

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway  
Morristown, NJ 07962-1997  
Telephone (973) 538-4006  
Fax (973) 538-5146

Attorneys Appearing: John S. Mairo (JM-0670)  
Brett S. Moore (BM-0014)

Attorneys for Warren J. Martin Jr., Assignee for the  
Benefit of Creditors of Fleer/SkyBox International LP  
and Fleer Collectibles, LLC

In the Matter of the General Assignment for  
the Benefit of Creditors of Fleer/SkyBox  
International LP

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

In the Matter of the General Assignment for  
the Benefit of Creditors of FLEER  
COLLECTIBLES, LLC,

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PROBATE PART  
BURLINGTON COUNTY

DOCKET NO: P-2005-1394

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PROBATE PART  
BURLINGTON COUNTY

DOCKET NO: P-2005-1408

**NOTICE OF MOTION FOR ORDER (1) ESTABLISHING BIDDING PROCEDURES, INCLUDING APPROVAL OF BREAK-UP FEE; (2) SCHEDULING AUCTION; AND (3) AUTHORIZING SALE OF (A) FLEER/SKYBOX'S INTELLECTUAL PROPERTY AND (B) SUBSTANTIALLY ALL OF THE ASSETS OF FLEER COLLECTIBLES**

TO: ALL PARTIES ON ATTACHED SERVICE LIST

**PLEASE TAKE NOTICE** that Warren J. Martin Jr. (the "Assignee"), Assignee for the Benefit of Creditors of Fleeer/SkyBox International LP ("Fleeer/Skybox") and Assignee for the Benefit of Creditors of Fleeer Collectibles, LLC ("Fleeer Collectibles"), by and through his counsel, Porzio, Bromberg & Newman, P.C., shall move before the Honorable Ronald E. Bookbinder, J.S.C., a Judge of the Superior Court of the State of New Jersey, on the 15th day of July, 2005 at 1:45 p.m., or as soon thereafter as counsel may be heard at the Superior Court of New Jersey, Chancery Division, Probate Part, Burlington County, 49 Rancocas Road, Mt. Holly, New Jersey 08060, for entry of an Order (1) Establishing Bidding Procedures, Including Approval Of Break-Up Fee; (2) Scheduling Auction And (3) Authorizing Sale Of (A) Fleeer/Skybox's Intellectual Property And (B) Substantially All Of The Assets Of Fleeer Collectibles (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that the proposed sale is to be free and clear of all liens, claims and encumbrances, valid liens, claims and encumbrances, if any, to attach to the proceeds of sale.

**PLEASE TAKE FURTHER NOTICE** that although the Purchase Agreement<sup>1</sup> is being filed with the Court, it is not being served on all parties as an Exhibit to the Motion. Any party wishing to obtain a copy of the Purchase Agreement should contact Elizabeth Martin McKeever, Esq., of Porzio, Bromberg & Newman, P.C. (E-mail: [emmckeever@pbnlaw.com](mailto:emmckeever@pbnlaw.com); Telephone: (973) 538-4006).

**PLEASE TAKE FURTHER NOTICE** that, in order to maximize the value of the assets being sold, the Assignee will hold a public auction on July 14, 2005, commencing at 2:00 p.m. (Eastern Standard Time), at the offices of Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, First Floor - Ralph Porzio Presentation Center, Morristown, New Jersey 07962, for

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

consideration of higher and better offers that may be presented to the Assignee as more fully described in the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Assignee will rely upon the attached Motion together with the argument of counsel and any testimony that the Court may require on the return date of the Motion.

**PLEASE TAKE FURTHER NOTICE** that if you fail to oppose the Motion, the Court may enter an Order Approving the Motion without further notice to you. A proposed form of Order is submitted herewith.

DATED: June 29, 2005

**PORZIO, BROMBERG & NEWMAN, P.C.**

By:  /s/ John S. Mairo  
John S. Mairo (JM-0670)

Attorneys for Warren J. Martin Jr., Assignee for the  
Benefit of Creditors of Fler/SkyBox International  
LP and Fler Collectibles, LLC

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In the Matter of the General Assignment for  
the Benefit of Creditors of FLEER/SKYBOX  
INTERNATIONAL LP,

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PROBATE PART  
BURLINGTON COUNTY

DOCKET NO: P-2005-1394

In the Matter of the General Assignment for  
the Benefit of Creditors of FLEER  
COLLECTIBLES, LLC,

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PROBATE PART  
BURLINGTON COUNTY

DOCKET NO: P-2005-1408

**VERIFIED APPLICATION FOR ORDER (1)  
ESTABLISHING BIDDING PROCEDURES, INCLUDING  
APPROVAL OF BREAK-UP FEE; (2) SCHEDULING  
AUCTION; AND (3) AUTHORIZING SALE OF (A)  
FLEER/SKYBOX'S INTELLECTUAL PROPERTY AND  
(B) SUBSTANTIALLY ALL OF THE ASSETS OF FLEER  
COLLECTIBLES**

Upon the Petition of Warren J. Martin Jr. (the "Assignee"), Assignee for the Benefit of Creditors of Fleer/SkyBox International LP ("Fleer/Skybox"), and Assignee for the Benefit of Creditors of Fleer Collectibles, LLC ("Fleer Collectibles"), by and through his counsel, Porzio, Bromberg & Newman, P.C. ("Porzio"), by way of Verified Application For Order (1) Establishing Bidding Procedures, Including Approval Of Break-Up Fee; (2) Scheduling Auction; And (3) Authorizing Sale Of (A) Fleer/Skybox's Intellectual Property And (B) Substantially All Of The Assets Of Fleer Collectibles (the "Motion"), respectfully states as follows:

1. I am the Assignee for the Benefit of Creditors of Fleer/Skybox and Fleer Collectibles, having been so designated pursuant to respective Deeds of Assignment for the Benefit of Creditors dated June 10, 2005.

2. Fleer/Skybox was primarily in the business of producing and selling a wide variety of sport and entertainment trading cards, autographs of professional athletes, game-used equipment and photographs of professional athletes. Fleer Collectibles was primarily in the business of producing and selling die-cast miniature replica vehicles.

### **The Asset Purchase Agreement**

3. Pursuant to an Asset Purchase Agreement dated June 29, 2005 (the "Purchase Agreement"), FSB Acquisition Company, LLC (the "Buyer"), which entity has been designated by The Upper Deck Company ("Upper Deck") as the purchaser and whose performance under the Purchase Agreement has been guaranteed by Upper Deck has agreed to purchase for **Two Million Dollars (\$2,000,000)** (the "Purchase Price") (a) all of the U.S. and foreign trademarks and goodwill associated therewith, copyrights and other intellectual property assigned to Assignee by Fleer/Skybox and as more fully described in Section 1.1(a) of the Purchase Agreement (collectively, the "Fleer/Skybox Intellectual Property"), and (b) substantially all of

the assets assigned to the Assignee by Fler Collectibles and as more fully described in Section 1.2(a) of the Purchase Agreement (collectively, the “Fler Collectibles Assets”), subject to the approval of the Court. A copy of the Purchase Agreement is annexed hereto as Exhibit "1". Pursuant to Section 8.1 of the Purchase Agreement, the Buyer is obligated to deposit with the Assignee the sum of Five Hundred Thousand Dollars (\$500,000).

4. Section 1.1(b) of the Purchase Agreement describes certain Fler/SkyBox assets that are excluded from the sale and will be retained by the Assignee. Similarly, section 1.2(b) of the Purchase Agreement describes certain Fler Collectibles assets that are excluded from the sale and will be retained by the Assignee.

5. As more fully set forth in Section 8.10 of the Purchase Agreement, Upper Deck has guaranteed the timely performance of all liabilities and obligations of the Buyer due under the Purchase Agreement.

6. The Purchase Price is to be allocated so that Six Hundred Thousand Dollars (\$600,000) is used for the purchase of the Fler/Skybox Intellectual Property and reserved for creditors of Fler/Skybox, and One Million, Four Hundred Thousand Dollars (\$1,400,000) is used for the purchase of the Fler Collectibles Assets and reserved for creditors of Fler Collectibles, as more fully described in the Allocation of Purchase Price exhibit, which is attached as Exhibit “A” to the Purchase Agreement.

7. According to a U.C.C.-1 search commissioned by the Assignee, the Assignee has discovered that various parties have filed U.C.C.-1 statements against Fler/Skybox (the "Potentially Secured Parties"). It is not yet clear to the Assignee whether any of the Potentially Secured Parties are properly perfected, and the Assignee reserves all rights to challenge the

validity of the claims of the Potentially Secured Parties. As of this date, none of the Potentially Secured Parties have filed a Proof of Claim with the Assignee.

8. According to certain documents maintained by Fleer/Skybox, Fleer/Skybox and Fleer Collectibles leased office space for their businesses from Brandywine Realty Trust ("BRT") and warehouse space from PSS Warehousing & Transportation, Inc. ("PSS"; together with BRT, the "Landlords"). The Landlords may be owed back rent which may attach as a lien to the Fleer/Skybox Intellectual Property and Fleer Collectibles Assets, pursuant to N.J.S.A. 2A:19-31. *See also In re Holly Knitwear, Inc.*, 115 N.J. Super 564(Co. Ct. 1971), mod. And aff'd, 140 N.J. Super 375 (App. Div. 1976). As of this date, neither Landlord has filed a Proof of Claim with the Assignee.

9. By virtue of this Motion, the Assignee seeks Court approval to sell the Fleer/Skybox Intellectual Property and Fleer Collectibles Assets to the Buyer (or any other successful purchaser of the Fleer/Skybox Intellectual Property and Fleer Collectibles Assets) free and clear of liens, claims and encumbrances, valid liens, claims and encumbrances, if any, to attach to the proceeds of the sale, as more fully described in Section 11.2 of the Purchase Agreement. Moreover, said sale proceeds will be maintained by the Assignee in escrow pending further Order of the Court.

### **Due Diligence and Bidding Procedures**

#### **A. Due Diligence**

10. Any entity who desires to conduct due diligence regarding the Fleer/Skybox Intellectual Property and/or the Fleer Collectibles Assets should contact Elizabeth Martin McKeever, Esq., Porzio, Bromberg & Newman, P.C. (e-mail: emmckeever@pbnlaw.com; telephone: (973) 538-4006).

11. Any interested bidder must complete its due diligence by July 12, 2005. Due diligence access may include access to the data, on site inspections and such other matters which a bidder may request and as to which the Assignee, in his sole discretion, designates.

B. Bidding Procedures

12. In order to maximize the value of the Fleer/Skybox Intellectual Property and Fleer Collectibles Assets for the benefit of creditors, the Assignee seeks to implement a competitive bidding process typical for transactions of this size and nature and designed to generate a maximum recovery.

13. An auction will be held on July 14, 2005, commencing at 2:00 p.m. (Eastern Standard Time), at the offices of Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, First Floor - Ralph Porzio Presentation Center, Morristown, New Jersey 07962 (the "Auction"), for consideration of offers that may be presented to the Assignee.

14. The Auction may be adjourned as the Assignee deems appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to parties that have contacted Mc. McKeever to conduct due diligence, which reasonable notice may be an announcement of the adjournment at the currently scheduled Auction.

15. Any entity that wishes to make a bid for the Fleer/Skybox Intellectual Property and the Fleer Collectibles Assets (each bid a "Competing Bid") must submit a qualified bid at the Auction to purchase the Fleer/Skybox Intellectual Property and the Fleer Collectibles Assets.

16. To be a qualified bidder, an offer to purchase must include: (a) a cash deposit, certified or bank cashier's check or letter of credit in the amount of ten percent (10%) payable to or for the benefit of Warren J. Martin Jr., as Assignee for the Benefit of Creditors for Fleer Collectibles, LLC (the "Good Faith Deposit") and (b) sufficient and adequate information to

demonstrate, to the sole and absolute satisfaction of the Assignee, that such bidder has the financial wherewithal and ability to consummate the transactions contemplated in the Competing Bid.

17. The Assignee shall (a) determine whether any person is a qualified bidder, (b) coordinate the efforts of potential bidders in conducting their respective due diligence reviews, (c) receive offers from qualified bidders, and (d) evaluate and negotiate any bid.

18. The Assignee shall entertain bids that are on substantially the same terms and conditions as those terms set forth in the Purchase Agreement and the documents set forth as exhibits thereto.

19. Any Competing Bid must be presented under a contract substantially similar to the Purchase Agreement and must include: the amount of consideration, name of purchaser, and other conforming changes to reflect the purchaser and its bid. Such bid must not be subject to due diligence review, board approval, or the receipt of any consents not otherwise required by the Purchase Agreement. Any such contract submitted with a Competing Bid must be signed by an individual authorized to bind the bidder.

20. The initial overbid (the "Initial Overbid") must be in an amount valued by the Assignee that is at least one hundred thousand dollars (\$100,000) greater than the Purchase Price as defined in the Purchase Agreement.

21. Subsequent bids at the Auction, including those of the Buyer, must be in increments of at least one hundred thousand dollars (\$100,000) higher than the highest prior bid.

22. At the conclusion of the Auction, the Assignee will select the winning bidder (the "Winning Bidder"). The bid of the bidder that submits the next highest or best bid (the "Back-up Bidder") will also be identified at the Auction. At the Court hearing scheduled for July 15, 2005

at 1:45 p.m., the Assignee will seek to approve the offer by the Winning Bidder as the highest and best offer. In addition, the Assignee will seek approval of the offer of the Back-Up Bidder so that in the event of the Winning Bidder fails to close, the Back-Up Bidder will close the transaction. Accordingly, the bids of the Winning Bidder and Back-Up Bidder shall remain open and irrevocable until the consummation of a sale of the Fleer/Skybox Intellectual Property and Fleer Collectibles Assets.

23. The Good Faith Deposit of the Winning Bidder shall be retained by the Assignee. The Good Faith Deposit of the Back-up Bidder shall be held until consummation of a sale of the Fleer/Skybox Intellectual Property and Fleer Collectibles Assets.

24. In the event a bidder (including Buyer) is the Winning Bidder, and either the Assignee or such Winning Bidder fails to consummate the proposed transaction by the closing date contemplated in the purchase agreement (or the Purchase Agreement, as applicable) agreed to by the parties, (i) the Assignee shall retain or return the Good Faith Deposit of such bidder, as provided in the purchase agreement (or the Purchase Agreement, as applicable), (ii) the Assignee and the Winning Bidder (including the Buyer) maintain the right to pursue all available remedies, whether legal or equitable, available to them except (in the event the Buyer is the Winning Bidder) as provided in the Purchase Agreement and (iii) the Assignee shall be free to consummate the proposed transaction with the Back-up Bidder (including the Buyer, if applicable) at the price bid by such Back-up Bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Assignee may consummate the transaction with the next highest or best bidder, (including the Buyer, if applicable) at the highest or best price bid by such bidder at the Auction, and so forth).

25. With the exception of the Initial Overbid, notwithstanding anything to the contrary herein, the Assignee shall have the right to entertain non-conforming bids that do not conform to one or more of the requirements set forth herein.

26. Any bidders (including the Buyer) presenting bids shall bear their own expenses in connection with the sale of the Fleer/Skybox Intellectual Property and the Fleer Collectibles Assets, whether or not such sale is ultimately approved.

27. In the event that the Purchase Agreement is terminated pursuant to Section 9.5 thereof and an alternative transaction closes, the Assignee agrees to pay to the Buyer upon closing of the alternative transaction the sum of Sixty Thousand Dollars (\$60,000.00) (the "Break-Up Fee"), by wire transfer of immediately available funds to an account designated by the Buyer, as liquidated damages.

28. The Assignee submits that the foregoing bidding procedures provide a fair and reasonable means of ensuring that the Fleer/Skybox Intellectual Property and the Fleer Collectibles Assets are sold for the highest or best offer attainable. Moreover, such procedures provide flexibility so as to enable a party interested in submitting an offer to modify the terms of the Purchase Agreement and submit a greater purchase price as a result thereof, so long as the offer is on substantially the same terms and conditions as those set forth in the Purchase Agreement. The Assignee believes the Break-Up Fee is fair and reasonable and will initiate an overbid process at a floor that is desirable for the Assignee, will foster competitive bidding for the Fleer/Skybox Intellectual Property and the Fleer Collectibles Assets, and will confer a benefit to the Assignee at least equal to the amount of the Break-Up Fee.

29. Based upon the foregoing, the Assignee submits that the foregoing bidding procedures, including payment of the Break-Up Fee by the Assignee upon satisfaction of the

conditions in the Purchase Agreement, are in the best interest of the Assignee and his creditors and should be approved by this Court.

**Notice**

30. Notice of this Motion has been served on: (i) all known creditors of Fleer/Skybox; and (ii) all known prospective bidders who have provided contract information to the Assignee.

31. In addition, notice of the Auction and Motion will be published in appropriate trade journals.

**WHEREFORE**, your Petitioner, Warren J. Martin Jr., Assignee for the Benefit of Creditors of Fleer/SkyBox International LP and Assignee for the Benefit of Creditors of Fleer Collectibles, LLC, respectfully prays for the entry of the an Order (1) Establishing Bidding Procedures, Including Approval Of Break-Up Fee; (2) Scheduling Auction; And (3) Authorizing Sale Of (A) Fleer/Skybox's Intellectual Property And (B) Substantially All Of The Assets Of Fleer Collectibles, and for such other and further relief as is fair and equitable under the circumstances.

DATED: June 29, 2005

**PORZIO, BROMBERG & NEWMAN, P.C.**

By: \_\_\_\_\_  
John S. Mairo

**VERIFICATION**

I, Warren J. Martin Jr., the Petitioner named in the foregoing Petition do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me as contained therein are willfully false, I am subject to punishment.

DATED: June 29, 2005

**PORZIO, BROMBERG & NEWMAN, P.C.**

By: /s/ Warren J. Martin Jr.  
Warren J. Martin Jr., Assignee

**PORZIO, BROMBERG & NEWMAN, P.C.**

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Attorneys for Warren J. Martin Jr., Assignee for the  
Benefit of Creditors of Fleer/SkyBox International LP  
and Fleer Collectibles, LLC

In the Matter of the General Assignment for  
the Benefit of Creditors of FLEER/SKYBOX  
INTERNATIONAL LP

Assignor,

to

WARREN J. MARTIN JR.,

Assignee.

SUPERIOR COURT OF NEW JERSEY  
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SUPERIOR COURT OF NEW JERSEY  
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DOCKET NO: P-2005-1408

**ORDER (1) ESTABLISHING BIDDING PROCEDURES, INCLUDING  
APPROVAL OF BREAK-UP FEE; (2) SCHEDULING AUCTION; AND (3)  
AUTHORIZING SALE OF (A) FLEER/SKYBOX'S INTELLECTUAL  
PROPERTY AND (B) SUBSTANTIALLY ALL OF THE ASSETS OF  
FLEER COLLECTIBLES**

**THIS MATTER** having been presented to the Court upon the motion for authority to (1) Establishing Bidding Procedures, Including Approval Of Break-Up Fee; (2) Scheduling Auction; And (3) Authorizing Sale Of (A) Fleer/Skybox's Intellectual Property And (B) Substantially All Of The Assets Of Fleer Collectibles (the "Motion") by Warren J. Martin Jr. (the "Assignee") for the Benefit of Creditors of Fleer/SkyBox International LP ("Fleer Skybox") and Fleer Collectibles, LLC ("Fleer Collectibles") by and through his counsel, Porzio, Bromberg & Newman, P.C., and the Court having considered the Motion, oral argument, and any opposition thereto, and for good and sufficient cause appearing for the entry of this Order;

IT IS ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

**ORDERED** that the Assignee be and the same is hereby approved, to sell the Fleer/Skybox Intellectual Property<sup>1</sup> and Fleer Collectibles Assets (collectively, the "Assets") by way of public auction, free and clear of liens, claims and encumbrances, valid liens, claims and encumbrances, if any, to attach to the proceeds of sale; and it is further

**ORDERED** that the Assignee be and the same is hereby authorized to consummate the sale of the Assets to the Winning Bidder; and it is further

**ORDERED** that, in the event the sale to the Winning Bidder does not close, the Assignee be and the same is hereby authorized to consummate the sale of the Assets to the Back-Up Bidder; and it is further

**ORDERED** that the bidding procedures, including the break-up fee, are hereby approved as fair and reasonable; and it is further

**ORDERED** that the notice of the Motion and Auction was fair, adequate and sufficient; and

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

**ORDERED** that all sale proceeds shall remain in escrow pending further Order of the Court; and it is further

**ORDERED** that a copy of the within Order shall be served upon the purchaser of the Assets within seven (7) days from the date hereof.

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