



Dated: August 21, 2006

*Redfield T. Baum*

REDFIELD T. BAUM, SR  
U.S. Bankruptcy Judge

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

In re:  
WESTERN MEDICAL, INC.,  
  
Debtor.

Chapter 11  
Case No. 2:06-1784-RTBP

**ORDER APPROVING DEBTOR'S MOTION  
FOR EXPEDITED SALE OF DESIGNATED  
ASSETS OF THE DEBTOR TO HIGH  
BIDDER AT AUCTION PURSUANT TO  
SECTION 363 WITH LIENS TO ATTACH  
TO PROCEEDS**

Hearing Date: August 15, 2006  
Hearing Time: 11:00 a.m.

This matter came before the Court pursuant to the "Debtor's Motion For Expedited Sale Of Substantially All Of The Debtor's Assets To High Bidder At Auction Pursuant To Section 363 With Liens To Attach To Proceeds" (the "Expedited Motion") filed by WESTERN MEDICAL, INC., the debtor and debtor-in-possession in the above-captioned case (the "Debtor"). In the Expedited Motion, the Debtor asks the Court, pursuant to Bankruptcy Code §§ 105(a), 363 and 365, and Bankruptcy Rules 2002, 6004, and 6006, for an order authorizing the Debtor to sell substantially all of its assets free and clear of liens with liens to attach to any proceeds. This matter also comes before the Court pursuant to the settlement terms read on the record by counsel on behalf of the Debtor, M&I Bank, Invacare Corporation, Sunrise Medical and

1 its subsidiaries, the Official Unsecured Creditors Committee, and Apria Healthcare, Inc.  
2 ("Apria").

3 Notice of the Expedited Motion having been given to the twenty largest creditors,  
4 to the Office of the United States Trustee, and to all interested parties; and such notice being due  
5 and sufficient notice under the circumstances; and upon the entire record made at the hearing  
6 before the Court with respect to the Expedited Motion, including all evidence proffered and  
7 argument presented in support of the Expedited Motion, and this Court having found good and  
8 sufficient cause appearing therefor;

9 IT IS HEREBY FOUND AND CONCLUDED that:

10 A. On June 15, 2006, the Debtor filed for relief under Chapter 11 of the  
11 Bankruptcy Code (the "Bankruptcy Case"). The Debtor is continuing in possession of its  
12 property, and is administering its business, as debtor-in-possession, pursuant to Bankruptcy Code  
13 §§1107 and 1108.

14 B. This Court has jurisdiction over the Bankruptcy Case and the Expedited  
15 Motion pursuant to 28 U.S.C. §§157(b) and 1334. The Motion presents a core proceeding as  
16 defined in 28 U.S.C. §157(b)(2).

17 C. On June 2, 2006, the Debtor and Providential Holdings, Inc.  
18 ("Providential") entered into a "Asset Purchase Agreement" which was attached to the "Debtor's  
19 Motion To Sell Substantially All Of The Debtor's Assets Pursuant to Section 363 With Liens To  
20 Attach To Proceeds" which was filed with the Court on June 15, 2006 (the "Original Sale  
21 Motion").

22 D. On July 26, 2006, a hearing was held wherein the Court approved  
23 Providential as the high bidder at auction. On July 27, 2006, the Court entered its Order  
24 approving "Debtor's Motion To Sell Substantially All Of The Debtor's Assets Pursuant To  
25 Section 363 With Liens To Attach To Proceeds And Setting Auction Sale" (the "Initial Sale  
26 Order") wherein the Court approved the sale of the Debtor's assets to Providential for the amount

1 of \$5,650,000, subject to adjustment only in the event that a reduction was provided for under the  
2 APA based on diminished accounts receivable. Pursuant to the Initial Sale Order, the closing of  
3 the sale to Providential was to close on August 2, 2006. In a minute entry associated with the  
4 Initial Sale Order dated July 27, 2006, the Court reserved its decision concerning the scope of  
5 releases provided to Sunrise and Invacare under the Sale Order. Providential failed to close on  
6 August 2, 2006.

7 E. On August 11, 2006, the Debtor filed its Expedited Motion proposing to  
8 sell some or all of the Debtor's assets to be sold to the highest and best bidder at auction.

9 F. Eight (8) objections were filed to the Original Sale Motion and the  
10 Expedited Motion by: (i) Maricopa County; (ii) Pima County; (iii) Stat Med; (iv) Airgas, Inc.; (v)  
11 the Department of Health and Human Services ("HHS"); (vi) Invacare Corporation and Invacare  
12 Credit Corporation ("Invacare"); (vii) Sunrise Medical, Inc., Sunrise Medical HHG, Inc. and  
13 Sunmed Finance ("Sunrise"); and (viii) M&I Marshall & Isley Bank ("M&I").

14 G. With respect to the objections of Maricopa County and Pima County, the  
15 claims of Maricopa County and Pima County for unpaid personal property taxes in the amount of  
16 \$9,840.15 and \$2,167.50, respectively (the "Tax Claims") will attach to the proceeds of the sale.

17 H. The objection of HHS which asserts that no transfer of the Medicare  
18 licenses can occur through the sale will be sustained and no transfer of Medicare licenses will  
19 occur through the sale.

20 I. Airgas and Stat Med have objected to the Expedited Motion seeking  
21 confirmation that the property to be sold pursuant to this Order does not include any of their  
22 property that is in the possession of the Debtor or the Debtor's customers. The Debtor has  
23 confirmed that the sale pursuant to this Order will not include the property that is described in the  
24 Airgas and Stat Med objections, but the Debtor reserves the right to seek to assume and assign its  
25 agreements with Airgas and Stat Med in accordance with the provisions of the Bankruptcy Code.  
26 Ford and GMAC have leased vehicles to the Debtor (the "Leased Vehicles"). The Debtor has

1 confirmed that the sale pursuant to this Order will not include the Leased Vehicles, but the Debtor  
2 reserves the right to seek to assume and assign its agreements with Ford and GMAC in  
3 accordance with the provisions of the Bankruptcy Code.

4 J. The objections by M&I, Sunrise and Invacare are resolved by their  
5 agreement to the terms of this Order. Accordingly, all objections have been resolved and all  
6 lienholders consent to the sale approved by this Order. Without limiting any substantive rights  
7 granted under the Initial Sale Order, this Order incorporates a series of compromises and  
8 agreements by and among the Debtor and its estate, M&I, Sunrise, Invacare, and the Committee  
9 (collectively, the "Parties") to provide for the sale of the Debtor's assets under the Expedited  
10 Motion, as well as for the division and distribution of proceeds, the allowance of claims, and  
11 additional releases among the Parties.

12 K. The Internal Revenue Service has asserted a secured claim as a division of  
13 the federal government against Medicare receivables due and owing to the debtor which are not  
14 included as assets to be sold in connection with the sale. The secured claim was formally asserted  
15 on July 21, 2006 by the filing of a Proof of Claim asserting, among other things, setoff rights  
16 against accounts receivable. No accounts receivable are not being sold as part of this Expedited  
17 Motion.

18 L. Sunrise and Invacare have also filed a "Complaint" against M&I, which is  
19 pending in the United States Bankruptcy Court for the District of Arizona as adversary  
20 proceeding number 06-00654 (the "Marshalling Complaint"). Sunrise and Invacare have been  
21 directed to dismiss the Marshalling Complaint with prejudice pursuant to the Initial Sale Order.

22 M. Invacare asserts a purchase money security interest in certain inventory and  
23 proceeds therefrom of the Debtor with asserted value of at least \$164,000 (the "Invacare PMSI").

24 N. Sunrise asserts a purchase money security interest in certain inventory and  
25 proceeds therefrom of the Debtor with asserted value of at least \$212,000 (the "Sunrise PMSI").  
26

1 The Sunrise PMSI includes assignments to Sunrise at least from the following lenders: (i)  
2 Citicapital; (ii) Preferred Capital; and (iii) VGM Financial Services.

3 O. Prior to the Petition Date, certain inventory subject to the Sunrise PMSI  
4 and the Invacare PMSI was previously sold to Apria prior to the filing of the Bankruptcy Case.  
5 Apria currently is holding \$9,009 on account of the Invacare PMSI and \$10,846 in connection  
6 with the Sunrise PMSI. Apria is holding those funds which Apria is directed to release to Sunrise  
7 and Invacare upon receipt of lien releases from Sunrise and Invacare with respect to that  
8 inventory.

9 P. Pursuant to the "Final Order (I) Authorizing Secured And Super Priority  
10 Post-Petition Financing Pursuant to 11 U.S.C. §§363, 364, and 503(b), (II) Modifying The  
11 Automatic Stay Pursuant To 11 U.S.C. §363, And (III) Granting Other Related Relief" (the  
12 "Financing Order"), dated July 25, 2006, M&I agreed to provide up to \$500,000 in post-petition  
13 financing to the Debtor pursuant to the terms and conditions stated therein. To date, M&I has  
14 funded approximately \$290,000 to the Debtor pursuant to the Financing Order.

15 Q. On August 15, 2006, the Court held a hearing on the Expedited Motion.  
16 Apria appeared through counsel, and Debtor's counsel confirmed receipt of Apria's \$200,000  
17 good faith deposit (the "Escrow Payment"). Upon the parties noting on the record that all  
18 Objections were resolved, the Court proceeded to hold an auction at which time Apria was  
19 determined to be the highest and best bid at \$2.5 million (the "Purchase Price") for the assets and  
20 subject to the terms stated herein.

21 R. Apria will acquire the assets of the Debtor (the "Assets") to be more fully  
22 described in the APA (as that term is defined herein), provided the Assets to be sold under this

23 Order will not include:

- 24 a) Any accounts receivable of the Debtor;  
25 b) Any of the company's cash and cash equivalents;

1 c) Any causes of action or litigation claims (including  
2 the United Healthcare/Evercare arbitration claim) not related to the  
3 assets purchased by Apria or the executory contracts or leases  
4 assumed by Apria;

5 d) Any state and federal income tax carryforwards and  
6 other tax attributes of the Debtor;

7 e) Any tax refunds due or available to the Debtor or  
8 any tax attributes of the Debtor;

9 f) Any avoidance actions or causes of action held by  
10 the Debtor in its capacity as debtor-in-possession;

11 g) Any insurance policies and any right to recover  
12 thereunder; and

13 h) Any Medicare/Medicaid provider numbers.

14 S. Apria's obligation to purchase the assets is conditioned upon entry of this  
15 Order and execution of a definitive asset purchase agreement (the "APA") consistent with the  
16 terms of this Order no later than August 18, 2006. The APA also will include provisions granting  
17 the Debtor and M&I reasonable access to all records, charts, software, billing information, and  
18 other data which the Debtor and M&I deem reasonable and necessary to pursue the collection of  
19 accounts receivable, at their own expense.

20 T. In the APA, the Debtor and Apria will identify the executory contracts and  
21 unexpired leases to be assumed at closing (the "Assumed Contracts"). The Assumed Contracts  
22 include only provider contracts for which no cure amount will need to be paid. In addition, the  
23 Debtor and Apria will identify the executory contracts and unexpired leases that Apria asks the  
24 Debtor to defer assuming until Apria can determine if it will assume those contracts and leases  
25 (the "Deferred Leases"). With respect to the Deferred Leases, Apria shall be responsible for all  
26 costs associated with any executory contracts and unexpired leases that it identifies as the

1 Deferred Leases under the APA on a pro rata basis after the Closing. Apria shall have sixty (60)  
2 days after the Closing to determine if it will obtain the Deferred Leases. Formal assumption of  
3 the Assumed Contracts and the Deferred Leases will be by separate motion to be filed by the  
4 Debtor.

5 U. Apria understands and agrees, to the extent applicable, to abide by the  
6 requirements and recommendations set forth in the "Consumer Privacy Ombudsman Report to the  
7 Court" that was filed on August 1, 2006. In addition, Apria agrees to ensure that all required  
8 notices and other privacy protections allowed for under state and federal law shall be afforded to  
9 those customers who comprise the "customer list" that is to be sold pursuant to the APA.

10 V. Due notice of the Expedited Motion has been given to all parties entitled  
11 thereto, as evidenced by the affidavits of service and publication previously filed with this Court.  
12 The solicitations made by the Debtor in connection with the proposed sale were adequate and  
13 reasonable to obtain the highest and best price for the sale. No other or further notice of the  
14 Expedited Motion is required.

15 W. A reasonable opportunity to object or to be heard regarding the relief  
16 requested in the Expedited Motion has been afforded to all interested persons and entities.

17 X. Upon the execution of this Order, the Debtor has full power and authority  
18 to execute and deliver any and all documents necessary to implement this Order and transfer the  
19 assets contemplated thereby.

20 Y. The sale of the assets outlined herein is in the best interests of the Debtor,  
21 its estate and its creditors. The Debtor has presented good and sufficient business justification for  
22 the sale of the assets pursuant to Section 363 of the Bankruptcy Code, in that, among other things,  
23 an expeditious sale of the assets in accordance with the procedures followed by the Debtor has  
24 resulted in the highest possible price for the assets, and in the absence of a prompt sale the value  
25 of the assets will likely decline due to deteriorating conditions, inadequate liquidity for necessary  
26 operating and capital expenditures, and uncertainty about the future of the Debtor's business.

1           Z.     The offer by Apria represents the highest and best offer for the Debtor's  
2 assets, the purchase price is fair and reasonable, and constitutes fair consideration and reasonably  
3 equivalent value under the Bankruptcy Code, Internal Revenue Code or other applicable federal  
4 or state law.

5           AA.    As a condition to the sale of the assets, Apria requires that the assets be  
6 sold free and clear of all liens, claims, interests and encumbrances, and that Apria has no liability  
7 for any other liabilities of the Debtor (as successor entity or otherwise). Apria would not enter  
8 into and consummate this sale, thus adversely affecting the Debtor's estate, if the sale to Apria  
9 was not free and clear of all liens, claims, interests and encumbrances of the Debtor, or if Apria  
10 were or would be liable for liabilities of the Debtor.

11          BB.    The Debtor is not affiliated with Apria, and the terms stated herein were  
12 reached by the parties without collusion, in good faith, from arm's-length bargaining positions  
13 and for fair value. Accordingly, Apria is a good faith purchaser under Section 363(m) of the  
14 Bankruptcy Code and, as such, entitled to the protections afforded thereby. Neither the Debtor  
15 nor Apria has engaged in any conduct that would cause or permit the sale to be avoided under  
16 Section 363(n) of the Bankruptcy Code.

17          CC.    The transfer of the assets contemplated herein (a) are or will be legal, valid  
18 and effective transfers of property of the Debtor's estate to Apria, and (b) vest or will vest Apria  
19 with all right, title and interest of the Debtor in and to the assets free and clear of all interests,  
20 including all liens, claims and encumbrances, under Sections 363(f) and 105 of the Bankruptcy  
21 Code.

22          DD.    The transfer of the assets to Apria does not and will not subject Apria to  
23 any liability for claims against the Debtor by reason of such transfer under the laws of the United  
24 States, any state, territory or possession thereof or the District of Columbia applicable to such  
25 transactions.

1 EE. Each of the foregoing findings by the Court will be deemed a finding of  
2 fact if and to the full extent that it makes and contains factual findings and a conclusion of law if  
3 and to the full extent that it makes legal conclusions.

4 Based upon the foregoing findings and conclusions, and good and sufficient cause  
5 appearing therefor;

6 IT IS HEREBY ORDERED that:

7 1. The Expedited Motion is granted, subject to the terms and conditions set  
8 forth in this Order. All objections to the entry of this Order have either been resolved as stated on  
9 the record, or shall be, and hereby are, overruled.

10 2. The Court conducted an auction sale of the Debtor's assets as set forth in  
11 the Expedited Motion, on August 15, 2006 at 11:00 a.m.

12 3. The terms and conditions set forth in this Order are hereby approved in all  
13 respects, and the sale of the assets is hereby authorized under Section 363(b) and 363(f) of the  
14 Bankruptcy Code, no further consent, approval or order being required.

15 4. By the issuance of this Order, the Debtor is authorized and directed to  
16 execute and deliver, and empowered and directed fully to perform under, consummate and  
17 implement, the APA, together with all additional instruments and documents that may be  
18 reasonably necessary or desirable to implement the APA, and to take all further actions as may  
19 reasonably be requested by Apria for the purpose of assigning, transferring, granting, conveying  
20 and conferring to Apria, or reducing to Apria's possession, any or all of the assets, or as may be  
21 necessary or appropriate to the performance of the obligations as contemplated by the APA.

22 5. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code and except  
23 as provided by this Order, the Assets shall be transferred to Apria upon Closing under the APA  
24 and shall be free and clear of all mortgages, security interests, conditional sale or other title  
25 retention agreements, pledges, liens, judgments, demands, encumbrances, easements, restrictions  
26 or charges of any kind or nature, if any, including, but not limited to, any restriction on the use,

1 voting, transfer, receipt of income or other exercise of any attributes of ownership (the foregoing  
2 collectively referred to herein as (“Liens”) and all debts arising in any way in connection with any  
3 acts of any of the Debtor, claims (as that term is defined in the Bankruptcy Code), obligations,  
4 demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters  
5 of any kind and nature, whether arising prior to or subsequent to the commencement of these  
6 cases, whether matured or unmatured, liquidated or unliquidated, whether known or unknown,  
7 and whether imposed by agreement, understanding, law, equity or otherwise, including without  
8 limitation, obligations to current and former employees of debtors (including, without limitation,  
9 employees of Debtor not offered employment by Apria) (the foregoing collectively referred to as  
10 “Claims” herein), with all such Liens and claims released, terminated and discharged as to the  
11 Assets and to attach to the proceeds of the sale paid by Apria.

12 6. All persons and entities holding Liens or claims of any kind and nature  
13 with respect to the Assets are hereby barred and enjoined from asserting such Liens and claims of  
14 any kind and nature against Apria, its successors or assigns, or the Assets purchased in  
15 accordance with the APA.

16 7. This Order: (a) is and shall be effective as a determination that, as of a  
17 Closing, all Liens existing on the Assets before the Closing have been unconditionally released,  
18 discharged and terminated, and that the conveyances contemplated herein have been effected; and  
19 (b) is and shall be binding upon and govern the acts of all entities including without limitation, all  
20 filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of  
21 deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state,  
22 federal, state, and local officials, and all other persons and entities who may be required by  
23 operation of law, the duties of their office, or contract, to accept, file, register or otherwise record  
24 or release any documents or instruments, or who may be required to report or insure any title or  
25 state of title in or to any of the Assets.

1           8. Each and every federal, state and local governmental agency or department  
2 hereby is directed to accept any and all documents and instruments necessary and appropriate to  
3 consummate the transactions contemplated by the APA.

4           9. If any person or entity that has filed financing statements or other  
5 documents or agreements evidencing Liens on or interests in the Assets shall not have delivered  
6 to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate  
7 parties, termination statements or releases of all Liens or other interests which the person or entity  
8 has with respect to the Assets, the Debtor is hereby authorized and directed to execute and file  
9 such statements, instruments, releases and other documents on behalf of the person or entity with  
10 respect to the Assets.

11           10. To the extent applicable, Apria shall abide by the requirements and  
12 recommendations set forth in the "Consumer Privacy Ombudsman Report to the Court" that was  
13 filed on August 1, 2006. Further, all required notices and other privacy protections allowed for  
14 under state and federal law shall be afforded to those customers who comprise the "customer list"  
15 that is to be sold pursuant to the APA.

16           11. Except as otherwise expressly provided in the APA or related instruments  
17 or as otherwise provided in this Order, Apria shall have no liability or responsibility for any  
18 liability or other obligation of the Debtor arising under or related to the Assets other than for the  
19 Purchase Price, the Assumed Contracts, and the Deferred Leases. Without limiting the effect of  
20 the foregoing, the transfer of the Assets does not and will not subject Apria to any liability for  
21 claims against any Debtor or the Assets by reason of such transfer under the laws of the United  
22 States, any state, territory or possession thereof or the District of Columbia applicable to such  
23 transactions. Apria shall not be deemed, as a result of any action taken in connection with the  
24 APA to: (a) be the successor of the Debtor; (b) have, de facto or otherwise, merged with or into  
25 the Debtor; (c) be a mere continuation or substantial continuation of the Debtor or the enterprise  
26

1 of the Debtor; or (d) be responsible for any liability of the Debtor or for payment of any benefit  
2 accruing to the Debtor, except as specifically provided for in the APA.

3 12. This Court retains jurisdiction: (a) to enforce and implement the terms and  
4 provisions of the APA, all amendments thereto, any waivers and consents thereunder, and each of  
5 the agreements executed in connection therewith; (b) to compel delivery of the Assets to Apria,  
6 (c) to resolve any disputes arising under or related to the APA, except as otherwise provided  
7 therein; (d) to interpret, implement and enforce the provisions of this Order, and (e) to hear and  
8 determine any and all disputes between Debtor and Apria, and as the case may be, any other party  
9 with respect to this sale.

10 13. Nothing contained in any plan or reorganization confirmed in this case or  
11 the order of confirmation confirming any plan of reorganization, nor any order dismissing any  
12 case or converting it to a Chapter 7 liquidation or entered in a converted Chapter 7 liquidation  
13 shall conflict with or derogate from the provisions of the APA, any document or instrument  
14 executed in connection therewith or the terms of this Order.

15 14. Apria is a purchaser in good faith of the Assets and is entitled to all of the  
16 protections afforded to a good-faith purchaser by Section 363(m) of the Bankruptcy Code.

17 15. The terms and provisions of the APA and this Order, shall be binding in all  
18 respects upon, and shall inure to the benefit of, the Debtor, its estate and its creditors, Apria, and  
19 their respective affiliates, successors and assigns, and any affected third parties and persons  
20 asserting a claim against or interest in the Debtor's estate or any of the Assets to be sold to  
21 pursuant to the APA, notwithstanding any subsequent appointment of any trustee, as to which  
22 trustee such terms and provisions likewise shall be binding in all respects.

23 16. The failure specifically to include any particular provisions of the APA or  
24 any of the documents, agreements or instruments executed in connection therewith in this Order  
25 shall not diminish or impair the efficacy of such provision, document, agreement or instrument, it  
26

1 being the intent of the Court that the APA and each such document, agreement or instrument be  
2 authorized and approved in its entirety.

3 17. The APA and any related agreements, documents or other instruments may  
4 be modified, amended or supplemented by the parties thereto in accordance with the terms thereof  
5 without further order of the Court, provided that any such modification, amendment or  
6 supplement is not material.

7 18. Upon the sale of the Debtor's Assets, the proceeds of the sale shall be  
8 distributed under the express terms set forth in this Order, and the Debtor shall have the authority  
9 to take such action as is necessary to effectuate the terms of this Order, including, without  
10 limitation, the authority to create accounts, and execute documents.

11 19. The closing of the sale will occur no later than 5:00 pm, MST, August 25,  
12 2006 (the "Closing").

13 20. At Closing, the proceeds of the sale will be distributed as follows:

- 14 a) Costs of sale;
- 15 b) Any amounts advanced as new financing by M&I  
16 under the DIP Order, plus attorneys' fees and costs relating to that  
17 financing not to exceed \$35,000;
- 18 c) The remaining proceeds will constitute the Net Sale  
19 Proceeds and will be distributed as provided in Paragraph 21 below.

20 21. The Net Sale Proceeds will be distributed as follows:

- 21 a) The first \$300,000 will be placed in a separate  
22 interest-bearing account for which: (i) \$250,000 will be earmarked  
23 for distribution to general unsecured creditors of the Debtor; and  
24 (ii) \$50,000 shall be earmarked for payment of attorneys' fees and  
25 costs incurred by the Committee counsel, subject to court approval;
- 26

1                   b) Sunrise will receive \$155,200 in full satisfaction of  
2 its secured claim arising in connection with the Sunrise PMSI and  
3 Invacare will receive \$122,400 in full satisfaction of its secured  
4 claims in connection with the Invacare PMSI. Both Sunrise and  
5 Invacare will maintain their unsecured claims as provided in  
6 Paragraph 22. Notwithstanding the foregoing, the estate will retain  
7 \$10,000 as a carve-out against the payment made to Sunrise on  
8 account of the Sunrise PMSI claim for allowed expenses incurred  
9 by the Privacy Care Ombudsman (the "PCO"). The expenses  
10 incurred by the PCO shall be shared equally between the carve-out  
11 provided in this paragraph and the carve-out provided in the DIP  
12 Order from M&I. To the extent any funds remain in the respective  
13 carve-outs, after payment in full of all allowed claims of the PCO,  
14 then the remaining funds will be remitted and retained by Sunrise  
15 and M&I, respectively.

16                   c) ~~The sum of \$100,000 will be retained by the estate~~  
17 subject to further order of the Court (the "Reserve") as a reserve  
18 against senior Tax Claims and potential senior purchase money lien  
19 claims in inventory, other than those asserted by and through  
20 Sunrise and Invacare. The Reserve will be held by the estate  
21 subject to the liens and security interests of M&I and no  
22 distribution of the Reserve shall be made for any purpose absent  
23 further order of the Court.

24                   d) All remaining Net Sale Proceeds will be distributed  
25 indefeasibly to M&I on account of its allowed secured claim.  
26

1                   22. Sunrise is hereby allowed a general unsecured claim in the amount of  
2 \$3,843,839.18. Invacare is hereby allowed a general unsecured claim in the amount of  
3 \$3,703,223.36.

4                   23. With respect to asserted secured claims against the Debtor regarding  
5 unpaid prepetition payroll taxes, interest, and penalties allegedly owed to the Internal Revenue  
6 Service (the "IRS"), the IRS reserves all rights with respect to its asserted lien against the  
7 remaining assets of the estate. M&I reserves all rights to object to the alleged secured claims and  
8 to assert a priority position over the IRS with respect such claims.

9                   24. With respect to the Sunrise PMSI claim, Sunrise will indemnify and defend  
10 M&I in connection with any claims asserted against M&I by: (i) Citicapital; (ii) Preferred  
11 Capital; (iii) VGM Financial Services; and (iv) any other lenders, which seek recovery on account  
12 of purchase money security interests in inventory which have been allegedly assigned to Sunrise.

13                   25. Upon execution of the APA in accordance with this Order, the Debtor shall  
14 file a motion for the assumption of those executory contracts and unexpired leases identified as  
15 Assumed Contracts. At the election of Apria, but no later than sixty (60) days after closing, Apria  
16 shall identify those Deferred Leases which Apria asks the Debtor to assume and the Debtor shall  
17 file a motion to proceed with the assumption of those Deferred Leases. Apria will be responsible  
18 for the pro rata costs associated with any Deferred Leases from the closing date until the date the  
19 Debtor receives actual notice from Apria of its intent not to proceed with the assumption of a  
20 Deferred Lease. Apria will be responsible for any cure amounts associated with any Deferred  
21 Leases.

22                   26. Without limiting the substantive rights granted under the Initial Sale Order  
23 and the DIP Financing Order, and except to the extent of the duties, obligations, and allowance of  
24 claims, as stated herein and in the DIP Financing Order, the Debtor and its estate, M&I, Invacare,  
25 and Sunrise expressly mutually release and forever discharge one another, and their respective  
26 affiliates, subsidiaries, shareholders, directors, officers, employees, agents, attorneys, and their

1 heirs, personal representatives, successors and assigns, from and all liability from any claims,  
2 defenses, demands, liabilities and obligations, damages, actions, causes of action, setoffs,  
3 recoupments, costs and expenses (including, without limitation, attorney's fees), known or  
4 unknown, past or present, fixed or contingent, liquidated or unliquidated arising from or related to  
5 the Debtor, its estate, C&S Investments, and any business dealings regarding those entities,  
6 provided that such releases (i) shall not apply in any manner or with respect to any Party, as to  
7 any claims that such Party may have against Moglia Advisors; (ii) shall not in any way limit or  
8 otherwise impair any liens or claims of M&I, Sunrise and Invacare against C&S or the claims of  
9 any Parties as to any guarantees of indebtedness by the Debtor's officers, directors, or  
10 shareholders to any of the Parties, including the previously pending action by Sunrise against  
11 Dennis Crowl; and (iii) shall be subject to any future ruling of the Court as to whether the scope  
12 of such releases with respect to Sunrise and Invacare includes avoidance actions belonging to the  
13 estate. To the extent M&I ultimately holds any allowed general unsecured claims, M&I will not  
14 share in any distribution of the \$250,000 carve out to general unsecured creditors described in this  
15 Order and has received a release from any avoidance actions.

16 27. Notwithstanding the releases provided to M&I in connection with the  
17 Original Sale Order and this Order which encompass all claims, including surcharge claims under  
18 Bankruptcy Code §506(c), M&I has agreed that the Debtor may seek to surcharge administrative  
19 expenses incurred through July 31, 2006 against the Designated Receivables (as that term is  
20 defined in the Original Sale Order) and up to \$100,000 of other account receivable collections.  
21 Furthermore, nothing in this Order is intended to limit or reduce M&I's commitment to permit the  
22 use of cash collateral to pay administrative expenses incurred from August 4, 2006 through  
23 August 18, 2006 as stated on the record by counsel for M&I in open court. Provided the APA is  
24 fully executed on or before August 18, 2006, M&I will consent for its collateral to be used to pay  
25 actual expenses that accrue in relation to the Debtor's reduced operations through the Closing  
26 Date, but no later than the close of business on August 25, 2006. The release and limitation of

1 surcharge claims pursuant to Bankruptcy Code §506(c) provided through the Original Sale Order  
2 and this Order expressly excludes surcharge claims which may be assertable by the estate against  
3 M&I for unpaid attorneys' fees and costs incurred by Osborn Maledon as counsel for the Debtor.  
4 No other expenses of the estate may be pursued via surcharge under Bankruptcy Code §506(c)  
5 except as otherwise provided in this paragraph.

6 28. Nothing in this Order shall be deemed to limit, modify, release, or waive  
7 any claim by any Parties against Providential arising in connection with the Original Sale Order,  
8 the transaction authorized therein, and any acts by Providential and its agents relating in any way  
9 to that transaction.

10 29. The provisions of this Order shall be binding upon and inure to the benefit  
11 of the Parties, and their respective successors and assigns, including any trustee or other fiduciary  
12 hereafter appointed in the Bankruptcy Case as a legal representative of the Debtor or its estate.

13 30. The notice provisions approved by the Court by entry of this Order shall  
14 constitute sufficient notice of the sale, and such notice shall be and hereby is adjudicated  
15 sufficient to provide due process to all parties.

16 31. The Court has and will retain jurisdiction to enforce this Order according to  
17 its terms.

18 32. The agreements and compromises as read before the Court on August 15,  
19 2006, and as embodied in this Order were entered into in good faith and are fully memorialized in  
20 this Order.

21 33. As provided by Bankruptcy Rule 6004(g), this Order shall be effective and  
22 enforceable immediately upon entry and there shall be no stay.

23 **IT IS SO ORDERED.**

24 ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2006.

25  
26  
\_\_\_\_\_  
HONORABLE REDFIELD T. BAUM  
Chief United States Bankruptcy Judge

1 APPROVED AS TO FORM  
AND CONTENT:

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20 Reviewed by:

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24 By /s/ Larry Watson  
25 Larry Watson

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