

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

**JOINTLY ADMINISTERED UNDER  
CASE NO. 08-46617**

Polaroid Corporation, et al.,

Court File No. 08-46617

Debtors.

Court File Nos:

(includes:

Polaroid Holding Company;  
Polaroid Consumer Electronics, LLC;  
Polaroid Capital, LLC;  
Polaroid Latin America I Corporation;  
Polaroid Asia Pacific LLC;  
Polaroid International Holding LLC;  
Polaroid New Bedford Real Estate, LLC;  
Polaroid Norwood Real Estate, LLC;  
Polaroid Waltham Real Estate, LLC)

08-46621 (GFK)  
08-46620 (GFK)  
08-46623 (GFK)  
08-46624 (GFK)  
08-46625 (GFK)  
08-46626 (GFK)  
08-46627 (GFK)  
08-46628 (GFK)  
08-46629 (GFK)

Chapter 11 Cases  
Judge Gregory F. Kishel

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**TARGET CORPORATION'S OBJECTION TO INITIAL NOTICE OF ASSUMPTION  
AND ASSIGNMENT OF AND AMOUNTS NECESSARY TO CURE DEFAULTS  
UNDER CONTRACTS AND LEASES TO BE ASSUMED AND ASSIGNED TO  
SUCCESSFUL PURCHASER**

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Target Corporation ("Target") objects to the debtors' Initial Notice of Assumption and Assignment of and Amounts Necessary to Cure Defaults Under Contracts and Leases to Be Assumed and Assigned to Successful Purchaser (the "Cure Cost Notice") to the extent that the debtors seek to assume and assign the Sponsorship Agreement (as that term is defined in ¶ 1 below) without first paying all necessary cure costs. In support of its objection, Target states and represents as follows:

## **BACKGROUND**

The debtors in the above-referenced case (the “Debtors”) conduct business in various industries including digital printing and the production of instant and digital imaging products. Debtors also engage in various marketing activities designed to enhance the visibility of their products as well as increase their sales.

1. Polaroid Consumer Electronics, LLC (“Polaroid”) and Target Chip Ganassi Racing (“Ganassi Racing”), are parties to that certain sponsorship agreement dated as of September 17, 2007 (the “Sponsorship Agreement”) pursuant to which Polaroid pays Ganassi Racing to display decals bearing Polaroid’s name and logo on various racecars, and on the firesuits worn by Ganassi Racing’s drivers. In addition to displaying Polaroid’s name and logo, the Sponsorship Agreement requires Ganassi Racing to provide other sponsorship benefits to Polaroid, including arranging for access to racing events and offtrack public appearances by Ganassi Racing’s drivers on behalf of Polaroid. A true and correct copy of the Sponsorship Agreement is attached hereto as Exhibit A.

2. In consideration for the various sponsorship rights and benefits Ganassi Racing confers to Polaroid, the Sponsorship Agreement requires Polaroid to pay Ganassi Racing a total \$11,000,000, payable in four installments of \$2,750,000 (each a “Payment” and collectively the “Payments”).

3. The Payments were due on November 15, 2007; March 1, 2008; November 15, 2008; and March 1, 2009. Each Payment was originally payable to Ganassi Racing. However, Ganassi Racing assigned its right to receive the Payments to Target pursuant to an Assignment of Contract Payments dated as of October 17, 2008 (the “Assignment”). A true and correct copy of the Assignment is attached hereto as Exhibit B. The Assignment also directs Polaroid to make

all future Payments directly to Target and grants Target the power to demand, collect, and receive all amounts that become due under the Sponsorship Agreement.

4. Polaroid made each of the first three Payments. However, Polaroid has failed to make the final Payment, which was due as of March 1, 2009. Pursuant to the Assignment, Target is entitled to receive and collect the final Payment from Polaroid. Thus, Polaroid is in default under the Sponsorship Agreement and currently owes Target \$2,750,000. (See: Affidavit of Nancy Hagerty dated as of March 20, 2009 (the “Hagerty Affidavit”) at ¶ 5). A true and correct copy of the Hagerty Affidavit is attached hereto as Exhibit C.

5. On December 18, 2008 (the “Petition Date”), the Debtors (including Polaroid) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

#### **DEBTORS’ MOTION AND CURE COST NOTICE**

6. On February 18, 2009, the Court entered an Order (1) Approving Auction and Bidding Procedures; (2) Approving Break-up Fee, Expense Reimbursement, and Other Buyer Protections; (3) Approving Notice; and (4) Granting Related Relief (the “Order”). On March 13, 2009, Target received the Cure Cost Notice in connection with the Order.

#### **OBJECTION**

7. Target objects to the Cure Cost Notice and to any assumption and assignment of the Sponsorship Agreement pursuant to the Cure Cost Notice to the extent that the Debtors seek to assume and assign the Sponsorship Agreement without first paying all necessary cure costs.

#### **Polaroid May Not Assume the Sponsorship Agreement Unless It First Pays the Cure Amount.**

8. Under Bankruptcy Code Sections 365(a) and (f), a debtor may assume and assign executory contracts if certain conditions are met.

9. Bankruptcy Code Section 365(b)(1)(A) requires that a debtor cure all defaults before assuming an executory contract. Under Bankruptcy Code Section 365(f)(2)(A), a debtor may not assign an executory contract unless the debtor has properly assumed said contract in accordance with Section 365.

10. The Cure Cost Notice states that no amounts are necessary to cure any defaults under the Sponsorship Agreement. However, Polaroid failed to make the final Payment due under the Sponsorship Agreement. Accordingly, Polaroid is in default under the Sponsorship Agreement and must pay \$2,750,000 in order to cure the default. Pursuant to the Assignment, Target is entitled to receive this amount from Polaroid.

11. Therefore, prior to assuming or assigning the Sponsorship Agreement, Polaroid must cure the existing defaults under the Sponsorship Agreement by paying Target \$2,750,000.

**RELIEF REQUESTED**

WHEREFORE, Target requests that this Court: (1) deny any request by the Debtors for entry of an order assuming or assigning the Sponsorship Agreement; and (2) grant Target such other and further relief as the Court shall deem just.

Dated: March 20, 2009

\_ /e/ Michael F. Doty \_\_\_\_\_  
Dennis M. Ryan (No. 161275)  
Michael F. Doty, (No. 0388303)  
Faegre & Benson LLP  
2200 Wells Fargo Center  
90 South 7<sup>th</sup> Street  
Minneapolis, MN 55402-3901  
Telephone: (612) 766-7000  
Facsimile: (612) 766-1600  
Email: dryan@faegre.com  
mdoty@faegre.com

ATTORNEYS FOR TARGET CORPORATION

**UNITED STATES BANKRUPTCY COURT  
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**EXHIBIT LIST TO TARGET CORPORATION'S OBJECTION TO INITIAL NOTICE  
OF ASSUMPTION AND ASSIGNMENT OF AND AMOUNTS NECESSARY TO CURE  
DEFAULTS UNDER CONTRACTS AND LEASES TO BE ASSUMED AND ASSIGNED  
TO SUCCESSFUL PURCHASER**

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**EXHIBIT LETTER & DESCRIPTION**

- A. Copy of the Sponsorship Agreement dated as of September 17, 2007.
- B. Copy of the Assignment of Contract Payments dated as of October 17, 2008.
- C. Copy of the Affidavit of Nancy Hagerty dated as of March 20, 2009.

# EXHIBIT A



TARGET CHIP GANASSI RACING  
One Oxford Centre, Suite 3550  
Pittsburgh, Pennsylvania 15219

September 17, 2007

Ms. Cheryl Mau  
Vice President, Marketing  
Polaroid  
4400 Baker Rd  
Minnetonka, MN 55343

The purpose of this letter is to set forth the agreement between Polaroid. ("POLAROID"), and Target Chip Ganassi Racing ("TEAM") with respect to sponsorship of two (2) race cars fielded by the TEAM in one or more of either the NASCAR SPRINT Cup Series ("NASCAR"), or the Indy Racing League ("IRL") for the calendar years 2008 and 2009 (collectively the "SERIES").

1. (a) The "TERM" of this agreement shall commence on January 1, 2008, and shall continue until December 31, 2009.

2. The Cars. The "CARS" shall mean two (2) race cars furnished by the TEAM which will be raced during the TERM by the TEAM and will be driven one or more of the SERIES by the Team Drivers ("DRIVERS"). The TEAM agrees to make their best attempt to qualify and race the CARS for all of the sanctioned races in their respective SERIES. In the event either of the CARS are damaged and/or either of the DRIVERS are unable to complete the SERIES for any reason, the TEAM agrees to provide substitute a comparable CARS and/or DRIVERS.

3. Grant of Sponsorship Rights. The TEAM grants to POLAROID the right to be a sponsor of the CARS. The TEAM hereby grants to POLAROID the rights to use the names, photographs or other likenesses, voices, and biographical information of the CARS and of any member of the TEAM in connection with the promotion and advertising of the POLAROID sponsorship of the CARS, subject to the terms of Paragraph 6 hereof, without additional compensation. The TEAM hereby agrees to obtain all necessary consents from the DRIVERS and/or CAR owners for POLAROID to use such names, photographs, likenesses, voices, and biographical information.

4. Sponsor Identification. Subject to SERIES rules on corporate identification and using the POLAROID trademarks and logo which POLAROID shall, in

its sole discretion, provide to the TEAM, the TEAM agrees that POLAROID shall receive the following sponsor identification benefits in connection with the CARS:

- (a) The TEAM agrees to prominently display the following decals bearing POLAROID Identification on the CARS:

Open-Wheel:

- Left and Right sides of Engine Cover (approx. 120 Sq. in.)
- Main plane of the Front Wing (approx. 60 sq. in.)

Stock Car:

- T.V. Panel (approx. 300 sq. in.)

Dimensions may be subject to slight change based on actual location of the decals.

- (b) The TEAM agrees to display the following patches containing POLAROID Identification on the DRIVERS' firesuits and on the TEAM's uniform and work shirts:

- Upper Right Chest (approx 6 sq. in.)
- Upper Back (approx. 6 sq. in.)

- (c) POLAROID Identification will appear on the TEAM transporters.

POLAROID agrees to furnish, at its expense, all required decals and logo artwork to the TEAM and to reimburse the TEAM for the reasonable actual cost of any embroidering of the POLAROID Identification on all TEAM apparel, cars, and equipment which amount will not exceed \$4,000 per year.

5. Sponsorship Benefits. In addition to the display of the POLAROID Identification as set forth in Paragraph 4 above, the TEAM agrees to further provide the following benefits to POLAROID at no additional cost unless otherwise specified herein:

- (a) Hospitality Credit. The TEAM will furnish POLAROID with a hospitality credit of One Hundred Fifty Thousand Dollars (\$150,000) per each calendar year of the TERM. This credit can be used for all race credentials, race tickets including suites and trackside hospitality, pace car rides, and special event costs (carting events, race weekend golf, etc.). A running total of the credit will be kept by the team, which will be made available to POLAROID at their request. The credit will be charged at billback rates for all products and services. When the full credit has been used, TEAM will notify POLAROID that all subsequent hospitality requests for that calendar year will be invoiced to POLAROID for payment, net terms 30 days. Any unused portions of the credit at the end of each calendar year will be forfeited by POLAROID, and will not carry forward to the next year.



- (b) Hardcards. The TEAM will provide POLAROID with season-long crew credential hardcards for two (2) POLAROID employees for both the NASCAR and IRL series with the right to purchase credentials and tickets for guests on race weekends, subject to availability. For the purposes of this agreement a "hardcard" is defined as a season-long general admission paddock and pit pass that distinguishes the bearer as a working member of the team. The cost of the hardcards will be deducted from POLAROID's annual hospitality credit.
- (c) Driver Appearances. At the request of POLAROID, the TEAM will provide one of the IRL DRIVERS for up to four (4) off-track appearances and one of the NASCAR DRIVERS for up to two (2) off-track appearances per year in connection with POLAROID's promotional events and/or sales meetings. Each appearance is subject to availability based upon the driver's schedule. POLAROID shall pay all reasonable expenses associated with drivers' off-track appearances and all accommodations to be first class.
- (d) Team Functions. The TEAM will invite POLAROID representatives to participate in all SERIES social functions conducted by the TEAM, which will include, but will not be limited to race day events.
- (e) Primary Paint Scheme/Special Uniforms. The TEAM will furnish POLAROID with the option to run a primary paint scheme for two (2) races during the 2008 season, two (2) races during the 2009 season and two (2) races during the 2010 season. The paint scheme and specific race in which the car will be run is subject to approval by both the Team and Targer.
- (f) Sponsor Services. At no extra charge, POLAROID will have access to all team services including Media Relations, Travel services, Tickets and Hospitality Coordination, Showcar Administration, Event Planning, and Merchandise and Apparel services. TEAM will make best efforts to secure and coordinate any additional event planning requests that POLAROID should have on behalf of POLAROID.
- (g) Parking. When available, the TEAM will provide POLAROID with parking and other passes based on their pro-rata commitment to the TEAM.

6. Approval of Advertising. The TEAM and POLAROID recognize that each owns certain names, logos, and identification ("Identification") used in connection with its organization or operation whether registered or not. It is agreed neither party will do anything inconsistent with the other party's ownership of its Identification. Each party agrees that it will not use the Identification of the other without the prior written approval of the other, which approval shall not be unreasonably withheld. Upon the effective date of termination of this agreement, each party will immediately cease creating and placing

Identification of the other party in any manner suggesting that an ongoing relationship continues to exist, which shall include the removal of all POLAROID Identification from the CARS, the TEAM's transporters, and the TEAM, provided the use of any POLAROID material which includes a TEAM Identification and was produced during the TERM consistent with this agreement will be allowed to be used for ninety days (90) after the termination, or until such inventories are depleted.

7. Approval of Merchandising. During the TERM of this agreement, POLAROID will permit the TEAM to sell merchandise bearing the POLAROID Identification from the TEAM'S merchandise trailer and mail order catalog, provided that POLAROID shall have the right to approve or disapprove all such merchandise in advance of its sale. The TEAM agrees to indemnify and hold POLAROID harmless from costs, claims or liabilities associated, directly or indirectly, with the sale and use of such merchandise, unless POLAROID shall furnish such merchandise to the TEAM directly which POLAROID shall so indemnify the TEAM. While the TEAM agrees to produce only such volume of merchandise that can reasonably be sold during the TERM, after the effective date of termination, the TEAM shall have the right to continue to sell existing inventories of products bearing POLAROID Identification until such inventories have been depleted.

8. Compensation. In consideration for the sponsorship rights and benefits herein granted by the TEAM to POLAROID, POLAROID agrees to pay to the TEAM the amount of ELEVEN MILLION DOLLARS (\$11,000,000) payable in accordance with the following schedule:

<u>YEAR</u>	<u>FEE</u>	<u>PAYABLE</u>
2008	\$2,750,000	November 15, 2007
2008	\$2,750,000	March 1, 2008
2009	\$2,750,000	November 15, 2008
2009	\$2,750,000	March 1, 2009

9. Notices and/or Submissions. All notices and/or submissions to be made or delivered to either party hereunder shall be delivered to the following addresses:

To POLAROID: POLAROID  
4400 Baker Rd  
Minnetonka, MN 55343  
Attn: Cheryl Mau

To GANASSI: Target Chip Ganassi Racing  
8500 Westmoreland Dr.  
Concord, NC 28027

Attn: Daniel Griffis

10. Payment. Payment shall be made by check drawn to the order of "Target Chip Ganassi Racing" and delivered to the TEAM'S address as set forth following:

Target Chip Ganassi Racing  
7777 Woodland Dr.  
Indianapolis, IN 46278  
Attention: Accounts Receivable Department

11. Product for the Use of the Team. POLAROID agrees to provide to the TEAM, at no charge, a reasonable quantity of POLAROID products for the use of the TEAM. The quantity of POLAROID product to be provided will be determined by POLAROID's discretion.

12. Insurance. (a) Owner/Sponsor Liability. The TEAM agrees to secure and maintain during the TERM of this agreement and any extensions thereof the following insurance coverage: Owner/Sponsor Liability Insurance in the amount of not less than Five Million Dollars (\$5,000,000). Certification and/or copies of such insurance coverage and copies of the insurance policy/policies shall be filed with POLAROID within ten (10) days of the signing of this agreement. Such certificates shall show POLAROID, its parent, subsidiary and affiliated companies and their officers, employees, directors, agents, and representatives as an "additional named insured" and the policies shall be endorsed with a provision that the insurance applies as primary insurance with respect to POLAROID and shall not require contribution by any other similar insurance available to POLAROID. Such certificate shall also show that the coverage shall not be canceled or reduced in coverage without thirty (30) days prior written notice to POLAROID.

(b) Worker's Compensation and Employer's Liability. The TEAM shall carry and maintain worker's compensation insurance in the minimum amount as required by applicable state law and shall carry employer's liability insurance in the amount of Five-Hundred Thousand Dollars (\$500,000).

13. Default. If either party at any time during the TERM hereof shall fail to observe or perform any covenants, agreements, or obligations undertaken by such party hereunder, the non-defaulting party shall have the right to elect to terminate the agreement if such default is not cured within thirty (30) days after the non-defaulting party shall have given the defaulting party written notice specifying such default. The termination rights set forth in this section shall not constitute the exclusive remedy of the non-defaulting party hereunder. Termination under the provisions of this section shall be without prejudice to any rights or claims which the terminating party may otherwise have against the defaulting party.

14. No Joint Venture. The TEAM and POLAROID are and shall remain independent contractors. This agreement does not constitute and shall not be construed as constituting a partnership or joint venture between the TEAM and POLAROID. Neither party shall have any right to obligate or bind the other in any manner whatsoever and nothing herein contained shall give, or is intended to give, any rights of any kind to any third person.

15. Indemnity. The TEAM shall indemnify, defend and hold POLAROID and its affiliated companies and their agents, officers, directors, employees and third parties under their control, harmless from and against any and all losses, claims, damages, liabilities, costs, and expenses, included attorneys' fees and disbursements, incurred by any one or all of them arising out of (a) any act or conduct of the TEAM or any of its agents or employees, or (b) any claim by any person arising from any act or omission of any nature by the TEAM or any of its agents or employees, including but not limited to, claims for personal injury, death or damage or property arising during the course of competition or practice, or transportation to or from competition or practice in the performance of this agreement.

POLAROID shall indemnify, defend and hold harmless TEAM and its directors, employees and agents from and against all claims, suits, liabilities, losses and expenses, including without limitation, reasonable attorneys' fees and costs of litigation which Ganassi Racing might suffer or incur arising out of the infringement of trademarks or tradenames of any other person as a result of the use of POLAROID Trademarks.

16. Mediation and Arbitration. This agreement and any and all disputes, claims, causes of action, litigations and/or lawsuits arising hereunder and/or in any way relating hereto shall be governed by and construed under the laws of the State of Pennsylvania, without reference to its choice of laws rules. Unless otherwise expressly agreed to in writing by the parties, any and all such disputes, claims, lawsuits and the like shall be resolved by mediation under the rules of the American Arbitration Association ("AAA") by an AAA mediator selected by the AAA. If said mediation does not resolve the claim, dispute, cause of action, etc., any and all such disputes, claims, lawsuits and the like shall be resolved by binding, non-appealable, final arbitration under the rules of the AAA by an AAA arbiter selected by the parties in accordance with the procedures of the AAA, whose decision as to, among other things, the matters presented and the costs of the proceedings (including attorneys' fees) shall be conclusive, and may be entered and enforced by a court having jurisdiction thereof.

17. Entire Agreement. This agreement shall have no force or effect until signed by GANASSI and POLAROID and it constitutes the entire agreement between the TEAM and POLAROID with respect to the subject matter of this agreement and supercedes all previous agreements and understandings.

Very truly yours,

TARGET CHIP GANASSI RACING


By 

Printed CHIP GANASSI

Title POSSIDORS

Accepted and agreed:

POLAROID.

By 

Printed THOMAS BEAUDOIN

Title PRESIDENT, CFO + COO

# EXHIBIT B

## ASSIGNMENT OF CONTRACT PAYMENTS

TARGET CHIP GANASSI RACING (the "Team"), for value received, does hereby assign, transfer, and set over to Target Corporation ("Target"), its successors and assigns, all monies due and to become due to the Team from Polaroid under that certain sponsorship agreement dated as of September 17, 2007 by and between Polaroid and the Team (the "Sponsorship Agreement").

The Team hereby directs Polaroid to make all payments under the Sponsorship Agreement that have not yet become payable directly to Target. The Team relieves Polaroid of all liability or obligation to see to the application by Target of such payments.

The Team irrevocably appoints Target, its successors and assigns, as its true and lawful attorney, with full power of substitution, for it and in its name instead, to demand, to collect, and receive all amounts which may be or become due to the Team under the Sponsorship Agreement, to file any suit or claim, make any settlement or take any other action, in its own or the Team's name or otherwise, which may be deemed necessary or appropriate to preserve or collect all such amounts, and give sufficient receipts and releases therefore and endorse the Team's name on all paper received in payment or settlement thereof.

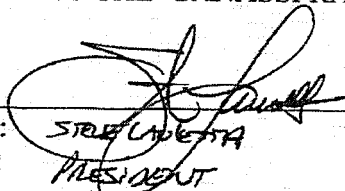
The Team represents and warrants that (i) the Sponsorship Agreement is genuine and existing in accordance with its terms, (ii) the Team owns its rights under the Sponsorship Agreement free and clear of all defenses, set-offs, counterclaims, liens and encumbrances, and (iii) it has the right to make this assignment and will not hereafter make any assignment or other disposition of its rights under the Sponsorship Agreement, or any part thereof, or any amounts due or to become due thereunder.

Target will not be obligated to anyone to enforce any claims assigned to it hereunder or to perform any of the obligations of the Team under the Sponsorship Agreement, and the Team agrees that it will perform all of its obligations under the Sponsorship Agreement.

This assignment shall inure to the benefit of Target, its successors and assigns and shall be binding on the Team and its successors and assigns.

IN WITNESS WHEREOF, the Team has duly executed this instrument as of this 17th day of October, 2008.

TARGET CHIP GANASSI RACING

By:   
Its: PRESIDENT

# EXHIBIT C



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**JOINTLY ADMINISTERED UNDER  
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Judge Gregory F. Kishel

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**AFFIDAVIT OF NANCY HAGERTY IN SUPPORT OF TARGET CORPORATION'S  
OBJECTION TO INITIAL NOTICE OF ASSUMPTION AND ASSIGNMENT OF AND  
AMOUNTS NECESSARY TO CURE DEFAULTS UNDER CONTRACTS AND LEASES  
TO BE ASSUMED AND ASSIGNED TO SUCCESSFUL PURCHASER**

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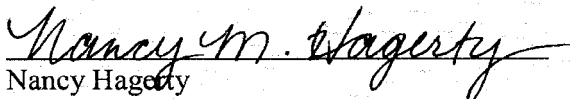
STATE OF MINNESOTA    )  
                                  ) SS.  
COUNTY OF HENNEPIN )

Nancy Hagerty, first being duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Minnesota and Senior Group Counsel for Target Corporation ("Target"). Because of my position with Target and my review of Polaroid Consumer Electronics, LLC's ("Polaroid") contractual relationships with Target and Target Chip Ganassi Racing ("Ganassi Racing"), I

have personal knowledge of the facts stated in this affidavit.

2. Polaroid and Ganassi Racing are parties to that certain sponsorship agreement dated as of September 17, 2007 (the "Sponsorship Agreement").
3. Pursuant to the terms of the Sponsorship Agreement, Polaroid was required to make a \$2,750,000 payment to Ganassi Racing on the following dates: November 15, 2007; March 1, 2008; November 15, 2008; and March 1, 2009.
4. Ganassi Racing assigned its right to receive the Payments to Target pursuant to an Assignment of Contract Payments dated as of October 17, 2008 (the "Assignment").
5. As of the date of this affidavit, Polaroid has failed to make the \$2,750,000 payment due as of March 1, 2009 and is currently in default of its obligations under the Sponsorship Agreement. Pursuant to terms of the Assignment, Target is entitled to collect from Polaroid the \$2,750,000 payment that became due under the Sponsorship Agreement on March 1, 2009.

  
Nancy Hagerty

Subscribed and sworn to before me  
this 20th day of March, 2009.



Notary Public

