

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

DJT PROPERTIES, LLC,

Debtor.

Bky. No. 04-34649

Chapter 11

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**NOTICE OF EXPEDITED HEARING AND MOTION TO APPROVE (1) BIDDING  
PROCEDURES WITH RESPECT TO THE DISPOSITION OF DEBTOR'S ASSETS (2)  
THE SALE OF ALL OR SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE  
AND CLEAR OF LIENS AND INTERESTS AND (3) AUTHORIZING ASSUMPTION  
AND ASSIGNMENT OF LEASES AND EXECUTORY CONTRACTS**

TO: Entities Specified in Local Rule 9013-3(2).

1. DJT Properties, LLC ("Debtor"), by and through its undersigned counsel, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **1:00 p.m. on September 1, 2004**, before the Honorable Gregory F. Kishel, Courtroom 228B, Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101. The Court will hold a final hearing respecting the sale of substantially all of Debtor's assets on **October 19, 2004 at 9:30 a.m.**

3. Any response to this motion must be filed and served prior to the hearing. **Unless a response opposing the motion is timely filed, the Court may grant the motion without a hearing.**

4. This Court has jurisdiction over this motion under 28. U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition

commencing this case was filed on August 9, 2004 (the “Filing Date”). This case is now pending before this Court.

5. This motion arises under 11 U.S.C. §§ 363 and 365 of the Bankruptcy Code, and Fed.R.Bankr.P. 2002, 6004, 6006, 9007 and 9014. Debtor seeks authority by this Motion for orders authorizing and approving bidding procedures in connection the Debtor’s intended sale of all or substantially all of Debtor’s assets free and clear of interests and authorizing the assumption and assignment of unexpired leases and executory contracts. The Assets are set forth on Exhibit A.

### **BACKGROUND**

6. The Debtor was formed in 1998. Debtor has continued in management and possession of its business as debtor-in-possession under 11 U.S.C. §§ 1107 and 1108. The Debtor operates a gas station, convenience store and car wash in Lino Lakes, Minnesota. The Debtor's total revenues for 2003 were approximately \$3.5 million.

7. Vermillion State Bank, Croix Oil Company and Cherokee State Bank (the “Secured Creditors”) are the holders of promissory notes with approximate outstanding principal balances of \$1,500,000, \$17,956.71 and \$400,000, respectively.

### **PROPOSED SALE OF DEBTOR’S ASSETS**

8. The Debtor requests authority to sell its Assets free and clear of liens, claims and other interests. Through this motion, the Debtor requests the entry of an order approving bidding procedures for the proposed sale of its assets as described in Exhibit B (the “Bidding Procedures”).

9. The Debtor further requests that this Court approve sale of Debtor's Assets pursuant to the Bidding Procedures free and clear of all liens, claims and interests on substantially the terms and conditions set forth either in the Official Bid Form attached hereto as **Exhibit C** (the "Official Bid Form").

10. As described in more detail in the Bidding Procedures, the Debtor intends to sell all or substantially all of the Assets. The Debtor shall offer the Assets for sale as a single unit. The sale is intended to be upon the terms of the Official Bid Form. The Debtor's intention is to maximize the recovery for the estate through any process that will accomplish that result.

11. As more specifically set forth in the Bidding Procedures, in order to participate in the sale process, each potential bidder (a "Potential Bidder") must deliver to the Debtor, with a copy to Insolvency Strategies, Inc. ("ISI") 3 Isleworth Drive, Henderson, NV 89052, Attention: C. Wayne Basore, not later than 11:59 p.m. CST on October 14, 2004 (the "Bid Deadline") a bid package that conforms with the Bidding Procedures. Under the Bidding Procedures, a "Qualified Bidder" is a Potential Bidder that delivers these items to the Debtor and that the Debtor, with consent of the Secured Creditors, determines as reasonably likely (based on availability of financing, and experience and other considerations) to submit a bona fide offer and be able to consummate a sale as the successful bidder. The Debtor shall distribute copies of these documents to the Secured Creditors. The Debtor shall deliver the bid package to the Secured Creditors within 24 hours after receipt of the bid package from a Qualified Bidder. Delivery shall be made to:

Vermillion State Bank  
c/o Mary Jo Jensen Carter, Esq.  
Buckley & Jensen  
1339 East County Road D  
Vadnais Heights, MN 55109

Croix Oil Company  
c/o Paul Muilenberg, Esq.  
1749 S. Greely Street  
Stillwater, MN 55082

Cherokee State Bank  
c/o David E. Runk, Esq.  
Oppenheimer Wolff & Donnelly  
3300 Plaza VII  
45 South Seventh Street  
Minneapolis, MN 55402

The Debtor may extend the Bid Deadline once or successively with the consent of the Secured Creditors, but is not obligated to do so. All bids must also include the following documents (the “Required Bid Documents”):

- (a) An executed copy of an Official Bid Form in substantially the same form as provided by the Debtor. Any changes to the form of these agreements must be marked on such form agreement and agreed to by the Debtor and the Secured Creditors;
- (b) An earnest money deposit in the form of a certified check or cashiers check payable to the order of the Debtor or such other party as the Debtor may designate in an amount equal to at least ten percent (10%) of the value of such bid (hereinafter the “Earnest Money Deposit”); and
- (c) Written evidence of commitment for financing or other evidence of ability to consummate the proposed transaction reasonably satisfactory to the Debtor and the Secured Creditors.

12. After all Qualified Bids have been received, the Debtor intends to conduct an auction (the “Auction”) with respect to any Assets as to which a Qualified Bid has been received. Subject to Court approval, the auction shall take place at **9:30 a.m. on October 19, 2004** at 228B U.S. Courthouse, 316

North Robert Street, St. Paul, Minnesota, 55101. Only a Qualified Bidder who has previously submitted a Qualified Bid will be eligible to participate in the auction. Based on the terms of the Qualified Bids received and other information as the Debtor and the Secured Creditors determine to be relevant, the Debtor will conduct the auction in accordance with the applicable Bid Procedures in the manner they determine will result in the highest or best offer for the assets. The Bid Procedures set forth in **Exhibit B** will apply.

13. Upon the conclusion of the Auction, the Debtor and the Secured Creditors, shall (i) review each Qualified Bid or Bids on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale, (ii) determine which Qualified Bid is the highest and best, and (iii) notify the highest and otherwise best offer for the assets (the "Successful Bid"). The Debtor shall present the Successful Bid to the Court for approval at the Sale Hearing.

14. The above-described procedures are in the best interests of the estate and the creditors that will result in the maximum value available for the estate's Assets.

#### **ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

15. Unless superceded by a procedure set forth in any prior or subsequent motions, with respect to unexpired leases and executory contracts, the Debtor proposes to give separate notice, with a cure amount to the extent known, to each party to such unexpired lease or executory contract of the potential assumption and assignment of such unexpired leases or executory contract more than six days before the date set for the Sale Hearing. The Debtor further proposes to identify the proposed assignees as soon as known by the Debtor by fax and e-mail immediately following the receipt of bids and immediately following any bid conference. The Debtor will seek approval of assumption and assignment of such

unexpired leases and executory contracts at the Sale Hearing to the extent that assumption and assignment is a condition to the purchase by the winning bidder. For those unexpired leases and executory contract, the assumption and assignment of which is contested, the Debtor shall notice those matters for further evidentiary hearing. If the hearing cannot be scheduled within 60 days from the filing of August 9, 2004, the date for assumption and assignment shall be automatically extended until the Bankruptcy Court renders a decision.

### **EXPEDITED HEARING**

16. The Debtor requires an expedited hearing on this motion for approval of the bidding procedures only in order to avoid unnecessary loss to the estate in connection with approval of the Bidding Procedures.

17. Bankruptcy Rules 2002 and 9006 requires 14 days' notice (by mail) of the hearing on the Bidding Procedures. The Debtor has given 5 days' notice to attorneys that the Debtor is aware of as of the date of this Motion. The Debtor believes that this notice should be sufficient under the circumstances.

### **WITNESS**

18. The Debtor may offer additional evidence in support of this motion including the testimony of Joan D. Tschida, President of Debtor, if such is necessary in connection with this motion.

**WHEREFORE**, the Debtor requests that the Court enter orders (1) granting an expedited hearing in connection with the Bid Procedures Motion; (2) approving the Bidding Procedures; (3) approving and authorizing the Official Bid Form; (4) approving the sale of the Assets free and clear of all liens and interests; (4) the assumption and assignment of unexpired leases and executory contracts and (5) granting such further relief as the Court deems just and equitable.

Dated: August 26, 2004

RAVICH MEYER KIRKMAN  
McGRATH & NAUMAN,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael F. McGrath #168610  
Michael L. Meyer #72527  
Will R. Tansey #323056

4545 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

ATTORNEYS FOR DEBTOR

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**VERIFICATION**

I, Joan D. Tschida, the President of Debtor, declare under penalty of perjury that the facts set forth in the foregoing Notice of Expedited Hearing and Motion to Approve (1) Bidding Procedures With Respect to the Disposition of Debtor's Assets, (2) the Sale of All or Substantially All of Debtor's Assets Free and Clear of Liens and Interests and (3) Authorizing Assumption and Assignment of Leases and Executory Contracts, are true and correct according to the best of my knowledge, information and belief.

Executed on: August 26, 2004

  
\_\_\_\_\_  
Joan D. Tschida

Debtor

**SCHEDULE A. REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
<b>REAL PROPERTY LOCATED AT 7090 21ST AVENUE, LINO LAKES MN AND LEGALLY DESCRIBED AS: LOT 1 BLOCK 1 CLEARWATER CREEK BUSINESS CENTER, ANOKA COUNTY MN</b>	<b>FEE OWNER</b>	<b>-</b>	<b>2,700,000.00</b>	<b>2,104,235.97</b>

**EXHIBIT A**

Sub-Total > **2,700,000.00** (Total of this page)

Total > **2,700,000.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

In re DJT PROPERTIES LLCCase No. 03-34649

Debtor

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.		<b>MACHINERY AND EQUIPMENT (BOOK VALUE)</b>	-	<b>115,661.62</b>
28. Inventory.		<b>INVENTORY (COST BASIS)</b>	-	<b>49,114.30</b>
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.		<b>PREPAID LEASES</b>	-	<b>3,948.36</b>

Sub-Total >	<b>168,724.28</b>
(Total of this page)	
Total >	<b>215,463.98</b>

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

Debtor

**SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
<b>AVAYA FINANCIAL SERVICES P O BOX 465 LIVINGSTON, NJ 07039</b>	<b>TELEPHONE SYSTEM LEASE</b>
<b>EMBERS AMERICA LINO LAKES 7090 21ST AVENUE LINO LAKES, MN 55038</b>	<b>LESSOR'S INTEREST IN RESTAURANT LEASE</b>
<b>US BANCORP BUSINESS EQUIPMENT 1310 MADRID ST #101 MARSHALL, MN 56258</b>	<b>LEASE FOR SURGE SUPRESSORS FOR ELECTRICAL SYSTEMS</b>

**DJT PROPERTIES, LLC**  
**BIDDING PROCEDURES**

1. DJT Properties, LLC ("Seller") is offering for sale assets of the estate, including personal assets listed on Schedule B of the Debtor's petition and schedules filed with the Bankruptcy Court. The assets of the estate consist of a gas station, convenience store and car wash, equipment, fixtures, inventory, and any other asset listed in the Debtor's petition and schedules filed on August 9, 2004, and as fully set forth at [www.mnb.uscourts.gov](http://www.mnb.uscourts.gov), BKY No. 04-34649 and on Exhibit A to the Debtor's Sale Motion. The Assets shall be sold "AS IS, WHERE IS", without any representations or warranties of any kind or nature. All of the Debtor's right, title and interest in and to the Assets shall be sold free and clear of interests in accordance with 11 U.S.C. §§ 363 and 365.

2. The sale shall be for cash payable in full on closing. The closing shall take place no later than fourteen (14) days following acceptance of the offer.

3. Seller will deliver marketable title to the assets free and clear of liens and encumbrances to the Purchaser at closing.

4. The sale will be conducted pursuant to the following rules:

**Rules of Sale**

1. Each potential Bidder or Bidding Group must register with Insolvency Strategies, Inc. ("ISI") at [www.isinc.bz](http://www.isinc.bz) "Request for Due Diligence". Registrants may obtain an official bid package on ISI's website. Registrants should contact C. Wayne Basore, Insolvency Strategies, Inc., 3 Isleworth Drive, Henderson, NV 89052, telephone number 702-897-3193, facsimile number 702-897-0264, website: [www.isinc.bz](http://www.isinc.bz) with any questions.

2. The bid package will include:

(a) Terms of Sale and Rules of Sale.

(b) An official bid form.

(c) Proof of Bidder's Financial Ability.

(d) A letter stating that the Bidder's offer is irrevocable until the later of (i) two (2) business days after the Assets upon which the Bidder is bidding have been disposed of pursuant to the Bidding Procedures, or (ii) fifteen (15) days after the Sale Hearing.

3. No bid will be considered that is not submitted on an official bid form and has not agreed to a ten (10%) percent buyer's premium payable to ISI. The printed material on the official bid form may not be altered and all blanks provided must be completed in order for the bid to be eligible for consideration.

4. In determining the amount of their bids, Bidders will be required to rely solely upon the information supplied in the bid package and their own due diligence review which must

be completed on or before the 13th day of October, 2004. Arrangements to conduct due diligence should be made by contacting C. Wayne Basore, ISI, at the address provided in paragraph 1 above.

NOTE: The Seller does reserve the right to supplement or clarify the information contained in the bid package at any time prior to sale, if, in the sole discretion of the Seller, the Seller determines it would be in the best interests of all concerned to do so. Any additional information will be supplied to all Bidders.

5. If the Bidder is an organization, the officer or agent executing the bid form must attach proof of the requisite authority to bid on behalf of the organization.

6. A certified or cashiers check in the amount of ten percent (10%) of the Purchase Price made payable to: "DJT Properties, LLC". Said check is hereinafter referred to as the "Earnest Money Deposit." The Earnest Money Deposits will be held by Seller, without being deposited, until after the bid opening as provided for below.

7. The Official Bid Form and Earnest Money Deposit must be placed in an envelope. The name of the Bidder should appear on the outside of the envelope. The envelope must be sealed.

8. The envelope should be delivered or mailed under separate cover to Seller's counsel:

Michael F. McGrath, Esq.  
Ravich Meyer Kirkman McGrath  
& Nauman, P.A.  
4545 IDS Center  
80 S. Eighth Street  
Minneapolis, MN 55402

**NOTE:** A copy of the Official Bid Form shall also be delivered to C. Wayne Basore.

**Bids must be received on or before 11:59 P.M. (Central Time) on October 14, 2004 (the "Sealed Bid Deadline").**

9. Immediately following the Sealed Bid Deadline, all bids will be opened in the presence of counsel for the Seller. At that time, Seller shall review the bids and Seller reserves the right to reject any bid that in the discretion of Seller does not comply with the sale rules as published. Further, Seller reserves the right to reject any bid that in its sole discretion is not in the best interest of Seller, and Seller reserves the additional right to waive any non-material deficiency in a bid form if Seller determines in its sole discretion that to do so is in the best interest of Seller.

10. Bidders who submit Qualified Bids will be notified on or before October 19, 2004, at 9:30 a.m. at 228B U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101

of the highest bid. The Qualified Bidders will have an opportunity to increase their bids at that time. Increasing Bids must be in at least ten (10%) or more increments of the accepted Bid. When the bidding has ceased, the highest and best bids, with the consultation of the Secured Creditors, will be announced at that time. In determining which bid(s) constitute the prevailing Bid, the Seller, in consultation with the Secured Creditors, may consider, among other things: (i) the purchase price offered in the bid; (ii) the bidder's financial situation and relevant wherewithal; and (iii) the probability of prompt closing.

11. Should the successful Bidder fail to close in timely manner, said Bidder's Earnest Money Deposit shall be forfeited and Seller shall retain the same. Seller may then, if it so elects, accept the bid of the second highest Bidder, who shall have 24 hours after written notice from Seller to deliver Earnest Money Deposit in an amount equal to ten percent (10%) of the accepted Purchase Price. Should the second highest Bidder fail to timely pay the Additional Earnest Money Deposit, the second highest Bidder shall forfeit its Earnest Money Deposit and Seller shall retain the same. The Seller's retention of any Earnest Money Deposit(s) as a result of a default under this Section shall not limit the liability of the Bidder for damages if the actual damages sustained by Seller can be reasonably ascertained and are in excess of the Earnest Money Deposit.

12. Seller and the successful Bidder ("Buyer") shall close the transaction within fourteen (14) days after the date on which Seller accepts the offer. Should the Buyer default on its obligation to complete the sale, the Earnest Money Deposit shall be forfeited and retained by Seller; however, such retention by Seller shall not limit the liability of the Buyer for damages for said default if the actual damages sustained by Seller can be reasonably ascertained and are in excess of the Earnest Money Deposit.

13. The Earnest Money deposit shall be returned to the Buyer if the Seller does not accept the bid or is unable to close for any reason.

**DJT PROPERTIES, LLC**  
**OFFICIAL BID FORM**

**Bid Deadline – October 14, 2004 11:59 P.M. C.S.T.**

The undersigned (hereinafter referred to as “Buyer”) hereby offers to purchase the Assets (as defined in paragraph 1 below) from the estate of DJT Properties, LLC, a Minnesota limited liability company (hereinafter referred to as “Seller”) upon the following terms and conditions:

1. Buyer acknowledges that the Seller makes no representation or warranty as to the condition, value, or suitability of any corporate asset or property whether it is real, personal, tangible, or intangible. It is specifically represented that all corporate assets and property are being transferred “**AS IS, WHERE IS**” without any representations and warranties of any kind or nature.

2. Purchase of Assets. Buyer shall purchase from Seller all assets used in operation of the business, as fully set forth in **Exhibit A** hereto.

3. Purchase Price. Buyer shall pay the total sum of \_\_\_\_\_ Dollars (the “Purchase Price”) for the Assets.

4. Payment. The Purchase Price shall be paid as follows:

(i) Earnest Money Deposit. Buyer herewith tenders to Seller a cashiers or certified check in the sum of \_\_\_\_\_ Dollars, which sum equals ten percent (10%) of the Purchase Price, payable to DJT Properties, LLC (hereinafter referred to as the “Earnest Money Deposit”).

(ii) Payment on Closing. The Purchase Price, less the Earnest Money Deposit shall be paid in cash by cashiers check or certified funds upon closing.

(iii) Buyer’s Premium. Buyer shall pay a ten percent (10%), of its Purchase Price, Buyer’s Premium to Insolvency Strategies, Inc.

**EXHIBIT C**

5. Duration of Offer. This irrevocable offer shall remain open until the later of: (i) two (2) business days after the Assets upon which the Bidder is bidding have been disposed of pursuant to the Bidding Procedures, or (ii) fifteen (15) days after the Sale Hearing. **HOWEVER, BUYER ACKNOWLEDGES THAT SELLER RESERVES THE RIGHT TO REJECT ALL BIDS, IN ITS SOLE BUSINESS JUDGMENT.**

6. Closing. If this Offer is accepted and approved by Seller, the closing of the transaction shall take place on or before fourteen (14) days following acceptance. At closing, Seller shall tender to Buyer the following:

- (i) A Deed with respect to the real property;
- (ii) An executed Bill of Sale and Assignment with respect to any personal property which constitutes a part of the Assets.
- (iii) An Order for sale free and clear of liens from the U.S. Bankruptcy Court.

7. Conditions. This offer is made upon the following conditions:

- (i) All of the Assets being sold are free from liens and encumbrances of any kind.
- (ii) Seller's ability to deliver marketable title to the Real Estate.

8. Disclaimer. In making its offer, Buyer acknowledges that Buyer has read the disclaimer contained in the offering package distributed by Seller's consultant, Insolvency Strategies, Inc., and that such disclaimer applies to all information distributed by Seller's consultant. Seller makes no representations or warranties other than as contained herein.

IN WITNESS WHEREOF, the undersigned has executed this offer on the \_\_\_\_ day of \_\_\_\_\_, 2004.

BUYER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

(Please remember to attach appropriate authorization  
if executed on behalf of an organization)

**EXHIBIT "A"**

**DESCRIPTION OF THE ASSETS: See attached Schedule A. Real Property, Schedule B. Personal Property, and Schedule G. Executory Contracts and Unexpired Leases.**

**Excluded assets:     None.**

Debtor

**SCHEDULE A. REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
<b>REAL PROPERTY LOCATED AT 7090 21ST AVENUE, LINO LAKES MN AND LEGALLY DESCRIBED AS: LOT 1 BLOCK 1 CLEARWATER CREEK BUSINESS CENTER, ANOKA COUNTY MN</b>	<b>FEE OWNER</b>	<b>-</b>	<b>2,700,000.00</b>	<b>2,104,235.97</b>

Sub-Total > **2,700,000.00** (Total of this page)

Total > **2,700,000.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

In re DJT PROPERTIES LLC

Case No. 03-34649

Debtor

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.		<b>MACHINERY AND EQUIPMENT (BOOK VALUE)</b>	-	<b>115,661.62</b>
28. Inventory.		<b>INVENTORY (COST BASIS)</b>	-	<b>49,114.30</b>
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.		<b>PREPAID LEASES</b>	-	<b>3,948.36</b>

Sub-Total >	<b>168,724.28</b>
(Total of this page)	
Total >	<b>215,463.98</b>

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

In re **DJT PROPERTIES LLC**

Case No. **03-34649**

Debtor

## SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
<b>AVAYA FINANCIAL SERVICES P O BOX 465 LIVINGSTON, NJ 07039</b>	<b>TELEPHONE SYSTEM LEASE</b>
<b>EMBERS AMERICA LINO LAKES 7090 21ST AVENUE LINO LAKES, MN 55038</b>	<b>LESSOR'S INTEREST IN RESTAURANT LEASE</b>
<b>US BANCORP BUSINESS EQUIPMENT 1310 MADRID ST #101 MARSHALL, MN 56258</b>	<b>LEASE FOR SURGE SUPPRESSORS FOR ELECTRICAL SYSTEMS</b>

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

DJT PROPERTIES, LLC,

Debtor.

Bky. No. 04-34649

Chapter 11

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION**

**INTRODUCTION**

The Debtor submits this Memorandum in support of its Motion to Approve (1) Bidding Procedures with Respect to the Disposition of Debtor's Assets; (2) the Sale of All or Substantially All of Debtor's Assets Free and Clear of Liens and Interests; and (3) authorizing the assumption and assignment of unexpired leases and executory contracts.

**FACTS**

The factual background is set forth in the motion and, to avoid duplication, is incorporated by reference as if fully set forth in this memorandum.

**LEGAL ARGUMENT**

1.     Sale Free and Clear.

Section 363 of the Bankruptcy Code provides that the Debtor "after notice and a hearing may use, sell or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. §363(b)(1); *In re Hanson Industries*, 90 B.R. 405 (Bankr. D. Minn. 1988). Section 363(f) allows the debtor to sell property "free and clear of any interest in such property of an entity other than the estate,"

only if one of five criteria is met. *Lindsey v. Ipock*, 732 F.2d 619, 622 (8th Cir. 1984). 11 U.S.C. § 363(f)

provides:

(f) The Debtor may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute;

or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The failure to object to a proposed sale could be construed as consent to the sale. *Veltman v. Whetzal*, 93 F.3d 517, 521-522 (8th Cir. 1996).

Because section 363(f) is drafted in the disjunctive, the Debtor's satisfaction of any one of its five requirements will be sufficient to permit the sale of the Assets free and clear of liens, claims and other interests (collectively the "Interests"). The Debtor believes that the primary entities holding liens on the Assets are the Secured Creditors. The Secured Creditors have supported the sale process, and the Debtor is reasonably confident that it will obtain the necessary consent on or before the Sale Hearing and will

thereby satisfy the requirements of §363(f)(2).<sup>1</sup> The Debtor proposes that any Interests in the Assets shall attach to the net proceeds in the same priority, dignity and extent the Interests attached prior to filing. The proceeds from the sale of the Assets shall be distributed pursuant to 11 U.S.C. § 724 as well as other provisions of the Bankruptcy Code.

2. Assumption and Assignment of the Contracts Should Be Permitted.

The Debtor, subject to the Court's approval, may assume or reject any of its executory contracts or unexpired leases. See: 11 U.S.C. § 365(a). Assumption or rejection of an executory contract or unexpired lease will be permitted where the Court finds that the assumption or rejection is in the best interests of the creditors in the bankruptcy estate. In re Huff, 81 B.R. 531, 537 (Bankr. D.Minn. 1988).

Bankruptcy Code § 365(b)(1) sets forth the requirements that the Debtor must meet in order to assume an executory contract or unexpired lease:

If there has been a default in an executory contract or unexpired lease of the debtor, the Debtor may not assume such contract or lease unless, at the time of assumption of such contract or lease, the Debtor –

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

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

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

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<sup>1</sup> To the extent that any other entity asserts a lien on the Assets, the Debtor requests approval of this Motion under 11 U.S.C. § 363(f)(1) and (f)(3). The Secured Creditors hold first priority security interests in substantially all of the Debtor's property, including the Assets. Those security interests (i) completely exhaust the value of the Assets, and (ii) could be satisfied through a sale of the Sale Assets free and clear of any junior liens under applicable nonbankruptcy law.

Under Bankruptcy Code § 365(f)(2), the Debtor may assign an executory contract if the Debtor first assumes the contract as set forth above and then provides adequate assurance of future performance by the assignee. The Debtor believes that the defaults will be cured prior to assignment and that the Qualified Bidders will demonstrate their ability to perform the contracts and that the other parties will not object to the assignment.

3. The Debtor Should Be Permitted to Conduct the Sale in Spite of Any Lease Provisions to Prohibit or Restrict Such Sale.

Some of the Debtor's convenience stores are leased and such leases may contain provisions purporting to restrict or prohibit the Debtor from closing stores, going out of business, inventory liquidation, or similar transactions. Such provisions have been found to be unenforceable as impermissible restraints on a estate's ability to maximize the value of its assets under section 363. *See, e.g., In re Ames Dept Stores*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (enforcement of anti-going out-of-business sale clause would contravene overriding federal policy requiring debtors to maximize assets); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-going-out-of-business sale clause in lease is unenforceable).<sup>2</sup>

Courts consistently authorize such sales despite lease provisions purporting to forbid such sales. *See, e.g., In re R.H. Macy & Co.*, 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); *In re Ames Dept Stores*, 136 B.R. at 359 ("to enforce the anti-closing sale clause of the [l]ease would contravene overriding federal policy requiring debtors to maximize estate assets by imposing additional constraints never envisioned by

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<sup>2</sup> By comparison, Courts routinely enter orders in retail chapter 11 cases providing for similar relief. *See e.g., In re FAg Case No. 03.61826 (LK)* (Bankr. D. De. 2003); *In re GolfAmerica Stores*, Case No. 02-12313 (PJW) (Bankr. D. Del. 2002); *In re WSR Corp.*, Case No. 981241 (MFW) (Bankr. D. Del. 1998); *In re Montgomery Ward Holding Corp.*, Case No. 97-1409 (P JW) (Bankr. D. Del. 1997); *In re County Sea4 Case No. 96-1637 (HSB)* (Bankr. D. Del. 1996).

Congress"); *In re Tobago Bay*, 112 B.R. at 465-66; *In re Libson Shops*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982).

To the extent any such restrictive clauses may exist in Debtor's leases, the lessors should not be permitted to interfere with, or otherwise seek to restrict, the Debtor from conducting the sale.

4. Expedited Hearing Is Appropriate and Should Be Approved.

Under Local Rule 9006(a), Debtor is required to give at least 14 days' notice for this motion to approve the Bidding Procedures. The Debtor has provided 5 days' notice. Local Rule of Bankruptcy Procedure 9006(d) allows for expedited hearing when necessary. In this case, there is cause to shorten the notice time because the Debtor and all interested parties will be damaged if the sale process is delayed.

### CONCLUSION

The Debtor requests that the Court enter orders (1) granting an expedited hearing in connection with the Bid Procedures Motion; (2) approving the Bidding Procedures; (3) approving and authorizing the sale of assets free and clear of liens and interests; (4) authorizing the assumption and assignment of executory contracts and unexpired leases; and (5) granting such further relief as the Court deems just and equitable.

Dated: August 26, 2004

RAVICH MEYER KIRKMAN  
McGRATH & NAUMAN,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael F. McGrath #168610

Michael L. Meyer #72527

Will R. Tansey #323056

4545 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

DJT PROPERTIES, LLC,

Debtor.

Bky. No. 04-34649

Chapter 11

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**UNSWORN CERTIFICATE OF SERVICE**

I, Michael F. McGrath, declare under penalty of perjury that on August 26, 2004 I served copies of the attached:

1. Notice of Expedited Hearing and Motion to Approve (1) Bidding Procedures With Respect to the Disposition of Debtor's Assets (2) The Sale of All or Substantially All of Debtor's Assets Free and Clear of Liens and Interests and (3) Authorizing Assumption and Assignment of Leases and Executory Contracts;
2. Memorandum of Law in Support of Motion; and
3. Proposed Order Approving Bidding Procedures and Official Bid Form Relating to Proposed Sale of All or Substantially All of Debtor's Assets Free and Clear of Interests;

by sending true and correct copies via facsimile and by first class mail postage prepaid to each entity named below at the address stated below for each entity:

[SEE ATTACHED SERVICE LIST]

Executed on: August 26, 2004

/e/ Michael F. McGrath

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Michael F. McGrath #168610  
Ravich Meyer Kirkman McGrath & Nauman  
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80 South Eighth Street  
Minneapolis, MN 55402  
(612) 332-8511

DJT PROPERTIES, LLC  
C/O CLEARWATER CREEK CONVENIENCE CTR.  
7090 - 21<sup>ST</sup> AVENUE  
LINO LAKES, MN 55038

MINN. DEPT. OF REVENUE  
COLLECTION ENFORCEMENT  
551 BANKRUPTCY/PO 64447  
ST. PAUL, MN 55164

UNITED STATES ATTORNEY FOR  
THE DISTRICT OF MINNESOTA  
600 U.S. COURTHOUSE, 300 S. 4TH ST  
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INTERNAL REVENUE SERVICE  
ATTN: SPECIAL PROCEDURES  
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ST. PAUL, MN 55101-1423

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107 EAST MAIN STREET  
VERMILLION MN 55085

VERMILLION STATE BANK  
C/O MARY JO A. JENSEN-CARTER, ESQ.  
BUCKLEY & JENSEN  
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VADNAIS HEIGHTS MN 55109

CROIX OIL COMPANY  
ATTN PAUL MUILENBERG  
1749 S GREELY STREET  
STILLWATER MN 55082-0000

CHEROKEE STATE BANK  
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ST PAUL MN 55107

CHEROKEE STATE BANK  
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FOSTER & BREVER, PLLC  
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ST. ANTHONY, MN 55418

DAVID KROONA  
5945 CARLSON ROAD  
SHOREVIEW MN 55126

AMCON DISTRIBUTING COMPANY  
ATTN: ROBERT LAMOS  
7405 IRVING ROAD  
OMAHA NE 68122

MAIN STREET BANK  
ATTN: MIKE  
7111 21<sup>ST</sup> AVENUE NORTH  
CENTERVILLE MN 55308

COREMARK MINNEAPOLIS  
ATTN: GARY CHRISTIANSON  
SDS 12-0836  
MINNEAPOLIS MN 55486

NORTH SUBURBAN INC.  
51 SOUTHWOOD DRIVE  
VADNAIS HEIGHTS MN 55127

ECOLAB VEHICLE CARE DIVISION  
ATTN MIKE EVANS  
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DALLAS TX 75391-0592

AMERICAN BOTTLING  
ATTN TOM CAHILL  
PO BOX 643  
DES MOINES IA 50303

KING DISTRIBUTORS  
ATTN KITTY  
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ST. LOUIS PARK MN 55426

ANYTIME ICE COMPANY  
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OSSEO MN 55369

CINTAS  
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TRADER PUBLISHING  
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CLEARWATER FL 33762-0359

FILTER FRESH  
1460 W COUNTY ROAD D  
ROSEVILLE MN 55112

SEAVER COMPANIES  
ATTN DEAN SEAVER  
PO BOX 123  
LeSEUER MN 56058

TWIN CITY GREETING INC.  
340 JOSEPH STREET  
NEW MARKET MN 55054

CHARLES LEVY CIRCULATING  
ATTN DOROTHY COLEMAN  
33165 TREASURY CENTER  
CHICAGO IL 60694-3100

DANISH PASTRY SHOP  
PO BOX 17279  
ST PAUL MN 55117

M&D DISTRIBUTING INC.  
2367 UNIVERSITY AVE WEST  
ST PAUL MN 55114

ANOKA COUNTY TREASURER  
PROPERTY RECORDS & TAXATION  
2100 - 3<sup>RD</sup> AVENUE  
ANOKA, MN 55303

AVAYA INC  
PO BOX 465  
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HUDSON, WI 54016

WASTE MANAGEMENT-BLAINE  
10050 NAPLES STREET NE  
BLAINE, MN 55449

August 26, 2004

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

DJT PROPERTIES, LLC,

Debtor.

Bky. No. 04-34649

Chapter 11

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**ORDER APPROVING BIDDING PROCEDURES AND OFFICIAL BID FORM  
RELATING TO PROPOSED SALE OF ALL OR SUBSTANTIALLY ALL OF  
DEBTOR'S ASSETS FREE AND CLEAR OF INTERESTS**

Upon preliminary consideration of the motion (the "Sale Motion") of DJT Properties, LLC (the "Debtor") to approve (1) Bidding Procedures with Respect to the Disposition of Debtor's Assets; (2) the Sale of All or Substantially All of Debtor's Assets Free and Clear of Liens and Interests and (3) Authorizing the Assumption and Assignment of Unexpired Leases and Executory Contracts; this Court having determined that granting the preliminary relief requested in the Sale Motion is in the best interest of the its estate and its creditors, it appearing that proper and adequate notice has been given; and after finding that good and sufficient cause appears therefore upon the record herein;

**IT IS HEREBY ORDERED:**

1. The Sale Motion is granted to the extent set forth herein.
2. The proposed Bidding Procedures and Official Bid Form, as set forth in the form of **Exhibit B** and **Exhibit C** to the Sale Motion, shall be approved in all respects, and the Debtor shall be authorized to comply therewith.
3. The Auction for the Assets, as described in the Bidding Procedures, shall take place at 9:30

a.m. (CST) on October 19, 2004 at 228B U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101, or such later time or other place as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids.

4. The hearing on the motion for sale of the estate's Assets free and clear of liens and interests as well as for assumption and assignment of unexpired leases and executory contracts shall be held at before this Court at 9:30 a.m. (CST) on October 19, 2004, 228B U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

Dated: \_\_\_\_\_, 2004

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GREGORY F. KISHEL, CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT

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