were parties to a certain non-residential real property lease involving premises commonly known as 11230 Katherine's Crossing, Suite 200, Woodridge, Illinois 60517, and located in the Wood Hill Crossing Business Park (the "**Lease**"). The Notice identifies the Lease as a potential lease to be assumed and assigned and lists a purported cure amount for the Lease.

Objection

5. Pursuant to §365(f)(2)(A) of the Bankruptcy Code, "the trustee may assign an executory contract or unexpired lease of the debtor only if – (A) the trustee assumes such contract or lease in accordance with the provisions of this section." 11 U.S.C. §365(f)(2)(A).

Pursuant to §365(b)(1) of the Bankruptcy Code,

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

11 U.S.C. §365(b)(1).

6. The Debtors may not assume or assign the Lease pursuant to sections

365(f)(2)(A) and 365(b)(1) of the Bankruptcy Code unless they cure and compensate, or provide adequate assurances that they will promptly compensate, Northern Wood Hill for its actual pecuniary loss suffered as a result of the Debtors' defaults under the Lease. See In re Rickel Home Centers, Inc., 209 F.3d 291, 298 (3d Cir. 2000), cert. denied, 531 U.S. 873 (2000) (noting that trustee must satisfy requirement of cure or adequate assurance of prompt cure before he may assume a contract or lease).

7. Northern Wood Hill objects to the Notice because the cure amount listed therein is incorrect. In the Notice, the Debtors list a "Non Residential Real Property Lease" with Northern Wood Hill as having a proposed cure amount of \$24,707.15. As detailed in the spreadsheet attached hereto as **Exhibit A**, the cure amount necessary to cure pecuniary defaults under the Lease is \$27,067.07. This sum includes (i) charges for base rent, taxes, common area maintenance and insurance of \$12,771.00 for both August and September; (ii) late fees of \$638.55 for both August and September; and (iii) interest of \$178.44 for August, and \$69.98 for September. In addition, Northern Wood Hill is entitled to attorneys' fees resulting from the Debtor's default under the lease and resulting from this bankruptcy case, which amount has not yet been determined. Thus, the Debtors cannot assume the Lease unless the actual cure amount is determined and paid in full.

8. Northern Wood Hill further objects to the relief requested because the Debtors have provided no information to Northern Wood Hill about the financial status of the stalking horse bidder to perform all of the obligations contained in the Lease.¹ Accordingly, the Debtors

¹ Northern Wood Hill reserves the right to supplement this Objection. Pursuant to the *Notice of (I) Revised Sale Objection Deadline, Bid Deadline, Auction Date, and Sale Hearing in Connection with the Sale of All or*

have yet to provide adequate assurance of future performance of the Lease as required by sections 365(b)(1)(C) and 365(f)(2) of the Bankruptcy Code. The Lease cannot be assumed and assigned to a potential purchaser until such potential purchaser satisfies the requirements of section 365 of the Bankruptcy Code by providing Northern Wood Hill with proof of its financial status and ability to perform all of the obligations under the Lease on a going-forward basis.

Conclusion

WHEREFORE, for the reasons set forth herein, Northern Wood Hill objects to the relief set forth in the Notice, as it applies to Northern Wood Hill, and respectfully requests that the Court enter an order (i) determining the actual cure amount to be that set forth herein, (ii) require the Debtors to provide adequate assurance of future performance under the Lease, and (iii) such other relief as is just and appropriate.

Dated: November 18, 2013

GREENBERG TRAURIG, LLP

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And

Substantially All of the Acquired Assets and (II) Revised Objection Deadline in Connection with Assumption and Assignment of Executory Contracts and Unexpired Leases dated November 6, 2013 [Docket No. 597], objections to the proposed assumption and assignment of executory contracts and unexpired leases are due by November 18, 2013. However, because the auction is not scheduled to be held until November 21, 2013, the identity of the successful bidder will not be known until after the objection deadline set forth in the notice. Northern Wood Hill therefore reserves its right to supplement this Objection upon the Debtors' identification of the successful bidder after the auction.

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