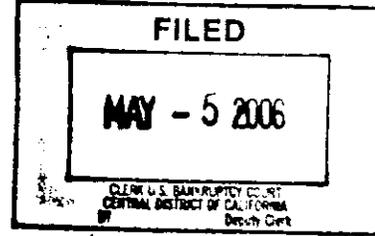


ORIGINAL

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number

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FOR COURT USE ONLY



Fy200

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re: OLYMPIA GROUP, INC.,

CASE NO.:

LA 06-10111-EC
Chapter 11

Debtor(s).

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: June 13, 2006

Time: 10:30 a.m.

Location: Marriott Courtyard, 14635 Baldwin Park Town Center, Baldwin Park, CA

Type of Sale: Public: Private: Last date to file objections: May 17, 2006

Description of Property to be Sold: Please see attached Exhibit "A"

Terms and Conditions of Sale: Please see attached Exhibit "A"

Proposed Sale Price: Please see attached Exhibit "A"

Overbid Procedure (If Any): Not applicable.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:
May 31, 2006 at 1:30 p.m., 255 East Temple Street, Courtroom "1639", Los Angeles, CA 90012

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Please see attached Exhibit "A"

Date: May 5, 2006

1 Jeffrey N. Pomerantz (CA Bar No. 143717)
Jeffrey W. Dulberg (CA Bar No. 181200)
2 Ramon M. Naguiat (CA Bar No. 209271)
PACHULSKI STANG ZIEHL YOUNG
3 JONES & WEINTRAUB LLP
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Telephone: 310/277-6910
5 Facsimile: 310/201-0760

6 Attorneys for Olympia Group, Inc., Debtor and Debtor in
Possession

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:

12 **OLYMPIA GROUP, INC.,**

13 Debtor.

14
15 Fed. Tax I.D. No.: 94-2431092
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20

Case No.: LA 06-10111-EC

Chapter 11

**NOTICE OF MOTION AND DEBTOR'S
MOTION FOR ORDER (1) AUTHORIZING
SALE OF CERTAIN ASSETS FREE AND
CLEAR OF LIENS CLAIMS AND
ENCUMBRANCES, (2) AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF
INTELLECTUAL PROPERTY LICENSES;
AND (3) APPROVING EMPLOYMENT OF
THE PRIDE CAPITAL GROUP, LLC D/B/A
GREAT AMERICAN GROUP AS
AUCTIONEER IN CONNECTION
THEREWITH; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATIONS OF
MARK P. NAUGHTON AND ALFRED M.
MASSE IN SUPPORT THEREOF**

Date: May 31, 2006

Time: 1:30 p.m.

Place: Courtroom 1639
255 East Temple Street
Los Angeles, CA 90012

Judge: Honorable Ellen Carroll

21
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23
24 **TO THE HONORABLE ELLEN CARROLL, UNITED STATES BANKRUPTCY JUDGE,**
25 **SECURED LENDERS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,**
26 **ALL PARTIES REQUESTING SPECIAL NOTICE, AND THE OFFICE OF THE**
27 **UNITED STATES TRUSTEE:**
28

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PACHULSKI STANG ZIEHL YOUNG JONES & WEINTRAUB LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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1 **PLEASE TAKE NOTICE THAT** a hearing will be held at the above captioned date and
2 time to consider the motion (the “Motion”) of Olympia Group, Inc., debtor and debtor in
3 possession herein (the “Debtor”), for an order (1) authorizing the Debtor to sell certain of its
4 assets (the “Assets”) via public auction, free and clear of all liens, claims, interests, and
5 encumbrances (collectively, “Interests”), with any such Interests to attach to the sale proceeds
6 with the same validity (or invalidity) and priority as existed prior to the sales; (2) authorizing the
7 Debtor to assume and assign the Debtor’s interests in any auctioned intellectual property license
8 agreements to the successful bidder for the underlying intellectual property at the auction; (3)
9 approving the employment of The Pride Capital Group, LLC d/b/a Great American Group
10 (“Great American”) as its auctioneer in connection therewith; (4) authorizing payment of the
11 Compensation (described below) and reimbursement of the Sale Expenses (described below)
12 without further order of the Court, as an expense of administration pursuant to sections 507(a)
13 and 503(b) of the Bankruptcy Code; (5) providing that the order hereon will be effective
14 immediately, notwithstanding the 10-day stay imposed by Bankruptcy Rule 6004(h); and (6)
15 granting such other and further relief as this Court deems just and proper.

16 The Motion is made pursuant to sections 327(a), 363 and 365 of title 11 of the United
17 States Code, Rules 2002, 2014, 6004 and 6005 of the Federal Rules of Bankruptcy Procedure, and
18 Local Bankruptcy Rules 2014-1 and 6004-2.

19 The Motion is based on the Declarations of Mark P. Naughton and Alfred M. Masse
20 annexed hereto, the supporting Memorandum of Points and Authorities, the statements,
21 arguments, and representations of counsel who appear at the hearing on the Motion, the record in
22 this case, any other evidence properly before the Court prior to or at the hearing on the Motion,
23 and all matters of which this Court may properly take judicial notice.

24 **PLEASE TAKE FURTHER NOTICE THAT** by way of the Motion the Debtor
25 proposes that the Assets, which include all of the Debtor’s remaining inventory, furniture,
26 fixtures, and equipment, and intellectual property (including any auctioned intellectual property
27 license agreements related to the intellectual property sold at the auction), will be sold “as is,”
28 “where is,” “with all faults,” and without any representations or warranties via public auction to

1 be conducted on **June 13, 2006**, commencing at 10:30 a.m. at the Marriott Courtyard Los
2 Angeles – Baldwin Park, 14635 Baldwin Park Towne Center, Baldwin Park, California 91706. In
3 addition, the Assets will be sold free and clear of all Interests, with any such Interests to attach to
4 the sale proceeds with the same validity (or invalidity) and priority as existed prior to the sales.

5 **PLEASE TAKE FURTHER NOTICE THAT** the Debtor seeks to employ Great
6 American, whose business offices are located at 6330 Variel Avenue Woodland Hills, CA 91367
7 and Nine Parkway North, Suite 300, Deerfield, IL 60015, as its auctioneer to provide liquidation
8 consulting services in connection with the sale, via public auction, of the Assets. The terms of
9 Great American’s retention are set forth in that certain Consulting Agreement dated April 7,
10 2006, a copy of which is attached hereto as **Exhibit “A”** (the “Agreement”).

11 As described in the Motion and in the Agreement, Great American will charge purchasers
12 a buyer’s premium of ten percent (10%) for on-site purchasers and thirteen percent (13%) for on-
13 line purchasers on sales of the Assets and will be entitled to a fee equal to 70% of such buyer’s
14 premiums (the “Compensation”), with the remaining portion to be paid to the estate along with
15 the net sale proceeds. In addition, Great American will be entitled to reimbursement for actual
16 expenses incurred by Great American in preparing for and conducting the sale on behalf of the
17 Debtor in an amount not to exceed \$60,000 (the “Sale Expenses”).

18 Given the nature of Great American’s services, the Debtor requests that the Court fix the
19 Compensation, and authorize payment of the Compensation and reimbursement of the Sale
20 Expenses without the need for Great American to file a fee application or further order of the
21 Court, as an expense of administration pursuant to sections 507(a) and 503(b) of the Bankruptcy
22 Code.

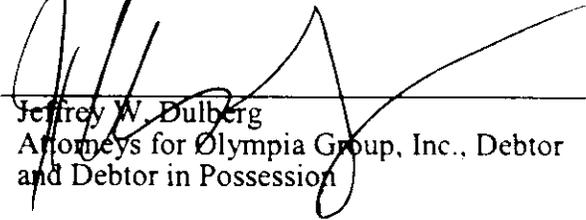
23 **PLEASE TAKE FURTHER NOTICE THAT** Local Bankruptcy Rule 9013-1(a)(7)
24 requires that any response to the Motion be filed with the Court and served upon counsel for the
25 Debtor at the address set forth in the upper left-hand corner of the first page hereof at least
26 fourteen (14) days prior to the hearing date. Pursuant to Local Bankruptcy Rule 9013-1(a)(11),
27 the failure to timely file and serve written opposition may be deemed by the Court to be consent
28 to the granting of the relief requested in the Motion.

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WHEREFORE, the Debtor respectfully requests that the Court enter an order (1) authorizing the Debtor to sell the Assets free and clear of all Interests, with any such Interests to attach to the sale proceeds with the same validity (or invalidity) and priority as existed prior to the sales; (2) authorizing the Debtor to assume and assign the Debtor's interests in any auctioned intellectual property license agreements to the successful bidder for the underlying intellectual property; (3) approving the Debtor's employment of Great American as its auctioneer to provide the liquidation consulting services described herein and fixing the Compensation for such services; (4) authorizing payment of the Compensation and reimbursement of the Sale Expenses without further order of the Court, as an expense of administration pursuant to sections 507(a) and 503(b) of the Bankruptcy Code; (5) providing that the order hereon will be effective immediately, notwithstanding the 10-day stay imposed by Bankruptcy Rule 6004(h); and (6) granting such other and further relief as this Court deems just and proper.

Dated: May 5, 2006

PACHULSKI STANG ZIEHL YOUNG JONES
& WEINTRAUB LLP

By 
Jeffrey W. Dulberg
Attorneys for Olympia Group, Inc., Debtor
and Debtor in Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS**

4 **A. Background**

5 On January 13, 2006 (the "Petition Date"), the Debtor filed a voluntary petition for relief
6 under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and
7 manage its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the
8 Bankruptcy Code. No trustee, examiner, or committee has been appointed in the Debtor's chapter
9 11 case.

10 **B. Description of the Debtor's Business**

11 Founded in 1977, the Debtor manufactured and sold hand tools and related accessories,
12 and lawn and garden products, for use by consumer and industrial users worldwide. The Debtor
13 offered more than 7,000 products, which were designed, manufactured, and distributed by seven
14 global manufacturing facilities.

15 **C. The Debtor's Principal Indebtedness**

16 The Debtor's principal indebtedness consists of borrowings under a senior secured credit
17 facility with Union Bank of California, N.A. (the "Lender"), pursuant to that certain Loan and
18 Security Agreement dated on or about June 3, 2002, under which the Lender agreed to provide
19 revolving loans to the Debtor, based upon a stated formula as more particularly set forth therein,
20 up to a maximum amount of \$24,000,000 together with term loans totaling \$1,000,000.

21 The Loan and Security Agreement dated as of June 3, 2002, has been amended pursuant to
22 the terms of the following agreements: (1) the First Amendment to Loan and Security Agreement,
23 dated as of April 22, 2003, (2) the Amendment Number Two to Loan and Security Agreement
24 and Acknowledgement, dated as of May 3, 2005, (3) the Amendment Number Three to Loan and
25 Security Agreement, dated as of June 1, 2005, (4) the Waiver and Amendment Number Four to
26 Loan and Security Agreement, dated as of June 13, 2005, and (5) the Amendment Number Five to
27 Loan and Security Agreement, dated as of September 30, 2005 (as amended, collectively, the
28

1 “Loan Agreement” and, together with all other Loan Documents as defined therein, collectively,
2 the “Pre-Petition Loan Documents”).

3 Under the Loan Agreement, as amended, in addition to the revolving loans described
4 above in the amended maximum amount of \$17,000,000 and the term loans made thereunder, the
5 Lender agreed to make Tranche A Advances in the maximum amount of \$8,000,000 and Tranche
6 B Advances in the amount of \$3,000,000. Pursuant to a Junior Participation Agreement dated
7 May 3, 2005, as amended by written agreement on June 13, 2005 and again on September 30,
8 2005 (collectively, the “Participation Agreement”), Olympia Holding, LLC (the “Junior
9 Participant”) purchased a 100% participation in all Tranche A Advances and a 50% participation
10 in all Tranche B Advances.

11 As of the Petition Date, the Lender asserts that the total obligation owed by the Debtor
12 under the Loan Agreement is approximately \$19.5 million, plus the Lender’s and the Junior
13 Participant’s pre-petition legal fees and expenses (collectively, the “Pre-Petition Obligations”).
14 The Debtor does not contest the amount of the Pre-Petition Obligations asserted by the Lender.

15 To secure repayment of the Pre-Petition Obligations, the Debtor granted the Lender a first
16 priority security interest in, and a lien upon, all “Collateral” as defined in the Loan Agreement,
17 which includes all “accounts,” “goods,” “general intangibles,” “chattel paper,” “investment
18 property,” and all other tangible and intangible personal property of the Debtor (collectively, the
19 “Pre-Petition Collateral”). The Lender perfected its first priority security interest in the Pre-
20 Petition Collateral by filing a UCC-1 Financing Statement with the California Secretary of State’s
21 office on May 21, 2002, as Document Number 0214260791.

22 In addition to the debt owed to the Lender, the Debtor has outstanding trade debt in excess
23 of \$9 million and approximately 300 general unsecured and priority creditors.

24 **D. Circumstances Leading to the Filing of the Debtor’s Bankruptcy Case**

25 The Debtor’s chapter 11 filing results from the impracticality of continuing its business in
26 light of the exorbitant duties imposed on a significant portion of its products pursuant to an “anti-
27 dumping duty order.” As discussed below, although the Debtor had hoped that it could succeed
28 in efforts to revoke such order, the instant circumstances no longer justify continuing to pursue

1 such efforts. Accordingly, the Debtor has decided to pursue an orderly liquidation of its assets
2 through this bankruptcy case in an effort to maximize the return to all creditors of this estate.

3 **1. Overview of Anti-Dumping**

4 Under Title VII of the Tariff Act of 1930 (the "Tariff Act"), the U.S. International Trade
5 Commission and the U.S. Department of Commerce (collectively, the "Authorities") are
6 responsible for, among other things, conducting anti-"dumping" investigations. "Dumping"
7 occurs when a producer sells a product in the United States at a price that is below that producer's
8 sales price in its home market, or at a price that is lower than its cost of production. Under the
9 Tariff Act, if the Authorities find that a product has been "dumped" and that an industry
10 producing a similar product has been, or is, threatened with material injury, the Authorities may
11 impose an "anti-dumping duty order" ("Anti-Dumping Order").

12 In accordance with an Anti-Dumping Order, the Bureau of Customs and Border Protection
13 ("Customs Bureau") then, in order to offset the unfair trade practice, assesses anti-dumping duties
14 on imports of the product at issue based on rates set by the Authorities ("Anti-Dumping Duties").
15 Collected Anti-Dumping Duties – the amounts of which vary depending on a number of factors
16 including, among other things, product type and country of origin – are ultimately distributed to
17 affected domestic producers of the product, subject to certain qualifications and in accordance
18 with applicable procedures.

19 In September of each year, the Authorities release results of an annual review of
20 applicable anti-dumping rates and make adjustments thereto. The new, adjusted rates apply both
21 to new purchases and, retroactively, to products imported during the review period. To the extent
22 that the new rates are higher than the rates actually paid by an importer, the Customs Bureau
23 assesses the difference against such importer.

24 **2. Impact of Anti-Dumping Order on the Debtor's Business**

25 In the ordinary course of its business, the Debtor imports various goods and supplies from
26 various international suppliers, subjecting it to potential scrutiny under the Tariff Act for
27 "dumping." At least as early as 1999, an Anti-Dumping Order had been in effect with respect to
28 certain of the Debtor's products (the "Affected Products"). The Affected Products are imported

1 primarily from China and are therefore subject to particularly high Anti-Dumping Duties under
2 the rates employed by the Customs Bureau. In some instances, the Anti-Dumping Duty on a
3 particular Affected Product is equivalent to as much as 173% of the cost thereof.

4 Prior to the Petition Date, the Debtor contested the Anti-Dumping Duties in cases pending
5 in the International Trade Court, as well as a case pending in the Federal Court of Appeals. These
6 actions have stayed the retroactive imposition of adjusted rates to products imported as far back
7 as 1999. Although the Debtor has been aware of the Anti-Dumping Order affecting the Affected
8 Products, the Debtor had historically been successful in its efforts to reverse or modify the
9 adjusted rates. In September of 2005, however, the Authorities adjusted the rates applicable to
10 the Affected Products following their annual review, applying such rates to all manufacturers in
11 the Republic of China. Accordingly, to the extent that the Debtor is forced to pay the new rates
12 retroactively, it could face aggregate Anti-Dumping Duties of approximately \$15 million, plus
13 approximately \$3.5 million in interest, which exponentially exceeds the Debtor's initial estimate.

14 Although the Debtor continued to believe until very recently that it could have ultimately
15 succeeded in revoking the Anti-Dumping Order or reducing the Anti-Dumping Duties on the
16 Affected Products, it simply could not pursue such action without tremendous expense. The
17 Debtor would have to incur significant legal fees and related expenses in contesting the Anti-
18 Dumping Order and Anti-Dumping Duties, while in the meantime having to pay Anti-Dumping
19 Duties on the Affected Products at currently applicable rates. Given the inherent uncertainty and
20 expense of any such effort, and in light of the exorbitant Anti-Dumping Duties, it became
21 impractical for the Debtor to continue its operations.

22 In light of the foregoing, the Debtor, in consultation with the Lender and the Junior
23 Participant, decided to terminate its operations and to attempt to preserve and maximize
24 remaining value by effecting an orderly liquidation of its assets in this chapter 11 case.

25 **E. The Assets and the Auction**

26 The Auction is presently scheduled for **June 13, 2006**, commencing at 10:30 a.m. at the
27 Marriott Courtyard Los Angeles – Baldwin Park, 14635 Baldwin Park Towne Center, Baldwin
28 Park, California 91706.

1 The terms of Great American's retention are set forth in that certain Consulting
2 Agreement dated April 7, 2006, a copy of which is attached hereto as **Exhibit "A"** (the
3 "Agreement"). The Agreement describes the Assets to be auctioned by Great American in more
4 detail and sets forth applicable terms, conditions, and procedures, the most salient of which are as
5 follows:

6 Among the Assets is the Debtor's entire inventory located at 505 South Seventh Avenue,
7 City of Industry, CA 91746 (the "Facility"), the estimated value of which is approximately \$7.2
8 million (at cost). In addition, the Assets include all of the Debtor's fixed assets, furniture,
9 fixtures, and equipment, including pallet racking, forklifts, office equipment, packaging
10 machinery, and computers. The Assets also include all of the Debtor's intellectual property
11 including any auctioned intellectual property license agreements related to the intellectual
12 property sold at the auction, except those properties specifically excluded by the Agreement. The
13 Assets will be sold "as is," "where is," "with all faults," and without any representations or
14 warranties via public auctions to be conducted by Great American or its agents. Auctions of the
15 Assets will not be subject to any limits or reserves.

16 In connection with the sale and auction of the Assets, Great American will charge each
17 buyer a premium of 10% above each respective purchase price for on-site bidders and 13% for
18 on-line bidders. Purchases may be made by cash or guaranteed checks. Great American's
19 Compensation will be a fee equal to 70% of the buyer's premiums collected on sales of the
20 Assets. In addition, Great American will be entitled to reimbursement for identified Sale
21 Expenses up to \$60,000.

22 II.

23 ARGUMENT

24 A. Cause Exists to Approve the Sale of the Assets Under Section 363(b) of the 25 Bankruptcy Code

26 Pursuant to section 363(b)(1) of the Bankruptcy Code, the Debtor, after notice and a
27 hearing, may use, sell, or lease property, other than in the ordinary course of business. 11 U.S.C.
28 § 363(b)(1). A debtor's application of its sound business judgment in the use, sale, or lease of

1 property is subject to great judicial deference. See, e.g., In re Moore, 110 B.R. 924 (Bankr. C.D.
2 Cal. 1990); In re Canyon P'ship, 55 B.R. 520 (Bankr. S.D. Cal. 1985); see also Walter v. Sunwest
3 Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) (“[T]here must be some articulated
4 business justification for using, selling, or leasing the property outside the ordinary course of
5 business . . . whether the proffered business justification is sufficient depends on the facts of the
6 case. As the Second Circuit held in Lionel, the bankruptcy judge should consider all salient
7 factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the
8 debtor, creditors and equity holders, alike.”).

9 In interpreting section 363(b)(1) of the Bankruptcy Code, courts have held that a
10 transaction involving property of the estate generally should be approved where the debtor can
11 demonstrate “some articulated business justification for using, selling, or leasing property outside
12 of the ordinary course of business.” In re Continental Airlines, Inc., 780 F.2d 1223, 1226 (5th
13 Cir. 1986); accord In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); Walter, 83 B.R. at 19-
14 20; In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981). Among other
15 factors, courts should consider the consideration to be paid, the financial condition and needs of
16 the debtor, the qualifications of the buyer, and whether a risk exists that the assets proposed to be
17 sold would decline in value if left in the debtor’s possession. See Equity Funding Corp. of Am. v.
18 Fin. Assocs. (In re Equity Funding Corp.), 492 F.2d 793, 794 (9th Cir. 1974) (affirming trial
19 court’s finding that the proposed sale of the debtor’s assets would be in the best interest of the
20 estate in light of impending deterioration of market value of debtor’s assets), cert. denied sub
21 nom, Herman Inv. Co. v. Loeffler, 419 U.S. 964 (1974).

22 As noted above, the Debtor filed this bankruptcy case in order to effect an orderly
23 liquidation of its assets. Here, the Assets will be offered for sale via public auction, which will
24 expose the Assets to the market and therefore yield the best available value under the
25 circumstances. In light of the Debtor’s liquidation goals and the maximization of value inherent
26 in the auction process, the Debtor has determined that the sale of the Assets, as described herein,
27 is in the best interests of the estate.
28

1 **B. Sale of the Assets Free and Clear of Liens, Claims, Interests, and Encumbrances**
2 **Pursuant to 11 U.S.C. § 363(f)**

3 Pursuant to section 363(f) of the Bankruptcy Code, the Debtor requests that the Court
4 approve the sale, via public auction, of the Assets free and clear of all Interests, with any such
5 Interests to attach to the sale proceeds with the same validity (or invalidity) and priority as existed
6 prior to the sales.

7 Section 363(f) of the Bankruptcy Code expressly authorizes a debtor to sell property
8 outside the ordinary course of business “free and clear of any interest in such property of an
9 entity” if any one of the five following conditions is met:

- 10 (a) applicable non-bankruptcy law permits sale of such property free and clear
11 of such interest;
- 12 (b) such entity consents;
- 13 (c) such interest is a lien and the price at which such property is to be sold is
14 greater than the aggregate value of all liens on such property;
- 15 (d) such interest is in bona fide dispute; or
- 16 (e) such entity could be compelled, in a legal or equitable proceeding, to
17 accept a money satisfaction of such interest.

18 11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is written in the disjunctive,
19 any one of these five conditions provides authority to sell the Assets free and clear of liens. See
20 Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988).

21 **1. Parties Asserting Interests in the Assets Consent to the Sale (11 U.S.C.**
22 **§363(f)(2))**

23 Under section 363(f)(2) of the Bankruptcy Code, a debtor may sell estate property free
24 and clear of liens, claims, interests, and encumbrances if the entity asserting the interest consents.
25 As noted above, the Lender and the Junior Participant assert Interests in the Assets. The Debtor is
26 informed that the Lender and the Junior Participant each consent to the sale of the Assets free and
27 clear of their Interests, with such Interests to attach to the proceeds as described herein. In
28 addition, to the extent that any other party asserting an Interest receives notice of this Motion and

1 does not file a written objection hereto, such party should be deemed to have consented to the
2 proposed sale of the Assets free and clear of its asserted Interest. See In re Channel One
3 Commc'ns, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

4 **2. Parties Asserting Interests Could Be Compelled to Accept a Money**
5 **Satisfaction (11 U.S.C. §363(f)(5))**

6 Apart from the Lender's and the Junior Participant's consent, section 363(f)(5) of the
7 Bankruptcy Code provides that assets may be sold free and clear of liens if the holders "could be
8 compelled, in a legal or equitable proceeding, to accept a money satisfaction of [their]
9 interest[s]." 11 U.S.C. § 363(f)(5).

10 Section 1129(b)(2) of the Bankruptcy Code permits a debtor or trustee to retain property
11 and cram down objecting creditors upon payment of the actual value of the collateral. See, e.g.
12 In re Terrace Chalet Apartments, Ltd., 159 B.R. 821, 829 (N.D. Ill. 1993) (holding that a creditor
13 who could be crammed down under section 1129(b) could be compelled to accept a money
14 satisfaction of his interest under section 363(f)(5)); In re Hunt Energy Co., Inc., 48 B.R. 472, 485
15 (Bankr. N.D. Ohio 1985) (same); In re Weyland, 63 B.R. 854, 860-61 (Bankr. E.D. Wisc. 1986)
16 (same); In re Red Oak Farms, Inc., 36 B.R. 856, 858 (Bankr. W.D. Mo. 1984). In addition,
17 section 1129(b)(2)(A)(ii) of the Bankruptcy Code permits the sale free and clear of liens with
18 liens to attach to proceeds.

19 Under section 1129(b)(2) of the Bankruptcy Code, any lienholder could be compelled to
20 accept a monetary satisfaction of its claims. Under section 506(a) of the Bankruptcy Code, the
21 amount of a secured claim is limited to the value of the collateral securing such claim. As a
22 result, a fair price for the collateral itself establishes the maximum amount of a creditor's secured
23 claim. In addition, under section 1129(b)(2)(A)(ii) of the Bankruptcy Code, a secured creditor's
24 collateral may be sold free and clear of liens with liens to attach to proceeds. Thus, under
25 sections 1129(b)(2) and 506(d) of the Bankruptcy Code, holders of Interests could be compelled
26 to accept money satisfaction of their interests and the Assets may therefore be sold free and clear
27 of any such Interests pursuant to section 363(f)(5) of the Bankruptcy Code.

28

1 Accordingly, the Debtor submits that approval of the sale of the Assets free and clear of
2 Interests is appropriate under both sections 363(f)(2) and (5) of the Bankruptcy Code and should
3 therefore be approved.

4 **C. Request for Waiver of Rule 6004(h) Stay**

5 In order to allow the immediate realization of value from the Assets consistent with its
6 liquidation goals, the Debtor respectfully requests that the order on this Motion be effective
7 immediately, notwithstanding the 10-day stay imposed by Bankruptcy Rule 6004(h).

8 As the Debtor has expressed since the outset of this case, its goal is to conduct an efficient
9 wind down of its financial and business affairs. An expedient sale process will inure to the
10 benefit of all parties to the estate. Waiver of Bankruptcy Rule 6004(h) will permit the Auction to
11 take place as early as possible under the circumstances and therefore will help to minimize any
12 administrative expense associated with continuing to house the Debtor's inventory at its current
13 location.

14 **D. The Debtor Should Be Authorized to Assume and Assign License Agreements at the**
15 **Auction**

16 Included among the Assets to be sold at Auction are the Debtor's interests as an
17 intellectual property licensor in one more license agreements (collectively, the "License
18 Agreements"), including, but not limited to, that certain License Agreement, dated May 1, 2004,
19 under which the Debtor is a licensor and Dasco Pro, Inc. is the licensee of certain of the Debtor's
20 patents.

21 An intellectual property license is generally considered an "executory contract" in a
22 licensor's bankruptcy. An executory contract is one where performance remains due on the part
23 of both parties to the contract or license, such that the failure to perform would constitute a
24 material breach. In re Robert L. Helms Const. & Development Co., Inc., 139 F.3d 702 (9th Cir.
25 1998); In re CFLC, Inc., 89 F.3d 673 (9th Cir. 1996).

26 The Debtor requests, pursuant to section 365 of the Bankruptcy Code, authority to assume
27 and assign the Debtor's interests in any License Agreements to the successful bidder(s) for the
28 underlying intellectual property at the Auction. The Debtor further requests that the order

1 approving the sale provide that the License Agreements will be assigned to, and remain in full
2 force and effect for the benefit of, the successful bidder(s) notwithstanding any provisions therein,
3 including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that
4 prohibit such assignment.

5 Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

6 The trustee may assign an executory contract or unexpired lease of
7 the debtor only if –

8 (A) the trustee assumes such contract or lease in accordance
with the provisions of this section; and

9 (B) adequate assurance of future performance by the assignee of
10 such contract or lease is provided, whether or not there has been a
default in such contract or lease.

11 11 U.S.C. § 365(f)(2). Under section 365(a), a debtor “subject to the court’s approval,
12 may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. §
13 365(a).

14 Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or
15 executory contract of a debtor, providing in relevant part that:

16 (b)(1) If there has been a default in an executory contract or
17 unexpired lease of the debtor, the trustee may not assume such
contract or lease unless, at the time of assumption of such contract
18 or lease, the trustee --

19 (A) cures, or provides adequate assurance that the trustee
will promptly cure, such default.... ;

20 (B) compensates, or provides adequate assurance that the
21 trustee will promptly compensate, a party other than the debtor to
such contract or lease, for any actual pecuniary loss to such party
22 resulting from such default; and

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

24 11 U.S.C. § 365(b)(1). Although section 365 of the Bankruptcy Code does not set forth
25 standards for courts to apply in determining whether to approve a debtor in possession’s decision
26 to assume an executory contract, courts have consistently applied a “business judgment” test
27 when reviewing such a decision. See, e.g., Group of Institutional Investors v. Chicago,
28 Milwaukee, St. Paul & Pacific Railroad Co., 318 U.S. 523, 550 (1953). A debtor satisfies the

1 “business judgment” test when it determines, in good faith, that assumption of an executory
2 contract will benefit the estate. In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D.N.Y. 1986). The
3 assumption and assignment of the License Agreements will benefit the Debtor’s estate as it will
4 increase the recovery on the liquidation of the Debtor’s assets.

5 The meaning of “adequate assurance of future performance” depends on the facts and
6 circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle
7 Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989). See
8 also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985); In re Bon Ton Rest. &
9 Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). Here, the successful bidder(s) will
10 merely be required to continue to refrain from making infringement claims against the Licensees.
11 therefore assurance of future performance with respect to the License Agreements is not an issue.
12 Consequently, assumption and assignment of the License Agreements is appropriate under the
13 circumstances.¹

14 **E. The Employment of Great American as Auctioneer Should Be Approved**

15 Pursuant to section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 6005,
16 Local Bankruptcy Rule 2014-1, and the Guide to Applications for Employment of Professionals
17 and Treatment of Retainers issued by the Office of the UST, the Debtor seeks authority to employ
18 Great American as its auctioneer to provide liquidation consulting services with respect to sale of
19 the Assets via public auction.

20 Great American provides liquidation, auction, and other services to various entities in a
21 number of different industries. See Declaration of Mark Naughton annexed hereto. In light of
22 such experience, Debtor believes that employing Great American as its auctioneer is in the best
23 interests of the estate.

24 As detailed in the Agreement, Great American will among other things, supervise the
25 auction and sale of the Assets, determine pricing of the Assets, provide accountings and
26 reconciliations of sales, and perform other related services as appropriate. As Compensation for

27 ¹ While it “is well settled that a non-exclusive licensee of a patent has only a personal and not a property interest in
28 the patent and that this personal right cannot be assigned unless the patent owner authorizes the assignment or the
license itself permits assignment,” there is no similar restriction on the assignment of a licensor’s rights in a patent
license. In re CFLC, Inc., 89 F.3d 673, 680 (9th Cir. 1996).

1 its services, Great American will be entitled to a fee equal to 70% of the buyer's premiums
2 collected on sales of the Assets, which the Debtor believes is fair and reasonable. In addition,
3 Great American will be entitled to reimbursement of actual Sale Expenses (up to \$60,000). The
4 Debtor specifically requests that Court authorize payment of the Compensation and
5 reimbursement of the Sale Expenses without the need for a fee application or further order of the
6 Court, as an expense of administration pursuant to sections 507(a) and 503(b) of the Bankruptcy
7 Code.

8 To the best of the Debtor's knowledge, and based upon and except as set forth in the
9 Declaration of Mark P. Naughton in support hereof (the "Naughton Declaration"), neither Great
10 American nor any of its professionals has any connection with the Debtor, its creditors, any other
11 party in interest, their respective attorneys and accountants, the UST, any person employed in the
12 office of the UST, or any insider of the Debtor. In addition, Great American does not employ any
13 person that is related to a judge of this Court or the UST for this region.

14 To the best of the Debtor's knowledge and based on the Naughton Declaration, neither
15 Great American nor any of its professionals represents any interest adverse to the Debtor or the
16 estate.

17 To the best of the Debtor's knowledge and based on the Naughton Declaration, Great
18 American is a "disinterested person" under applicable sections of the Bankruptcy Code. 11
19 U.S.C. § 101(14).

20 III.

21 CONCLUSION

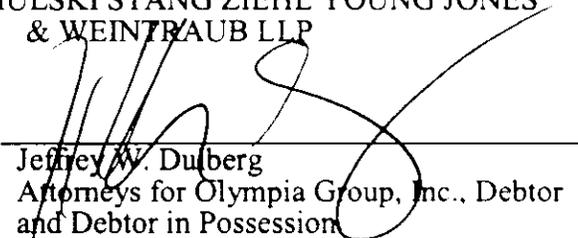
22 For all the foregoing reasons, the Debtor respectfully requests that the Court enter an order
23 (a) authorizing the Debtor to sell the Assets free and clear of all Interests, with any such Interests
24 to attach to the sale proceeds with the same validity and priority as existed prior to the sales; (b)
25 authorizing the Debtor to assume and assign the Debtor's interests in any auctioned intellectual
26 property license agreements to the successful bidder for the underlying intellectual property; (c)
27 approving the Debtor's employment of Great American as its auctioneer to provide the
28 liquidation consulting services described herein and fixing the Compensation for such services;

1 (d) authorizing payment of the Compensation and reimbursement of the Sale Expenses without
2 the requirement of a fee application or further order of the Court, as an expense of administration
3 pursuant to sections 507(a) and 503(b) of the Bankruptcy Code; (e) providing that the order
4 hereon will be effective immediately, notwithstanding the 10-day stay imposed by Bankruptcy
5 Rule 6004(h); and (f) granting such other and further relief as may be appropriate under the
6 circumstances.

7
8 Dated: May 5, 2006

PACHULSKI STANG ZIEHL YOUNG JONES
& WEINTRAUB LLP

9
10 By


Jeffrey W. DuBerg
Attorneys for Olympia Group, Inc., Debtor
and Debtor in Possession

1 5. To the best of my knowledge, neither Great American nor any of its professionals
2 has any connection with the Debtor, its creditors, any other party in interest, their respective
3 attorneys and accountants, the UST, any person employed in the office of the UST, or any insider
4 of the Debtor.

5 6. To check upon and disclose possible relationships with parties-in-interest, Great
6 American performed reasonable due diligence to determine whether it had any relationships with
7 the entities that were included on the Debtor's Schedule D and on its twenty largest creditors list
8 filed in this bankruptcy case. Despite the efforts described above to identify and disclose Great
9 American's connections with parties-in-interest, Great American is unable to state with certainty
10 that every client relationship or other connection has been disclosed. In this regard, if Great
11 American discovers additional material information that it determines requires disclosure, it will
12 promptly file a supplemental disclosure with this Court.

13 7. Based upon such review, Great American has determined the following
14 relationships to be disclosed:

- 15 • In February 2002, the Debtor engaged Great American Appraisal and
16 Valuation Services, LLC ("GAAV"), an affiliate of Great American, to value
17 its then-existing inventory.
- 18 • In November 2003, Union Bank of California, the Debtor's lender, engaged
19 GAAV to value the Debtor's then-existing inventory.
- 20 • In December 2005, Union Bank of California engaged GAAV to value the
21 Debtor's then-existing inventory.
- 22 • GAAV has also performed appraisal work on matters unrelated to this case for
23 Union Bank of California.

24 8. To the best of my knowledge, Great American does not employ any person that is
25 related to a judge of this Court or the UST for this region.

26 9. To the best of my knowledge, neither Great American nor any of its professionals
27 represents any interest adverse to the Debtor or the estate.

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10. To the best of my knowledge, Great American and its professionals are “disinterested persons” under applicable sections of the Bankruptcy Code because:

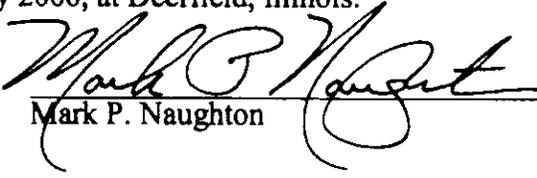
a. Neither Great American nor any of its professionals is a creditor, equity security holder, or an insider of the Debtor;

b. Neither Great American nor any of its professionals is or was, within 2 years before the date of the filing of the petition herein, a director, officer, or employee of the Debtor.

c. Neither Great American nor any of its professionals has an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 5th day of May 2006, at Deerfield, Illinois.


Mark P. Naughton

DECLARATION OF ALFRED M. MASSE

I, Alfred M. Masse, declare as follows:

1. I am over the age of eighteen years and have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would competently testify on personal knowledge, and on information and belief where indicated, as to all of the matters stated herein.

2. I am the Co-Chief Responsible Officer of Olympia Group, Inc., debtor and debtor in possession herein (the "Debtor") pursuant to an order of this Court entered April 11, 2006.

3. I make this declaration in support of the Motion, which I have read and reviewed, and I hereby adopt each of the factual allegations therein and incorporate them in this declaration by reference. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of relevant documents, or my opinion based on my experience with the Debtor's operations and financial condition. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, review of documents, or opinion.

4. By the Motion, the Debtor seeks authority to sell the Assets via public auction and to employ Great American as its auctioneer.

5. On January 13, 2006 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in the Debtor's chapter 11 case.

6. Founded in 1977, the Debtor manufactures and sells hand tools and related accessories, and lawn and garden products, for use by consumer and industrial users worldwide. The Debtor offers more than 7,000 products, which are designed, manufactured, and distributed by seven global manufacturing facilities.

7. The Debtor's principal indebtedness consists of borrowings under a senior secured credit facility with Union Bank of California, N.A. (the "Lender"), pursuant to that certain Loan and Security Agreement dated on or about June 3, 2002, under which the Lender agreed to

1 provide revolving loans to the Debtor, based upon a stated formula as more particularly set forth
2 therein, up to a maximum amount of \$24,000,000 together with term loans totaling \$1,000,000.

3 8. The Loan and Security Agreement dated as of June 3, 2002, has been amended
4 pursuant to the terms of the following agreements: (1) the First Amendment to Loan and Security
5 Agreement, dated as of April 22, 2003, (2) the Amendment Number Two to Loan and Security
6 Agreement and Acknowledgement, dated as of May 3, 2005, (3) the Amendment Number Three
7 to Loan and Security Agreement, dated as of June 1, 2005, (4) the Waiver and Amendment
8 Number Four to Loan and Security Agreement, dated as of June 13, 2005, and (5) the Amendment
9 Number Five to Loan and Security Agreement, dated as of September 30, 2005 (as amended,
10 collectively, the "Loan Agreement" and, together with all other Loan Documents as defined
11 therein, collectively, the "Pre-Petition Loan Documents").

12 9. Under the Loan Agreement, as amended, in addition to the revolving loans
13 described above in the amended maximum amount of \$17,000,000 and the term loans made
14 thereunder, the Lender agreed to make Tranche A Advances in the maximum amount of
15 \$8,000,000 and Tranche B Advances in the amount of \$3,000,000. Pursuant to a Junior
16 Participation Agreement dated May 3, 2005, as amended by written agreement on June 13, 2005
17 and again on September 30, 2005 (collectively, the "Participation Agreement"), Olympia
18 Holding, LLC (the "Junior Participant") purchased a 100% participation in all Tranche A
19 Advances and a 50% participation in all Tranche B Advances.

20 10. As of the Petition Date, the Lender asserts that the total obligation owed by the
21 Debtor under the Loan Agreement is approximately \$19.5 million, plus the Lender's and the
22 Junior Participant's pre-petition legal fees and expenses (collectively, the "Pre-Petition
23 Obligations"). The Debtor does not contest the amount of the Pre-Petition Obligations asserted
24 by the Lender.

25 11. To secure repayment of the Pre-Petition Obligations, the Debtor granted the
26 Lender a first priority security interest in, and a lien upon, all "Collateral" as defined in the Loan
27 Agreement, which includes all "accounts," "goods," "general intangibles," "chattel paper,"
28 "investment property," and all other tangible and intangible personal property of the Debtor

1 (collectively, the "Pre-Petition Collateral"). The Lender perfected its first priority security
2 interest in the Pre-Petition Collateral by filing a UCC-1 Financing Statement with the California
3 Secretary of State's office on May 21, 2002, as Document Number 0214260791.

4 12. In addition to the debt owed to the Lender, the Debtor has outstanding trade debt
5 in excess of \$9 million and approximately 300 general unsecured and priority creditors.

6 13. The Debtor's chapter 11 filing resulted from the impracticality of continuing its
7 business in light of the exorbitant duties imposed on a significant portion of its products pursuant
8 to an "anti-dumping duty order." Although the Debtor had hoped that it could succeed in efforts
9 to revoke such order, the instant circumstances no longer justify continuing to pursue such efforts.
10 Accordingly, the Debtor has decided to pursue an orderly liquidation of its assets through this
11 bankruptcy case in an effort to maximize the return to all creditors of this estate.

12 14. Under Title VII of the Tariff Act of 1930 (the "Tariff Act"), the U.S. International
13 Trade Commission and the U.S. Department of Commerce (collectively, the "Authorities") are
14 responsible for, among other things, conducting anti-"dumping" investigations. "Dumping"
15 occurs when a producer sells a product in the United States at a price that is below that producer's
16 sales price in its home market, or at a price that is lower than its cost of production. Under the
17 Tariff Act, if the Authorities find that a product has been "dumped" and that an industry
18 producing a similar product has been, or is, threatened with material injury, the Authorities may
19 impose an "anti-dumping duty order" ("Anti-Dumping Order").

20 15. In accordance with an Anti-Dumping Order, the Bureau of Customs and Border
21 Protection ("Customs Bureau") then, in order to offset the unfair trade practice, assesses anti-
22 dumping duties on imports of the product at issue based on rates set by the Authorities ("Anti-
23 Dumping Duties"). Collected Anti-Dumping Duties – the amounts of which vary depending on a
24 number of factors including, among other things, product type and country of origin – are
25 ultimately distributed to affected domestic producers of the product, subject to certain
26 qualifications and in accordance with applicable procedures.

27 16. In September of each year, the Authorities release results of an annual review of
28 applicable anti-dumping rates and make adjustments thereto. The new, adjusted rates apply both

1 to new purchases and, retroactively, to products imported during the review period. To the extent
2 that the new rates are higher than the rates actually paid by an importer, the Customs Bureau
3 assesses the difference against such importer.

4 17. In the ordinary course of its business, the Debtor imports various goods and
5 supplies from various international suppliers, subjecting it to potential scrutiny under the Tariff
6 Act for "dumping." At least as early as 1999, an Anti-Dumping Order had been in effect with
7 respect to certain of the Debtor's products (the "Affected Products"). The Affected Products are
8 imported primarily from China and are therefore subject to particularly high Anti-Dumping
9 Duties under the rates employed by the Customs Bureau. In some instances, the Anti-Dumping
10 Duty on a particular Affected Product is equivalent to as much as 173% of the cost thereof.

11 18. Prior to the Petition Date, the Debtor contested the Anti-Dumping Duties in cases
12 pending in the International Trade Court, as well as a case pending in the Federal Court of
13 Appeals. These actions have stayed the retroactive imposition of adjusted rates to products
14 imported as far back as 1999. Although the Debtor has been aware of the Anti-Dumping Order
15 affecting the Affected Products, the Debtor had historically been successful in its efforts to
16 reverse or modify the adjusted rates. In September of 2005, however, the Authorities adjusted the
17 rates applicable to the Affected Products following their annual review, applying such rates to all
18 manufacturers in the Republic of China. Accordingly, to the extent that the Debtor is forced to
19 pay the new rates retroactively, it could face aggregate Anti-Dumping Duties of approximately
20 \$15 million, plus approximately \$3.5 million in interest, which exponentially exceeds the
21 Debtor's initial estimate.

22 19. Although the Debtor continued to believe until very recently that it could have
23 ultimately succeeded in revoking the Anti-Dumping Order or reducing the Anti-Dumping Duties
24 on the Affected Products, it simply could not pursue such action without tremendous expense.
25 The Debtor would have to incur significant legal fees and related expenses in contesting the Anti-
26 Dumping Order and Anti-Dumping Duties, while in the meantime having to pay Anti-Dumping
27 Duties on the Affected Products at currently applicable rates. Given the inherent uncertainty and
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1 expense of any such effort, and in light of the exorbitant Anti-Dumping Duties, it became
2 impractical for the Debtor to continue its operations.

3 20. The Agreement describes the Assets to be auctioned by Great American in more
4 detail and sets forth applicable terms, conditions, and procedures, the most salient of which are as
5 follows.

6 21. Among the Assets is the Debtor's entire inventory located at 505 South Seventh
7 Avenue, City of Industry, CA 91746 (the "Facility"), the estimated value of which is
8 approximately \$7.2 million (at cost). In addition, the Assets include all of the Debtor's fixed
9 assets, furniture, fixtures, and equipment, including pallet racking, forklifts, office equipment,
10 packaging machinery, and computers. The Assets also include all of the Debtor's intellectual
11 property, including any auctioned intellectual property license agreements related to the
12 intellectual property sold at the auction, except those properties specifically excluded in the
13 Agreement. The Assets will be sold "as is," "where is," "with all faults," and without any
14 representations or warranties via public auctions to be conducted by Great American or its agents.
15 Auctions of the Assets will not be subject to any limits or reserves.

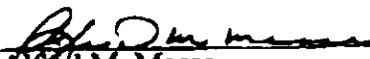
16 22. In connection with the sale and auction of the Assets, Great American will charge
17 each buyer a premium of 10% above each respective purchase price for on-site bidders and 13%
18 for on-line bidders. Purchases may be made by cash or guaranteed checks. Great American's
19 Compensation will be a fee equal to 70% of the buyer's premiums collected on sales of the
20 Assets. In addition, Great American will be entitled to reimbursement for identified Sale
21 Expenses up to \$60,000.

22 23. As noted above, the Debtor filed this bankruptcy case in order to effect an orderly
23 liquidation of its assets. Here, the Assets will be offered for sale via public auction, which will
24 expose the Assets to the market and therefore yield the best available value under the
25 circumstances. In light of the Debtor's liquidation goals and the maximization of value inherent
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1 in the auction process, the Debtor has determined that the sale of the Assets, as described herein,
2 is in the best interests of the estate.

3 I declare under penalty of perjury under the laws of the United States of America, that the
4 foregoing is true and correct.

5 Executed on this 5th day of May 2006, at City of Industry, California.

6 
7 Alfred M. Masse

PACHULSKI STANG ZIEHL YOUNG JONES & WEINTRAUB LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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CONSULTING AGREEMENT

This Consulting Agreement, dated as of April 7, 2006 (together with all Schedules, Exhibits and attachments hereto, collectively, the "Agreement"), is made by and between The Pride Capital Group, LLC d/b/a Great American Group, a California limited liability company, with a principal place of business at 6330 Variel Avenue Woodland Hills, CA 91367 (the "Consultant") and Olympia Group, Inc., a California corporation (the "Company"), with a principal place of business at 505 South Seventh Ave., City of Industry, CA 91746 (the "Facility").

WITNESSETH:

WHEREAS, the Company filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, which case is pending in the Central District of California (the "Court") as Case No. 06-10111-EC (the "Case");

WHEREAS, the Company desires to retain Consultant to provide liquidation consulting services to the Company with respect to the disposition of the Assets (as defined below);

WHEREAS, the Company desires to retain the Consultant to sell the Assets at public auction; and

WHEREAS, the Consultant is willing to conduct the sale of the Assets at a public auction (other than at the Facility) upon the terms and conditions and in the manner set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS

For the purpose of this Agreement, the terms listed below shall have the respective meanings indicated:

- 1.1 "Assets" shall mean the Inventory, the FF&E and the Intellectual Property.
- 1.2 "Facility" shall mean 505 South Seventh Ave., City of Industry, CA 91746.
- 1.3 "FF&E" means all fixed assets, furniture, fixtures, and/or equipment, including pallet racking, forklifts, office equipment, packaging machinery, and computers, owned by the Company.
- 1.4 "Intellectual Property" shall mean all of the intellectual property owned by the Company, including trade names, service marks, trademarks, domain names, and patents, including intellectual property license agreements related to said intellectual property; except those set forth in **Schedule 1.4** hereto.

EXHIBIT A

1.5 “Inventory” shall mean all of the inventory owned by the Company and currently located at the Facility, which the Company has represented to the Consultant is currently approximately \$7.2 million at cost.

1.6 “Sale” shall mean a public auction sale of the Assets to be conducted by the Consultant on behalf of the Company at a location other than the Facility.

1.7 “Sale Commencement Date” shall mean a date mutually agreed by the Company and Consultant after satisfaction of the conditions precedent set forth below, but no later than eleven (11) days after the entry of the Approval Order.

1.8 “Sale Expenses” shall mean actual expenses incurred by the Consultant in preparing for and conducting the Sale on behalf of the Company in an amount not to exceed \$60,000. Sale Expenses shall expressly exclude any occupancy expenses for the Facility.

1.9 “Sale Term” shall mean the period of time beginning with the Sale Commencement Date and ending on the Sale Termination Date.

1.10 “Sale Termination Date” shall mean June 30, 2006, unless mutually agreed by Consultant and Company.

1.11 “Services” shall mean the services to be performed by Consultant pursuant to Section 2.2 of this Agreement.

1.12 “Supervisors” shall mean the individuals whom shall provide Services at the Facility as set forth in Sections 2.2 and 2.3 of this Agreement.

2. RETENTION; SERVICES

2.1 The Company hereby retains the Consultant, and the Consultant hereby agrees to serve as an independent consultant to the Company in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the Company’s sole and exclusive consultant relative thereto throughout the Sale Term.

2.2 On the terms and conditions set forth herein, commencing as of the Sale Commencement Date, the Consultant shall provide the Company with the following Services with respect to the conduct of the Sale:

- (i) provide full-time Supervisors to supervise and conduct the Sale as further described in Section 2.3 below;
- (ii) oversee the liquidation, disposal and auction of the Assets from the Facility, including but not limited to selling or grouping product in order to maximize the volume of Assets sold and removed from the facility; provided, however, the Consultant reserves the right to abandon in place at the Facility at no cost to the Consultant any Assets that have not been sold or removed by the buyer thereof from the Facility by the end of the Sale Term;

- (iii) determine and implement appropriate point of purchase, point of sale and external advertising (including the use of the Company's name in the marketing materials) to effectively sell the Assets during the Sale Term;
- (iv) determine pricing of the Assets;
- (v) provide the Company with a regular accounting and reconciliation of the progress of the Sale, in form acceptable to the Company and the Consultant; and
- (vi) provide such other related service deemed necessary or prudent by the Company and the Consultant under the circumstances giving rise to the Sale.

2.3 In connection with the Sale, the Consultant shall directly retain and engage the Supervisors. The Supervisors are independent contractors engaged as agents of the Consultant and are not and shall not be deemed to be employees of the Company in any manner whatsoever. In consideration of Consultant's engagement of the Supervisors, the Company agrees to pay the Consultant the Supervisor expenses (As referred to in Section 1.8 and part of the \$60,000).

2.4 All sales of the Assets shall be made by Consultant as agent in fact for the Company.

2.5 The Consultant shall be the sole party authorized to sell the Assets, except that the Consultant and the Company shall jointly determine the make-up of any lots.

2.6 The Consultant is authorized to accept cash or guaranteed checks as payment for the Assets sold. The Consultant is further authorized to charge purchasers a reasonable and customary buyer's premium of ten percent (10%) for on-site purchasers and thirteen percent (13%) for online purchasers, which shall be treated as set forth below.

2.7 The Assets shall be sold on and "AS IS" and "WHERE IS" basis, without any representations as to merchantability or fitness of any kind or nature whatsoever, and without warranty or agreement as to the condition of such Assets. The Consultant is acting solely in the capacity of Consultant for the Company and has no knowledge with respect to the fitness or usability of any of the Assets. The Company indemnifies and holds the Consultant harmless against any claim asserted by a purchaser at the Auction with regard to merchantability or use of the Assets.

2.8 The Company agrees that, in the event the Facility or any of the Assets contain any environmental hazards, toxic waste or any type of hazardous material in any form whatsoever, the Consultant shall not be responsible for its containment, storage or removal.

2.9 Any auction is to be without limit, and without reserve except as set forth below. The Company shall not bid at any such auction, nor allow anyone to bid on the Company's behalf unless the Company discloses such intent to the Consultant in writing prior to the Sale, and is prepared to pay commissions due to the Consultant under the terms of this Agreement on any actual purchases made. Notwithstanding the foregoing, the Company may require minimum