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2002-12-23 16:45:11

Cook County Recorder 78.50

Stephanie Keller  
Land America  
1200 Sixth Ave, Ste 1910  
Seattle WA 98101



0021432368



UNITED STATES BANKRUPTCY COURT  
Central District of California

I hereby attest and certify that on 11-14-02 the  
attached reproduction(s), containing 27 pages, is a  
full, true and correct copy of the complete document entitled:

Order Authorizing Debtors  
To Sell Real Property (Des  
Plains Facility) Under Care  
of ACR

which includes:  Exhibits  Attachments

on file in my office and in my legal custody at the marked location:

300 North Los Angeles Street  
Los Angeles, CA 90012

3420 Twelfth Street, Suite 125  
Riverside, CA 92501-3819

411 West 4th Street, Suite 2074  
Santa Ana, CA 92701-4593

1415 State Street  
Santa Barbara, CA 93101-2511

21041 Burbank Boulevard  
Woodland Hills, CA 91367

Jon D. Ceretto, Clerk of Court

By: Anna Bullard  
Deputy Clerk

THIS CERTIFICATION IS VALID ONLY WITH THE  
UNITED STATES BANKRUPTCY COURT SEAL.

02-16017 10F2

Lawyers Title Insurance Corporation

28785

1 LATHAM & WATKINS  
Michael S. Lurey, CA State Bar No. 048235  
2 Gregory O. Lunt, CA State Bar No. 173299  
Shira Roth, CA State Bar No. 217469  
3 633 West Fifth Street, Suite 4000  
Los Angeles, California 90071-2007  
4 Telephone: (213) 485-1234  
Facsimile: (213) 891-8763

FILED  
NOV 12 2002  
CLERK, U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] Deputy Clerk

ENTERED  
NOV 12 2002  
CLERK, U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] Deputy Clerk

5 Proposed Counsel for  
6 Debtors and Debtors-in-Possession

7  
8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 RIVERSIDE DIVISION

11 In re  
12 CONSOLIDATED FREIGHTWAYS  
CORPORATION OF DELAWARE, et al.,  
13  
14 Debtors.

Case No.: RS-02-24284-MG  
Chapter 11  
(Jointly Administered with Case Nos.  
RS-02-24287-MG, RS-02-24289-MG,  
RS-02-24293-MG, RS-02-24294-MG and  
RS-02-24295-MG)

15  
16 Fed. Tax I.D. No. 94-1444797

Hearing  
Date: November 12, 2002  
Time: 1:30 p.m.  
Place: Courtroom 301  
3420 Twelfth Street  
Riverside, CA 92501  
Judge: Hon. Mitchel R. Goldberg

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21 **ORDER AUTHORIZING DEBTORS TO SELL REAL PROPERTY  
(DES PLAINES FACILITY) FREE AND CLEAR OF LIENS**

22  
23 This matter came before the Court on November 12, 2002, at 1:30 p.m. upon the  
24 First Motion for Order Authorizing Debtors to Sell Certain Real Property Assets Free and Clear  
25 of Liens, Claims and Encumbrances and Reject Unexpired Lease with Respect to Certain  
26 Facilities (the "Motion") which was filed by Consolidated Freightways Corporation,  
27 Consolidated Freightways Corporation of Delaware ("CFCD"), Redwood Systems, Inc., Leland  
28 James Service Corporation, CF Airfreight Corporation and CF MovesU.com Incorporated, the

417 [Signature]

1 debtors and debtors-in-possession herein (collectively, the "Debtors"). The Court having  
2 considered the Motion, the declarations, supplements and other evidence submitted in support of  
3 the Motion, the arguments and evidence proffered at the hearing on the Motion, and the record in  
4 these cases, and for other good cause shown, the Court hereby finds, as a matter of fact, and  
5 concludes, as a matter of law, that:

6 1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 to  
7 approve the sale of the real property and improvements located at 2300 S. Mount Prospect Road,  
8 Des Plaines, Illinois (the "Facility") free and clear of those liens, encumbrances, claims and  
9 interests identified in this Order, and to authorize CFCD on behalf of its estate (the "Estate") to  
10 enter into and perform in accordance with the Commercial Real Estate Purchase and Sale  
11 Agreement dated October 30, 2002, including the modifications, if any, set forth in the record of  
12 the hearing on the Motion (the "Agreement"), in substantially the form attached hereto as Exhibit  
13 "A." The Motion is core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). The  
14 statutory predicates for the relief requested in the Motion with respect to the Facility are 11  
15 U.S.C. §§ 105 and 363, and Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules")  
16 2002, 6004 and 9014.

17 2. All objections, if any, to the Motion and to the approval of the Agreement,  
18 including the transactions contemplated thereby, have been withdrawn, resolved or overruled.

19 3. The Facility is situated in Des Plaines, County of Cook, State of Illinois,  
20 described more fully in Exhibit "A" to the Agreement, which is attached hereto.

21 4. Record title to the Facility is vested in CFCD (the "Record Owner").

22 5. Notice of the Motion was appropriate under the circumstances and  
23 complied in all respects with the requirements of the Bankruptcy Code and the Bankruptcy  
24 Rules.

25 6. The proposed sale does not entail a sale of all or substantially all of the  
26 Debtor's assets.

27 7. The Facility is allegedly subject to the liens, encumbrances and other  
28 interests of record, including, without limitation, the following: (1) the liens of General Electric

1 Capital Corporation ("GE Capital") in connection with the Debtors' post-petition secured  
2 financing previously approved by this Court (the "DIP Financing"); and (2) certain liens for  
3 property taxes for the fiscal year 2001, 2002 and subsequent years (the "Property Tax Liens").

4 8. Within the meaning of 11 U.S.C. § 363(f)(2), GE Capital has consented to  
5 ~~the sale of the Facility free and clear of any and all of its liens, encumbrances or interests in the~~  
6 Facility (with such liens attaching to the net proceeds of the sale), including, without limitation,  
7 those liens, encumbrances and interests of such party listed in Paragraph 7 above.

8 9. CFCD proposes to pay all amounts owing on account of the Property Tax  
9 Liens from the gross proceeds of the sale of the Facility.

10 10. CFCD has engaged in fair and reasonable marketing, advertising and other  
11 sale efforts and procedures in connection with the sale of the Facility, which efforts and  
12 procedures have enabled the Estate to obtain a fair and reasonable price for the Facility under the  
13 circumstances of these cases. In connection with the proposed sale, CFCD has complied with all  
14 sale procedures established or required by this Court.

15 11. The highest and best offer to purchase the Facility was the one received  
16 from FedEx Freight East, Inc. (the "Purchaser") to purchase the Facility for a purchase price of  
17 \$4,550,000 on the terms and conditions set forth in the Agreement.

18 12. The Purchaser is not an affiliate of any of the Debtors. The Agreement  
19 was negotiated, proposed, and entered into by the parties without collusion, in good faith, and  
20 from arm's-length bargaining positions. None of the Debtors nor the Purchaser has engaged in  
21 any conduct that would cause or permit the Agreement, or the transactions contemplated thereby,  
22 to be invalidated or avoided under 11 U.S.C. § 363(n). Accordingly, upon consummation of the  
23 sale transaction contemplated by the Agreement, the Purchaser will be a buyer in "good faith"  
24 within the meaning of 11 U.S.C. § 363(m), and, as such, is entitled to the protections afforded  
25 thereby.

26 13. The terms and conditions of the sale transaction as provided for in the  
27 Agreement are fair and reasonable; entry into the Agreement on behalf of the Estate is a sound

28

1 exercise of CFCD's reasonable business judgment; and, the sale transaction contemplated by the  
2 Agreement is in the best interests of creditors, interest holders and the Estate.

3 Based on the record in these cases, the findings of fact and conclusions of law set  
4 forth above and stated on the record pursuant to Bankruptcy Rules 9014 and 7052, and good  
5 cause appearing therefor, it is hereby

6 **ORDERED THAT** the Motion is granted as set forth herein; and it is further

7 **ORDERED THAT** the terms, conditions, and transactions contemplated by the  
8 Agreement are hereby approved in all respects, and CFCD is hereby authorized under 11 U.S.C.  
9 §§ 105(a) and 363(b), (c), (f) and (m) to sell the Facility free and clear of those liens, claims,  
10 encumbrances and interests set forth below (the "Liens") to the Purchaser on the terms and  
11 conditions provided in the Agreement with all such Liens to attach to the net proceeds of the  
12 sale, with the same validity, enforceability, priority, force and effect that they no have as against  
13 the Facility, subject to the rights, claims, defenses and objections, if any, of the Debtors and all  
14 interested parties with respect to such Liens; and it is further

15 **ORDERED THAT** CFCD is hereby authorized, empowered, and directed to (1)  
16 perform under, consummate, and implement the Agreement, (2) execute all additional  
17 instruments and documents that may be reasonably necessary or desirable to implement the  
18 Agreement and the transactions contemplated thereby, (3) take all further actions as may be  
19 necessary or appropriate for the purposes of assigning, transferring, granting, conveying,  
20 encumbering or transferring CFCD's property as contemplated by the Agreement, and (4) take  
21 such other and further steps as are contemplated by the Agreement or reasonably required to  
22 fulfill CFCD's obligations under the Agreement, all without further order of the Court; and it is  
23 further

24 **ORDERED THAT** the sale of the Facility shall be free and clear of the  
25 ownership interests of the Record Owner, and its predecessors and successors in interest; any  
26 unrecorded equitable or legal interests in the Facility asserted by any person or entity, or their  
27 respective predecessors and successors in interest, unless such interests would be superior to the

28 rights of a trustee under 11 U.S.C. § 544(a)(3); the claims or interests asserted by any person or



1 entity, or their respective predecessors and successors in interest, against the Estate which do not  
2 constitute liens against or interests in the Facility; and the claims or interests asserted by any  
3 person or entity, or their respective predecessors and successors in interest, evidenced by the  
4 Liens of GE Capital in connection with the DIP Financing and the Property Tax Liens; and it is  
5 further

*the prepetition Liens of GE Capital*

6 **ORDERED THAT** CFCD is hereby authorized to pay directly from the escrow  
7 all amounts due (the "Release Payments") which are secured by the Property Tax Liens; and it is  
8 further

9 **ORDERED THAT** (1) the commission that Transportation Property Company,  
10 Inc. ("TPC") is owed on the sale of the Facility (the "Commission") shall be held by the escrow  
11 company in the escrow established for the sale pending approval of TPC's employment by the  
12 Court, (2) the Commission shall be promptly released to TPC from escrow if and when the Court  
13 enters an order approving TPC's employment by the Debtors without the necessity of a further  
14 order of the Court approving the Commission or authorizing the release of the Commission from  
15 escrow, (3) the Commission shall be computed at the agreed-upon commission schedule set forth  
16 in Exhibit "B" hereto, and (4) the Court's approval of the sale of the Facility shall in no way  
17 prejudice TPC's entitlement to the Commission if and when this Court approves TPC's  
18 employment; and it is further

19 **ORDERED THAT** CFCD is hereby authorized to pay all other reasonable and  
20 customary escrow fees, recording fees, title insurance premiums, and closing costs (collectively,  
21 the "Closing Costs") necessary and proper to conclude the sale of the Facility; and it is further

22 **ORDERED THAT** any proceeds from the sale of the Facility less the Closing  
23 Costs, the Release Payments, and the Commission shall be applied in accordance with the  
24 documents governing the DIP Financing subject to any and all defenses, claims and/or other  
25 rights of any party relating thereto; and it is further

26 **ORDERED THAT** this Court shall and hereby does retain jurisdiction to (1)  
27 enforce and implement the terms and provisions of the Agreement, all amendments thereto, any  
28 waivers and consents thereunder, and any other supplemental documents or agreements executed

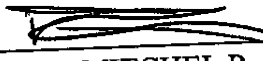
1 in connection therewith; (2) compel delivery and payment of the consideration provided for  
2 under the Agreement; (3) resolve any disputes, controversies or claims arising out of or relating  
3 to the Agreement; and (4) interpret, implement, and enforce the provisions of this Order; and it is  
4 further

5 ~~ORDERED THAT, pursuant to 11 U.S.C. § 363(m), absent a stay of this Order~~

6 pending appeal prior to the closing of the transactions contemplated by the Agreement, the  
7 reversal or modification on appeal of this Order, or any provision thereof, shall not affect the  
8 validity of the sale transaction approved hereby which is consummated prior to such stay,  
9 reversal or modification on appeal; and it is further

10 **ORDERED THAT** the validity of the sale approved hereby shall not be affected  
11 by the appointment of a trustee or successor trustee, the dismissal of the above-captioned case, or  
12 its conversion to another chapter under title 11 of the United States Code.

13 DATED: NOV 12 2002

14   
15 HON. MITCHEL R. GOLDBERG  
16 UNITED STATES BANKRUPTCY JUDGE

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**COMMERCIAL REAL ESTATE  
PURCHASE AND SALE AGREEMENT**

**By and Between**

**CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE,**

**as Debtor and Debtor-in-Possession**

**as SELLER**

**and**

**FEDEX FREIGHT EAST, INC.,**

**as BUYER**

Property of Cook County Clerk's Office



**COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT**

This **COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT** (referred to as the "Contract") is made and entered into as of October 25, 2002, (the "Effective Date") and constitutes an agreement by and between **FEDEX FREIGHT EAST, INC.**, ("Buyer"), as purchaser, whose principal address is 2200 Forward Drive, Harrison, AR 72601 and **CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE**, a Delaware corporation, as debtor and debtor-in-possession ("Seller"), as seller, whose principal address is 16400 SE CF Way, Vancouver, WA 98683 with respect to certain improved real property located at:

**2400 S. Mount Prospect Road, City of Des Plaines, County of Cook, Illinois**

and legally described in **EXHIBIT A** attached hereto and made a part hereof (the "Land"), and all improvements, buildings, parking facilities and other structures located on the Land (the "Improvements"). The Land and the Improvements, together with any appurtenant easements, rights of way, licenses and hereditaments thereto, are collectively referred to herein as the "Property."

NOW, THEREFORE, in consideration of the mutual promises, warranties and undertakings expressed in this Contract, Seller and Buyer agree as follows:

1. **Purchase and Sale of the Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth in this Contract.

2. **Purchase Price.** The total purchase price for the Property ("Purchase Price") is ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00). The Purchase Price shall be payable by Buyer to Seller as follows:

(a) Upon mutual execution of this Contract Buyer shall deposit One Hundred Eighty Thousand Dollars (\$180,000.00) (the "Deposit") in escrow with the title insurance company designated in Section 4.1 ("Title Company"). The Deposit will be held in accordance with the provisions of a joint escrow trust agreement or joint escrow instructions, in the form customarily used by the Title Company, modified to conform with the provisions of this Contract (or, in the absence of such separate escrow trust agreement or instructions, this Contract shall constitute the parties' joint instructions to the Title Company concerning the handling of the Deposit). The Deposit will be held in a federally insured depository account, with any interest earned on the Deposit held in the account. The Deposit (including any interest) shall be held, refunded, applied and handled, as described in this Contract.

(b) Upon the Closing Date provided below, the entire Purchase Price will be paid to Seller in cash, less a credit for the Deposit and any credits due under Section 6.4 hereof.

3. **Contingencies.**

3.1 **Review Period.** Buyer will have fifteen (15) days following the Effective Date (the "Review Period") to satisfy itself concerning the matters referenced in Sections 3.2, 4.1, 4.2 and 4.3 of this Contract.

3.2 **Buyer's Right to Inspect Property.** During the Review Period, Buyer shall have the right (at Buyer's expense) to perform inspections, investigations, and feasibility studies on the Property, including, without limitation, "level one" and "level two" environmental studies and tests for asbestos-containing materials (collectively, the "Environmental Studies"), engineering, soils, and

geological tests of the Property, a survey of the Property, and feasibility studies of the Property, as Buyer may deem necessary in its reasonable business judgment, in order to determine the structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest infestation, soils conditions, wetlands, American with Disabilities Act compliance, and other matters affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase of the Property, subject to the **General Terms** attached hereto as **EXHIBIT B** and the **Right of Entry Agreement** attached hereto as **EXHIBIT C**. Buyer shall have the right to discover any executory contracts with respect to the Property in order to either request assignment of the same from Seller or to request that the same be rejected as part of the bankruptcy proceeding.

**3.3 Rescission within Review Period.** In the event Buyer, in Buyer's reasonable discretion, determines that the contingencies referenced in Section 3.1 have not been satisfied, Buyer may, at any time prior to expiration of the Review Period, rescind this Contract by giving written notice to Seller. In the event of such rescission and within five (5) business days of such written notice to Seller, Buyer shall deliver to Seller (at no charge to Seller) those feasibility and property studies, audits, Environmental Studies, and other data and work product compiled by or at the request of Buyer about the Property requested by Seller and not otherwise deliverable under the terms of this Contract, whereupon the Deposit shall be returned to Buyer. This Contract thereafter shall be null and void and neither party shall have any obligation to the other, except that the obligations of Buyer to indemnify, hold harmless and defend Seller as described or referenced in Section C.1 of Exhibit "B" and Section 2 of Exhibit "C" to this Contract shall survive and continue in full force and effect. If Buyer does not notify Seller that it is rescinding this Contract within the time period specified above, the matters referenced in Section 3.1 shall be conclusively deemed approved by Buyer and, thereafter, Buyer shall be obligated to consummate the purchase of the Property from Seller, as set forth in this Contract.

**4. Seller's Title to the Property; Survey.**

**4.1 Title Report.** Within five (5) business days after mutual execution of this Contract, a preliminary title report/commitment (the "Commitment") will be provided to Buyer, at Buyer's expense, from an affiliated title insurance company of LANDAMERICA NATIONAL COMMERCIAL SERVICES or such other title/escrow company as Seller may designate in the State in which the Property is situated or such other title insurance company as determined by Seller ("Title Company") showing its willingness to issue title insurance on the Property, together with full copies of all exceptions shown in such report. Buyer shall have until the expiration of the Review Period within which to notify Seller in writing of Buyer's disapproval of any exceptions shown in the Commitment other than: (a) a lien to secure payment of real estate taxes and assessments, not yet delinquent; (b) matters affecting the condition of title created by or with the consent of Buyer; (c) matters which would be disclosed by a physical inspection of the Property and review of a Survey (defined below) and which do not materially and adversely affect the use of the Property by Buyer as a motor freight terminal; and (d) any other exceptions disclosed by the Commitment which do not materially and adversely affect the use of the Property by Buyer as a motor freight terminal or that are approved (or deemed approved) by Buyer in accordance with this Section (collectively, "Permitted Exceptions"). In the event of such disapproval, Seller shall have until the Closing Date described in Section 6 to eliminate any disapproved exception. Failure of Buyer to disapprove any exception(s) on the Commitment within the stated time period shall be conclusively deemed an approval of the exceptions shown in the Commitment.

**4.2 Survey.** Seller will provide a copy to Buyer of a recent boundary or physical survey ("Survey") of the Property if Seller has one in its possession (but Seller will not be required to provide a new Survey, and is not warranting the accuracy of any such Survey or Buyer's right to rely thereon). If Buyer desires to have a Survey performed, Buyer will promptly cause it to be performed after the Effective Date, and a copy of the Survey will be delivered to both parties at the same time. Buyer

shall have until the expiration of the Review Period within which to notify Seller in writing of Buyer's disapproval of any exceptions shown in the Survey (and, if Buyer does not do so, Buyer will be conclusively deemed to have approved all matters shown on the Survey).

4.3 **Objections to Title or Survey.** If objections to matters in the Commitment (other than Permitted Exceptions and any mortgages or other financial encumbrances to be removed by Seller at Closing) are made by Buyer within the time and manner prescribed above, then Seller shall have the right, but not the obligation, to attempt to eliminate or ameliorate such objections as Buyer shall have so disapproved, prior to the expiration of the Review Period. If Seller is unable or unwilling to eliminate such disapproved exceptions within said period, Buyer shall have the right, by a writing delivered to Seller on or before the expiration of the Review Period to: (a) waive its prior disapproval, in which event this Contract and the rights and obligations of the parties hereunder, except Buyer's indemnity obligations set forth in Section C.1 of Exhibit "B" and Section 2 of Exhibit "C", and thereafter, the Deposit shall be returned to Buyer.

5. **AS-IS, WHERE-IS and WITH ALL FAULTS.** Buyer acknowledges that the sale of the Property to Buyer is made solely on an "AS-IS, WHERE-IS, WITH ALL FAULTS" basis and that Seller makes no representations or warranties as to the condition of the Property or its suitability for Buyer's intended purpose. Buyer agrees to conduct or cause to be conducted within the Review Period such investigations and perform any and all due diligence Buyer deems necessary in order to ascertain the condition of the Property and confirm that the Property meets Buyer's needs. In the event Buyer lacks the expertise to conduct the investigations, studies and tests of property such as the Property, Buyer shall retain the services of persons qualified to provide such expertise. Buyer hereby waives any and all rights Buyer may have, including any rights Buyer may have to rescind this Contract, based on Buyer's failure to discover any facts prior to the Closing.

6. **Closing.**

6.1 **Closing Date.** This transaction will be closed (the "Closing") in escrow at that Title Company branch office which is the Title Company mutually acceptable to the parties (the office, agent or approved title attorney for Title Company handling the closing is, for this purpose, the "Escrow Agent"), in accordance with this Contract. If escrow closings are not typically performed by the Title Company in the State in which the Property is situated, the parties will use Title Company's national account office as Escrow Agent to close the transaction, or will close the transaction as a "table closing" at the offices of Seller's legal counsel, as the parties may reasonably approve. The date of the Closing (the "Closing Date"), by which date Seller and Buyer shall make their respective deposits in escrow, shall occur within Three (3) business days after the Order becomes a Final Order, but not in any event later than December 6, 2002.

If, for any reason, this transaction fails to close by the Closing Date and the parties have not agreed in writing to an extension, either party to this Contract shall have the right to rescind and terminate this Contract, provided such party is not in default hereunder. If the failure to close is a result of such a default, the parties shall be entitled to pursue their remedies set forth in the General Terms.

6.2 **Delivery of Closing Documents by Seller.** On or before the Closing Date, Seller shall deposit with the Escrow Agent, for delivery at Closing to Buyer, the following: (a) a Quit Claim deed sufficient to convey fee title, in form to be prepared by Seller and approved within the Review Period, conveying the Land and Improvements to Buyer (the "Deed"); (b) an affidavit executed by Seller under penalty of perjury, stating Seller's United States Taxpayer Identification Number and that Seller is not a foreign person in accordance with Internal Revenue Code Section 1445(b)(2) (the

"FIRPTA Affidavit"); (c) any transfer tax or sales tax affidavit or statement of value or other form required to be signed in order to record the Deed; (d) an entered copy of the Order; and (e) a closing statement in form prepared by the Escrow Agent.

6.3 **Delivery of Closing Documents by Buyer.** At least one (1) business day before the Closing Date, Buyer shall deposit with the Escrow Agent, for delivery at Closing to Seller, the following: (a) a bank (cashier's) check or wire transfer of funds to in the amount required in Section 2 above; (b) any transfer tax or sales tax affidavit or statement of value or other form required to be signed in order to record the Deed; and (c) a closing statement in form prepared by the Escrow Agent.

6.4 **Taxes and Costs of Closing.** Real estate taxes and assessments (not including documentary stamp, excise or transfer taxes) on, or which relate to, the Property, shall be prorated as of Closing based on the amount of the most recent ascertainable tax bill. Buyer shall bear and pay (a) unless otherwise waived by the Bankruptcy Court under Section 1146(c) of the Bankruptcy Code, the cost of any and all documentary stamps, excise taxes, stamp taxes or transfer taxes which must be paid or affixed to the Deed as a result of this transaction, (b) the cost of recording the Deed, (c) the cost of the Survey (if any), and (d) the cost of title insurance on the Property. Any and all other costs of Closing, shall be divided equally between Seller and Buyer and paid by them accordingly. Each party shall pay the costs of its own legal counsel.

6.5 **Events of Closing.** Provided the Escrow Agent has received the sums and is in a position to cause the title insurance policy to be issued as described below, this transaction shall be closed on the Closing Date as follows:

(a) Seller shall have performed its deliveries to Escrow Agent as required by Section 6.2 above and Buyer shall have performed its deliveries to Escrow Agent as required by Section 6.3 above.

(b) The Escrow Agent shall perform the prorations and adjustments and payments of any transfer or other charges as described in Section 6.4, and the parties shall be charged and credited accordingly.

(c) Any liens required to be paid by Seller at closing shall be released of record at Seller's expense.

(d) The Escrow Agent shall record the Deed to Buyer and file any transfer tax or sales tax affidavit or statement of value or other form required to be signed in order to record the Deed.

6.6 **Title Insurance.** As soon as possible after Closing, a standard coverage owner's policy of title insurance will be issued to Buyer in the amount of the Purchase Price, subject only to the standard printed exceptions of the Title Company and the Permitted Exceptions (including matters approved or deemed approved by Buyer pursuant to this Contract).

7. **Brokers or Finder's Fees.** Each party represents to the other party that no third party has any claim for a finder's fee or a real estate broker's commission except Transportation Property Company (the "Broker"). Each party further agrees that should any third party other than the Broker claim a finder's fee or broker's commission as a result of the acts of either party hereto, the party upon whose acts the claim rests shall defend said claim and, if said claim is established, that party shall pay said claim. Each party agrees to indemnify, defend and hold harmless the other party against any liability



arising from claims for finder's fees or broker's commissions as a result of its acts. Seller will pay Transportation Property Company a commission in accordance with their agreement.

8. **Integration.** This Contract, the **General Terms** attached hereto as **EXHIBIT B** and the **Right of Entry Agreement** attached hereto as **EXHIBIT C** are incorporated herein by reference and supersede and replace all written and oral agreement previously made or existing between the parties and states the entire agreement of the parties, and Seller shall not be bound by any stipulations, representations, agreement or promises, oral or otherwise, not included in or attached to this Contract, the **General Terms** and the **Right of Entry Agreement**.

9. **Effective Date.** The Effective Date of this Contract is the date on which the last party to this Contract has executed this Contract as evidenced by the dates next to their signatures below.

IN WITNESS WHEREOF, the parties hereto have entered into this instrument as of the last date and year set forth below.

BUYER:

FEDEX FREIGHT EAST, INC.

By [Signature] 7/13/07  
Name/Title: **Randall R. Smith**  
**Vice President-Properties**  
**FedEx Freight East, Inc.**

ATTEST:

By [Signature]  
Name/Title: **PAT REEA - COO - FKE EAST**

SELLER:

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware corporation,

By [Signature]  
Name/Title: **Kerry Morgan, Vice President**

ATTEST:

By [Signature]  
Name/Title: **Arthur Hackworth**  
**Assistant Secretary**

EXHIBIT A

Legal Description of Property

The North 370 feet of the East half of the West three quarters of the South East quarter of the South East quarter of Section 25, Township 41 North, Range 11, East of the Third Principal Meridian, and the North 370 feet of the East quarter of the South East quarter of the South East quarter of said Section 25 (excepting therefrom that portion lying South Westerly of the North Westerly line of the Chicago and Northwestern Railroad, (also excepting therefrom that portion dedicated as highways) all in Cook County, Illinois.

Property of Cook County Clerk's Office



## EXHIBIT B

GENERAL TERMSA. Bankruptcy Court Approval.

**A.1 Court Filing.** The parties acknowledge that Seller is the subject of that certain bankruptcy case brought under chapter 11 of Title 11 of the United States Code entitled "*In re Consolidated Freightways Corporation of Delaware, et al.*," jointly administered under Case No. RS 02-24284 MG (the "**Bankruptcy Case**"), which is pending in the United States Bankruptcy Court for the Central District of California, Riverside Division (the "**Bankruptcy Court**"). The parties further acknowledge that the transactions described in this Contract are subject to the approval of the Bankruptcy Court and cannot be consummated without such approval. Finally, the parties acknowledge that, unless otherwise expressly provided herein, the transactions described in this Contract will be subject to higher and better offers from other parties and subject to an auction in accordance with bidding procedures authorized by the Bankruptcy Court.

**A.2 Order.** No later than five (5) days after the Effective Date, Seller shall file a motion with the Bankruptcy Court seeking the entry of an order (the "**Order**") authorizing Seller to enter into this Contract and consummate the transactions described herein and describing any bidding procedure to be authorized. Buyer shall use commercially reasonable efforts to cooperate with Seller in preparing, filing and adjudicating this motion and obtaining the Order. In the event (i) Buyer is not the successful bidder or (ii) the Bankruptcy Court fails to approve the Contract (or any material provision thereof) or (iii) a Final Order is not entered by December 6, 2002, the Contract shall be deemed terminated without liability on the part of Buyer provided Buyer is not in breach of the Contract (and except to the extent provided in Section C.1 below and in Exhibit "C" hereto) and Buyer shall receive back its entire Deposit.

**A.3 Final Order.** Neither Buyer nor Seller shall have any obligation to consummate the transactions described herein unless and until the Order becomes a Final Order. "**Final Order**" shall mean an order, judgment or other decree, (i) the operation or effect of which has not been reversed, stayed, modified or amended, (ii) as to which no appeal, certiorari proceeding or other proceeding for review or rehearing shall then be pending, or if any such appeal, certiorari proceeding or other proceeding for review or rehearing has been filed, such appeal, certiorari proceeding or other proceeding for review or rehearing does not dispute or affect the Bankruptcy Court's finding of Seller's good faith under 11 U.S.C. § 363(m), and (iii) either (X) the period in which such order, judgment or decree is subject to appeal, certiorari proceeding or other proceeding for review or rehearing has ended or (Y) the Bankruptcy Court has waived the requirements of 6004(g) of the Federal Rules of Bankruptcy Procedure.

B. Failure To Close.

**B.1 Seller's Remedies.** In the event that this transaction fails to close on or before the Closing Date as a result of a breach by Buyer of any of its obligations under this Contract or Buyer's inability to close, then Seller may elect as its sole remedy one of the following remedies: (a) Seller may terminate this Contract, in which case the amount previously deposited or paid as earnest money shall be forfeited by Buyer and retained by Seller as liquidated damages. **SUCH AMOUNT HAS BEEN AGREED BY THE PARTIES TO BE REASONABLE COMPENSATION SINCE THE PRECISE AMOUNT OF SUCH COMPENSATION WOULD BE DIFFICULT TO DETERMINE;** or (b) Seller may compel specific performance by Buyer.

**B.2 Buyer's Remedies.** In the event this transaction fails to close on or before the Closing Date as a result of a material breach by Seller of its obligations under this Contract or Seller's inability to close, then Buyer may elect as its sole remedy to terminate this Contract and recover the Deposit.

**C. Property Related Matters.**

**C.1 Buyer's Right to Enter and Inspect.** Subject to its compliance with the terms of the Right of Entry Agreement, Buyer may perform reasonable, non-invasive tests, engineering studies, and inspections on the Property as Buyer may deem necessary, at Buyer's expense. Buyer will obtain Seller's specific written consent, in Seller's discretion, prior to doing any invasive testing. Buyer shall defend, indemnify and hold Seller harmless for, from and against any claim, loss or liability or any claim of lien or damage in connection with any entry on the Property by Buyer or any activities on the Property by Buyer, its agents, employees and independent contractors.

**C.2 Environmental Indemnity.** Subject to the consummation of the Closing, Buyer hereby waives, releases and discharges and agrees to defend, indemnify, and hold Seller, and its employees, agents and representatives harmless from any liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorneys', consultants' and experts' fees and expenses (collectively, "Liabilities"), relating to the Property, including any Liabilities relating to the presence, discharge, existence, use, deposit, spill or other release of Hazardous Substances in, on, under or about the Property or on adjoining or neighboring property, or arising from any use of the Property by Buyer, after the Closing Date, including (without limitation) any Liabilities arising out of or resulting from any test, survey, study, investigation, or inspection or entry by Buyer, its agents, contractors, employees or invitees. "Hazardous Substances" shall include, without limitation: (a) those substances now or hereafter included within the definitions of hazardous substances, hazardous materials, toxic substances, or solid waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 *et seq.*; Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 *et seq.*; the Materials Transportation Act (49 U.S.C. Sections 1601 *et seq.*); or any other federal, state, or local laws, or in the regulations now or hereafter promulgated pursuant to such laws.

**C.3 Negation of Agency, Partnership.** No provision of this Contract or the Right of Entry Agreement, nor any other previous or subsequent document, letter, communication or conduct of the parties shall be construed: (i) as making either party an agent, principal, partner, or joint venturer with the other party, or (ii) as making either party responsible for payment or reimbursement of any costs incurred by the other (except as may be expressly set forth herein or in its attached exhibits).

**C.4 Work Product to Seller.** If for any reason this transaction does not close, Buyer shall promptly deliver to Seller copies of any materials about the Property that Seller delivered to Buyer.

**D. Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date subject to Seller's right of entry for five (5) business days after the Closing Date to complete the removal of the telephone system and any computers, trucks, forklifts, scales and other personal property and equipment which is part of Seller's former business operations conducted on the Property and not necessary for the operation of the Improvements (collectively the "Excluded Items"); Excluded Items are not part of the Property. Upon either party's request, the parties will conduct a joint "walk through" of the Property prior to the Closing Date and when Seller delivers possession of the Property, in order to confirm the condition of the Property and the removal of any such Excluded Items by Seller. Any Excluded Items not removed within the time period provided above will be conclusively deemed abandoned by Seller upon delivery of written notice by Seller to that effect, and thereupon Buyer may retain or dispose of the same, free of any interest by Seller and without the need to compensate Seller for any such items.

**E. Material Casualty Loss Or Condemnation.** In the event all or a material part of the Property to be conveyed to Buyer is damaged or destroyed or is taken by eminent domain prior to the Closing Date, either party may elect to rescind this Contract prior to the Closing Date by written notice to the other; provided, however, that Seller's notice shall not be effective if, within fifteen (15) days after receipt of such notice, Buyer elects to accept the insurance proceeds or condemnation proceeds attributable to such destruction or taking in lieu of the portion of the Property that has been so destroyed or taken. If this Contract is rescinded, Buyer will receive back the Deposit. If this Contract is not rescinded, then Seller will assign to Buyer at Closing Seller's interest in the insurance proceeds or condemnation award with respect to the Property, without diminution in the Purchase Price. As used in this paragraph the term "material" means a casualty loss to repair or a condemnation that would materially and adversely affect the use of the Property as a motor freight terminal costing no less than the greater of (i) Twenty Five Thousand Dollars (\$25,000.00) or (ii) five percent (5%) of the Purchase Price.

**F. Notices.** All notices given pursuant to this Contract shall be in writing and shall either be (i) delivered in person or by nationally recognized overnight courier, or (ii) sent by facsimile or prepaid telegram. Any such notice sent by nationally recognized overnight courier shall be deemed served or given two business days after delivery to the courier, charges prepaid. Any such notice transmitted by facsimile shall be deemed given 12 hours after being sent by facsimile and receipt has been confirmed either electronically or otherwise. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender. The address of each party to this Contract for purposes of notice shall be as set forth in the first paragraph of this Contract and to the attention of the person who signed this Contract on behalf of the party.

Each party may change its address for notice by giving not less than five (5) days' prior notice of such change to the other party in the manner set forth above. Copies of all notices to Seller shall be sent to: Rene G. Gonzalez, 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204, and copies of all notices to Buyer shall be sent to: Randall Smith, Vice President, FedEx Freight East, Inc., 2200 Forward Drive, Delivery Code 2255, Harrison, AR 72601. Delivery of the copy of any notice to the places to which copies are to be sent is not a precondition to the effectiveness of the notice as to the parties to this Contract.

**G. Miscellaneous Provisions.**

**G.1 Time is of the Essence.** TIME IS OF ESSENCE in the performance of the obligations under this Contract. If Buyer fails to perform its obligations in this Contract within the time prescribed, then, at Seller's option, this Contract may be terminated and Seller's shall have the remedies set forth in this **General Terms** above, including terminating this Contract and retaining the Deposit. Unless otherwise explicitly stated in this Contract: (a) performance under this Contract which references a date shall absolutely be required by 5:00 p.m. Pacific Time on the stated date, unless otherwise stated herein; and (b) the term "days" (as distinguished from "business days") shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement.

**G.2 Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Contract shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter. As used in this Contract, the expression (i) "business day" means every day other than a nonbusiness day, and (ii) "nonbusiness day" means a Saturday, Sunday or legal holiday in the State of in which the Property is situated. Whenever a payment is due, an act is to be performed, a notice is to be delivered or a period expires under this Contract on a nonbusiness day, such occurrence shall be deferred until the next succeeding business day.

**G.3 Waiver.** Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

**G.4 Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Contract or to rescind this Contract, the prevailing party as to each cause of action shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

**G.5 Further Assurances.** Each party will, whenever and as often as it shall be reasonably requested by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further instruments and documents as may be necessary in order to carry out the intent and purpose of this Contract.

**G.6 Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns, but Buyer shall not assign or otherwise transfer any right, title or interest in, under or to this Contract prior to the Closing Date without the prior written consent of Seller, which may be given (or withheld) in Seller's sole (but commercially reasonable) discretion.

**G.7 Section Headings.** The descriptive headings of the sections of this Contract are being used for convenience only and are not intended to have any effect whatsoever in determining the rights or obligations of the parties hereto.

**G.8 Applicable Law/Venue.** This Contract shall be construed, applied and enforced in accordance with the laws of the State in which the Property is situated. The parties agree that venue shall lie in the United States Bankruptcy Court for the Central District of California, Riverside Division.

**G.9 Changes in Writing.** This Contract and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

**G.10 Indemnified Parties.** Any indemnification contained in this Contract for the benefit of a party shall extend to such party's members, officers, employees, and agents.

**G.11 Facsimile Signatures.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Escrow Agent, the parties shall confirm facsimile transmitted signatures by signing an original document.

**G.12 Counterparts.** This Contract may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Contract.

**G.13 Invalidity of Provisions.** In the event any provision of this Contract, or any instrument to be delivered by Buyer at closing pursuant to this Contract, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.



**G.14 Survival of Covenants.** Any covenants and Agreements which this Contract does not require to be fully performed prior to the Closing Date shall survive the Closing Date and shall be fully enforceable thereafter in accordance with their terms.

**G.15 Seller's Required Approvals.** This Contract and Seller's obligations hereunder are conditioned upon: (a) the receipt of any necessary approvals from its Board of Directors, (b) the Order becoming a Final Order, and (c) such authorizations, approvals and actions other than the Order as may be required in the Bankruptcy Case. Seller will promptly notify Buyer when condition (c) is satisfied. If such conditions are not satisfied by the Closing Date, this Contract will automatically terminate, Buyer will receive a refund of its Deposit, and this Contract will be null and void and neither party will have any further obligation to the other under this Contract.

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## EXHIBIT C

RIGHT OF ENTRY AGREEMENT

In connection with a pending COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT ("Sale Agreement"), between CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware corporation, as debtor and debtor in possession under the Case described in Section 11.16 of the Sale Agreement, as seller ("Seller"), and FEDEX FREIGHT EAST, INC., a Delaware corporation, as purchaser ("Buyer"), Buyer desires to enter the Property described therein ("Property"), for purposes of performing reasonable tests, surveys, studies, investigations, or inspections thereon.

NOW THEREFORE, FOR VALUE RECEIVED, Buyer covenants and agrees with Seller as follows:

1. **Right of Entry.** Seller grants permission to Buyer to enter the Property for the purposes referenced above, and Buyer agrees to do so, in accordance with the terms and conditions of this Right of Entry Agreement ("Agreement"). Prior to making or authorizing any entry, Buyer will provide reasonable advance notice (at least 24 hours) to Seller as to the timing and nature of the entry and the person(s) that may be performing the test, survey, study, investigation, or inspection. Access and entry will be: (a) at reasonable times and hours; (b) limited to the area in which the test, survey, study, investigation, or inspection is to take place; and (c) performed in a manner that does not interfere with operations at the Property. No drilling or invasive testing shall be undertaken without Seller's prior written consent. Buyer shall not disturb or sample any sampling or monitoring wells on the Property. If Buyer fails to comply with the terms of this Agreement or to provide evidence of liability insurance as described below, Seller may suspend the right of entry until any such failure is resolved.
2. **Indemnity.** Buyer hereby waives, releases and discharges and agrees to defend, indemnify, and hold Seller, and its employees, agents and representatives harmless from any claim, loss, or liability (including reasonable attorneys' fees) arising out of or in connection with any entry on the Property pursuant hereto or Buyer's failure to comply with the provisions of this Agreement, including (without limitation) any claim, loss or liability arising out of or resulting from any test, survey, study, investigation, or inspection or entry by Buyer, its agents, contractors, employees or invitees.
3. **Non-Assignability.** This Agreement is not assignable by Buyer separate from the party obligated as the Buyer under the Sale Agreement (but covers Buyer's employees, agents, independent contractors and invitees entering the Property pursuant hereto, and Buyer's successors and assigns under the Sale Agreement).
4. **Insurance.** Buyer will maintain commercial general liability insurance in the amount of at least \$2,000,000, and will cause Seller to be named as additional insured on a certificate of insurance with a contractual liability endorsement referencing this Agreement. Prior to entry on the Property, Buyer shall provide Seller with certificates evidencing such coverage, and require ten (10) days' notice to Seller prior to any cancellation of such coverage.
5. **General Provisions.** In the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, at trial, upon appeal and any petition for review. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same document.



**AMENDMENT TO COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT**

THIS AMENDMENT TO Commercial Real Estate Purchase and Sale Agreement (the "Amendment") is made and entered into as of the 11th day of November, 2002, by and between ~~FEDEX GROUND PACKAGE SYSTEM, INC., 1000 FedEx Drive, Moon Township, PA 15108~~ ("Buyer"), as purchaser, and CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware corporation ("Seller"), as seller.

**FREIGHT EAST  
RECITALS:**

A. Buyer and Seller have previously entered into that certain Commercial Real Estate Purchase and Sale Agreement, with respect to 2300 S. Mount Prospect Road, City of Des Plaines, County of Cook, Illinois (which Contract, as amended by this Amendment, is sometimes hereinafter referred to as the "Contract"). For purposes of this Amendment, all capitalized terms used herein shall have the meanings ascribed to them in the Contract, unless otherwise defined herein.

B. The parties now desire to amend the Contract as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Purchase Price: The total purchase price for the Property under Section Two is hereby amended to be Four Million Five Hundred Fifty Thousand DOLLARS (\$4,550,000).
2. Force and Effect: Except as set forth in this Amendment, the terms and conditions of the Contract shall remain unchanged and in full force and effect.
3. Counterparts; Facsimile: The parties agree that this Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The parties further agree that this Amendment may be executed by facsimile signature, and that any facsimile signature shall be binding upon the party providing such signature as if it were the party's original signature.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date and year set forth above.

**SELLER:**

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware corporation

By: [Signature]

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

FEDEX GROUND PACKAGE SYSTEM, INC.

FREIGHT EAST

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

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

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Eric Sagerman  
Murphy, Sheneman, Julian & Rogers  
2049 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Email: [esagerman@MSJR.com](mailto:esagerman@MSJR.com)  
Fax: 310.788.3777

Todd C. Meyers  
Kilpatrick Stockton LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4530  
Email: [tmeyers@kilpatrickstockton.com](mailto:tmeyers@kilpatrickstockton.com)  
Fax: 404.815.6555

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EXHIBIT B

## SCHEDULE OF COMMISSIONS

This Schedule of Commissions (the "Schedule") is applicable to all transactions in which a commission, "finder's fee" or other amounts may be payable by CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware corporation, as debtor and debtor-in-possession under Case RS02-24284 MG pending in the U.S. Bankruptcy Court for the Central District of California, Riverside Division ("Seller"), or its affiliates, CFCD 2002 LLC and CFCD 2002A LLC, as applicable, on account of the SALES LISTING AND COMMISSION AGREEMENT between Seller and TRANSPORTATION PROPERTY COMPANY, INC. ("Broker").

Commissions will be determined as follows:

1. If the Property has an appraised value equal to or in excess of \$1,000,000 and if the sales price for the Property payable at closing in connection with the sale is .....
  - A. An amount up to 90% of the appraised value of the Property—then, a commission equal to 1.00% of the sales price (sometimes also referred to as the "Base Commission Rate").
  - B. An amount that is over 90% of such appraised value and up to 100% of such appraised value—then, the commission amount specified in Subparagraph 1(A) for the portion of the sales price up to 90% of such appraised value, and 1.50% of the excess portion of the sales price (above 90% of such appraised value).
  - C. An amount that is over 100% of such appraised value and up to 110% of such appraised value—then, the commission amount specified in Subparagraph 1(B) for the portion of the sales price up to 100% of such appraised value, and 2.00% of the excess portion of the sales price (above 100% of such appraised value).
  - D. An amount that is over 110% of such appraised value and up to 120% of such appraised value—then, the commission amount specified in Subparagraph 1(C) for the portion of the sales price up to 110% of such appraised value, and 3.00% of excess portion of the sales price (above 110% of such appraised value).
  - E. An amount that is over 120% of such appraised value and up to 130% of such appraised value—then, the commission amount specified in Subparagraph 1(D) for the portion of the sales price up to 120% of such appraised value, and 5.00% of excess portion of the sales price (above 120% of such appraised value).
  - F. An amount that is over 130% of such appraised value - then, the commission amount specified in Subparagraph 1(E) for the portion of the sales price up to 130% of such appraised value, and 6.00% of excess portion of the sales price (above 130% of such appraised value).

The incremental increases in the commission rates under Paragraphs 1(B) through 1(F) are collectively called the "Incremental Commission Rates".

2. If a Property has an appraised value between \$500,000 and \$999,999, the Base Commission Rate will be 1.75%. If the Property has an appraised value from \$250,000 to \$499,999, the

Base Commission Rate will be 2.50%. If the Property has an appraised value under \$250,000, then the Base Commission Rate will be 3.00%. The "escalation" provisions for determining the commission in the preceding **Subparagraphs 1(B) through 1(E)** will apply to a Property that has an appraised value under \$1,000,000, as well, if the sales price for the Property payable at closing in connection with the sale is greater than 90% of the appraised value, but the Base Commission Rate in each case will be as provided in this **Paragraph 2**.

3. If there is a Cooperating Broker representing the successful buyer in a transaction described in **Paragraph 2** who is not affiliated with Broker, then the Base Commission Rate for the sale of the Property or Properties will be increased by 1.00% of the sales price, above the amount stated above.
4. If a sale is for a package of Properties (for purposes of this Agreement, a "Package" means any sale pursuant to an offer or Bid that involves more than one Property being sold together to the same buyer under a single sales agreement of 3 or more Properties, at least two of which are under \$1 million each in appraised value, then the Base Commission Rate for each one of the under-\$1,000,000 Properties will be reduced by 0.75% of the sales price, but in no event will the Base Commission Rate for an individual Property be less than 1.00%. In any sale of a Package of more than one Property, if there is not a separately stated sales price for each Property, then the sales price (for commission purposes) for each Property in the package will be calculated as follows: the appraised value for such Property will be divided by the appraised value for all Properties in the Package, and that percentage will be multiplied by the purchase price for the entire Package to determine the sales price for each individual Property in the real estate Package.
5. Upon the sale of Properties having an aggregate sales price of \$250 million or more (in the aggregate, for all Properties that have been sold pursuant to this Agreement), the Base Commission Rate will thereafter be increased by an additional 0.50% of the sales price (but the Base Commission Rate shall not exceed a total Base Commission Rate, as increased, of 2.00%). Upon the sale of Properties having an aggregate sales price of \$335 million or more (in the aggregate, for all Properties that have been sold pursuant to this Agreement), the Base Commission Rate will thereafter be increased by an additional 0.50% of the sales price (but the Base Commission Rate shall not exceed a total Base Commission Rate, as increased, of 2.25%). Upon the sale of Properties having an aggregate sales price of \$375 million or more (in the aggregate, for all Properties that have been sold pursuant to this Agreement), the Base Commission Rate will thereafter be increased by an additional 0.50% of the sales price (but the Base Commission Rate shall not exceed a total Base Commission Rate, as increased, of 2.75%). Where more than one circumstance or event under this Exhibit I may cause the Base Commission Rate to be increased or decreased, the parties will first give effect to the decrease(s) in the Base Commission Rate and then to the increase(s) in such Base Commission Rate, up to but not exceeding any maximum total Base Commission Rate stated in this **Exhibit A**. Notwithstanding the foregoing, in no event shall the application of this **Paragraph 5** reduce the Base Commission Rate from its original amount.
6. When calculating whether the \$250 million, \$335 million or \$375 million sales thresholds stated in **Paragraph 5** have been achieved, the parties will include the actual sales price of Seller's Mira Loma property at the time of the closing of its sale (whether or not Broker is entitled to a commission hereunder for such Mira Loma property).

7. Notwithstanding the foregoing, Broker further agrees to reduce its previously agreed-to commission for the Sunnyvale and West Sacramento Properties to a flat commission rate of 2.00% of the sales price, except that the 2.50% commission payable to the current prospective buyer's broker on the Sunnyvale Property will continue to apply and be made available out of closing proceeds. When calculating whether the \$250 million, \$335 million or \$375 million sales thresholds stated in **Paragraph 5** have been achieved, the parties will include the actual sales price of Seller's Sunnyvale and West Sacramento Properties, as of the closing of its sale by Seller.

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<p>In re  <b>CONSOLIDATED FREIGHTWAYS CORPORATION  OF DELAWARE, a Delaware corporation, et al.,</b>    Debtor.    Fed. Tax I.D. No. 94-1444797</p>	<p>Case No. RS 02-24284- MG    Chapter 11    (Jointly administered with the following cases:  02-24287; 02-24289; 02-24293; 02-24294; and  02-24295)</p>
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**NOTICE OF ENTRY OF JUDGMENT OR ORDER  
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021, that a judgment or order entitled, **“ORDER AUTHORIZING DEBTORS TO SELL REAL PROPERTY (DES PLAINES FACILITY) FREE AND CLEAR OF LIENS,”**

was entered on **NOV 12**, 2002.

2. I hereby certify that I mailed a copy of this Notice of Entry and a true copy of the order or judgment to the noticing agent for service to the persons and entities on the attached service list on **NOV 12**, 2002.

Dated: **NOV 12**, 2002

**JON D. CERETTO**  
Clerk of the Bankruptcy Court

By: *Joyce Korchert*  
Deputy Clerk

# UNOFFICIAL COPY

21432368

## Limited Notice Service List

John P. Brincko  
Consolidated Freightways Corporation  
16400 S. E. CF Way  
Vancouver, WA 98683  
Fax: 360.448.4301

Email: brincko.john@cfwy.com

Michael S. Lurey  
Latham & Watkins  
633 West Fifth Avenue  
Los Angeles, CA 90071  
Fax: 213.891.8763  
Michael.Lurey@lw.com

Alice Whitfield  
Poorman-Douglas Corporation  
Legal Services, Bankruptcy Division  
10300 S. W. Allen Boulevard  
Beaverton, OR 97005  
Fax: 503.350.5320  
Email: alice.whitfield@poorman-douglas.com

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Senior Staff Attorney  
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Riverside, CA 92501  
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