

ORIGINAL

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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In re	:	Chapter 11 Case Nos.
JUST FOR FEET, INC., <u>et al.</u>	:	99-4110 (RRM) through
	:	99-4117 (RRM) inclusive
Debtors.	:	(Jointly Administered)

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CERTIFIED:

AS A TRUE COPY: 3/3/00

ATTEST:

STEPHEN D. TAYLOR, CLERK
U.S. BANKRUPTCY COURT

BY

Deputy Clerk

**ORDER PURSUANT TO SECTIONS 105(a), 363, 365 AND
1146(c) OF THE BANKRUPTCY CODE AUTHORIZING
THE SALE OF CERTAIN OF DEBTORS' ASSETS,
FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES**

Upon the motion of Just for Feet, Inc. and its direct and indirect debtor subsidiaries (collectively, the "Debtors")¹, dated January 27, 2000 (the "Sale Motion"), for an order pursuant to sections 105(a), 363, 365 and 1146(c) of title 11, United States Code (the "Bankruptcy Code") approving the sale of certain of the Debtors' assets free and clear of liens, claims and encumbrances; and upon the record of the hearing held on February 1, 2000 related to certain relief requested in the Sale Motion; and upon the supplement to the Sale Motion filed by the Debtors on February 17, 2000; and upon the record of the hearing on the Sale Motion held on February 24, 2000 (the "Hearing") pursuant to the Order Granting the Emergency Motion of the Debtors For Order Approving, *inter alia*, (i) Procedures for Proposed Auction Sale(s) of Substantially All of Debtors' Assets, and (ii) Notice of Date, Time and Place for an Auction and for Hearing on Approval of (x) Sale(s) of Assets, (y) Assumption and Assignment

¹ Capitalized terms used but not otherwise defined in this Order shall have the meanings ascribed to such terms in the Sale Motion and the Agreement, as the case may be.

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proceeds. Allocation of Shortfall repayment obligations within claims of the same priority, if any, or secured by liens entitled to the same priority of treatment as against Assets sold pursuant to this order, shall be pro rata with reference to Purchase Price proceeds actually received, so that in no event shall any holder of a claim be allocated a Shortfall share in excess of the amount of the Purchase Price actually received by the holder on account of such claim. Notwithstanding anything in this paragraph to the contrary, no creditor shall have any obligation to repay any portion of any Shortfall unless on or before December 31, 2000, the Buyer issues a notice that a Shortfall exists in a specified amount, and serves such notice on the Debtors and the entities that have requested service of papers pursuant to Bankruptcy Rule 2002, and files such notice with the Bankruptcy Court on or prior to such date. Any dispute regarding allocation of the Shortfall shall be decided by the Bankruptcy Court. The Debtors shall not distribute any portion of the Purchase Price to any creditors holding unsecured or priority claims until after the final resolution and payment of the inventory adjustment, if any, contemplated by Section 3.3 of the Agreement.

23. The ownership of the Assets and the operation of the Business by the Buyer after the Closing shall be effective and valid and not subject to penalty, notwithstanding any law which would otherwise restrict, affect or penalize the ability of the Buyer to own the Assets or to operate the Business because of the fact that the Debtors had conducted "Going Out of Business" sales at any of the Subject Stores prior to closing or any applicable law having a similar effect.

24. This Sale Order and any order authorizing the assumption and assignment of the Real Property Leases and the Assumed Contracts shall (i) be effective, binding and

of Certain Executory Contracts and Unexpired Leases and (z) Exemption of Sale(s) from Stamp or Similar Taxes, dated February 1, 2000 (the "Scheduling Order"); and the Debtors having marketed and conducted an auction of substantially all of their assets pursuant to the terms and conditions of the Auction Procedures (as defined in the Scheduling Order); and an auction having been held on February 15, 2000 for the sale of all or substantially all of the Debtors' assets (the "Auction"); and Footstar, Inc. (the "Buyer") having made the highest and best offer at the Auction for the assets which are the subject of the Agreement (as defined below); and the terms of the agreement between the Debtors and the Buyer for the purchase of the Assets (as defined in the Agreement) having been incorporated into that certain Asset Purchase Agreement, dated February 16, 2000, a copy of which is annexed hereto as Exhibit A (the "Agreement"); and it appearing that the provisions of sections 105(a), 363(b), 363(f), 363(m), 363(n), 365 and 1146(c) of the Bankruptcy Code having been complied with and that consummation of the Agreement is in the best interests of the Debtors and their estates as it will maximize the value of the Assets; and it appearing that the Agreement is entered into in contemplation of the formulation of a chapter 11 plan; and after due deliberation and sufficient cause appearing therefor; and upon all of the pleadings and proceedings heretofore had herein, including the Hearing; and after considering any and all objections to the relief requested in the Sale Motion as it relates to the Agreement (the "Objections"); and it appearing that, under the circumstances here present, good, sufficient and timely notice of the relief sought and granted in this order has been given and that no other or further notice need be given; and the appearances of all interested parties and all responses and objections to the Motion, if any, having been duly noted in the record of the Hearing; and upon the record of the Hearing, the Sale Motion, said

responses and objections, if any; and after due deliberation and sufficient cause appearing therefor, the Court hereby FINDS, DETERMINES, AND CONCLUDES THAT:²

1. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Determination of the Sale Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). The statutory predicates for the relief requested herein are sections 105, 363, 365 and 1146(c) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002, 6004 and 6006.
3. The Debtors have complied with the procedures for giving notice of the Sale Motion and the Hearing on approval of the Agreement and the transactions contemplated thereby, as set forth in the Scheduling Order.
4. Proper, timely, adequate and sufficient notice of the Sale Motion, the Hearing and approval of the Agreement and the transactions contemplated thereby, has been provided in accordance with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006 and the Scheduling Order, and no other or further notice of the Sale Motion, the Hearing or the entry of this Order is required.
5. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all parties in interest.

²Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

6. The Debtors have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets has been duly and validly authorized by all necessary corporate action of the Debtors. The Debtors have all the corporate power and authority necessary to consummate the transactions contemplated by the Agreement and no consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate such transactions.

7. The Agreement and the transactions contemplated thereby, including without limitation the assumption and assignment of the Assumed Contracts and the Real Property Leases, reflect the exercise of the Debtors' sound business judgment.

8. Approval at this time of the Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors and estates. Good and sufficient business justification for consummating the sale transaction pursuant to section 363(b) of the Bankruptcy Code, and for the sale, the assumption and assignment of the Real Property Leases and Assumed Contracts pursuant to sections 363 and 365 of the Bankruptcy Code, has been established in that, among other things:

a. In the absence of a prompt sale of the Assets, their value will decline because of the Debtors' current and deteriorating business operations;

b. Each of the Assumed Contracts are executory contracts within the meaning of section 365(a) of the Bankruptcy Code; and

c. Unless a sale to the Buyer is concluded expeditiously as provided for in the Sale Motion and under the Agreement, the Debtors, their estates and their creditors will realize less value for such assets.

9. The terms and conditions of the Agreement are fair and reasonable. The Agreement represents the highest and best offer for the Assets, and the purchase price payable thereunder is fair and reasonable. The Debtors determined to accept the Buyer's offer to purchase the Assets following an extensive Auction conducted on February 15, 2000 at which time the Buyer submitted a higher and better bid than any other bid for the Assets.

10. The cure amounts in respect of the Assumed Contracts that are either undisputed or that will be determined by the Court (the "Cure Amounts"), if any, are the sole amounts necessary to cure all defaults, and to pay all established actual or pecuniary losses that have resulted from such defaults under the Assumed Contracts. Such amounts shall be paid by the Debtors under the Agreement.

11. The Buyer has provided adequate assurance of Buyer's future performance under the Assumed Contracts and the Real Property Leases to be assigned to Buyer within the meaning of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

12. The sale, assumption and assignment of the Assumed Contracts and Real Property Leases pursuant to the Agreement is in the best interests of the Debtors, their creditors and their estates.

13. The Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith, and from arm's length bargaining positions. The Buyer is a

buyer in good faith of the Assets, including the Real Property Leases and the Assumed Contracts, under section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Agreement and the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code.

14. The transfer of the Assets and the assignment of the Real Property Leases and the Assumed Contracts pursuant to the Agreement (a) are or will be legal, valid and effective transfers of property of the Debtors' estates to the Buyer, and (b) except as provided in the Agreement, vest or will vest the Buyer with good title to the Assets, the Real Property Leases, and the Assumed Contracts, free and clear of all liens, claims, interests, and encumbrances under section 363(f) of the Bankruptcy Code.

15. Except to the extent expressly provided in the Agreement, consummation of the transaction contemplated by the Agreement does not and will not subject the Buyer to any debts, liabilities, obligations, commitments, responsibilities or claims of any kind or nature whatsoever, whether known or unknown, contingent or otherwise, existing as of the date hereof or hereafter arising, of or against the Debtors, any affiliate of the Debtors, or any other person by reason of such transfers and assignments under the laws of the United States, any state, locality, territory or possession thereof or the District of Columbia or other governmental authority applicable to such transactions.

16. All of the provisions of this Sale Order and the Agreement are nonseverable and mutually dependent.

17. The transactions contemplated by the Agreement and approved in this Order are in contemplation of the filing of a plan of reorganization by the Debtors.

18. The relief requested in the Sale Motion, including approval of the Agreement, is in the best interests of the Debtors, their creditors and estates.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:**

1. The Sale Motion be, and it hereby is, granted in its entirety.
2. All Objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.
3. The terms and conditions and transactions contemplated by the Agreement are hereby approved in all respects, and the sale transaction contemplated thereby is hereby approved in all respects and authorized under section 363(b) of the Bankruptcy Code.
4. Pursuant to sections 363(b) and 365 of the Bankruptcy Code, each of the Debtors is hereby authorized and empowered to fully assume, perform under, consummate and implement the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and the transactions contemplated thereby, and to take all further actions as may reasonably be requested by the Buyer for the purpose of selling, assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession, any or all of the Assets free and clear of all Liens and Claims (as defined

below), or as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement.

5. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the closing under the Agreement, except as expressly provided by the Agreement, the Assets shall be transferred to the Buyer free and clear of all mortgages, deeds of trust, security interests, pledges, liens, judgments, hypothecations, easements, rights of way, demands, encumbrances, or charges of any kind or nature, if any (the foregoing collectively referred to as "Liens" herein) and all debts arising in any way in connection with any acts of the Debtors, claims (as that term is defined in the Bankruptcy Code), obligations, demands, guaranties, options, rights of others, responsibilities, contractual commitments, restrictions, interests and matters of any kind and nature whatsoever, direct or indirect, absolute or contingent, whether accrued, vested or otherwise, whether known or unknown, arising prior to the Closing Date or relating to acts occurring prior to the Closing Date, and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing collectively referred to as "Claims" herein), with all such Liens and Claims to transfer, affix and attach to the net proceeds of the sale transaction contemplated by the Agreement in the order of their priority with the same validity, force and effect which they now have as against the Assets, subject to the rights, claims, defenses and objections, if any, of the Debtors and all interested parties with respect to such Liens and Claims; provided, however, that Buyer shall remain liable for only the Assumed Liabilities as provided in the Agreement.

6. The proceeds of the sales of the Debtors' assets authorized by this Order and by other orders granting the Sale Motion shall be dealt with as follows:

(a) If the amounts necessary to satisfy (i) the Debtors' prepetition obligations pursuant to sections 365(b) and (f) of the Bankruptcy Code and all related postpetition obligations and (ii) amounts owed to secured creditors with prepetition indebtedness secured by assets other than the Debtors' prepetition inventory and accounts receivable, are agreed to by the Debtors, such amounts may be paid at or promptly after the closing and consummation of the Footstar transaction. To the extent that a dispute exists as to the amount of any such obligations, an amount equal to the amount claimed by each party having a claim on account of such obligation shall be segregated, set aside and invested in an interest bearing account or investments qualifying under section 345 of the Bankruptcy Code, pending agreement among the Debtors, such other party and the Lenders or resolution by further order of the Court.

(b) The Debtors may use a portion of such proceeds to pay the amount owed to the DIP Lender at closing, without prejudice to the right of any other party in interest to assert any claim it may have against the DIP Lender.

(c) The Debtors may use a portion of such proceeds to pay their ordinary course of business expenses incurred prior to or after the closing of the Footstar transaction.

(d) All proceeds, net of the amounts described in clauses (a) through (c) inclusive above, including any amounts not required to satisfy obligations described in clause (a) hereof, shall be segregated, set aside and invested in an interest bearing account or qualifying

investments under section 345 of the Bankruptcy Code, subject to further order of the Court entered after notice and a hearing.

7. Except as expressly permitted by the Agreement, all persons and entities holding Liens or Claims against the Debtors arising on or before the Closing Date, or out of events occurring prior to the Closing Date, of any kind and nature with respect to the Assets or the Business hereby are barred from asserting such Liens and Claims of any kind and nature against the Buyer, its successors or assigns, or the Assets.

8. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT OR IN THIS ORDER, THE BUYER IS NOT ASSUMING NOR SHALL IT IN ANY WAY WHATSOEVER BE LIABLE OR RESPONSIBLE, AS A SUCCESSOR OR OTHERWISE, FOR ANY LIABILITIES, DEBTS OR OBLIGATIONS OF THE DEBTORS OR ANY LIABILITIES, DEBTS OR OBLIGATIONS IN ANY WAY WHATSOEVER RELATING TO OR ARISING FROM THE ASSETS OR THE BUSINESS OR THE DEBTORS' OPERATIONS OR USE OF THE ASSETS OR THE BUSINESS PRIOR TO CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, OR ANY LIABILITIES CALCULABLE BY REFERENCE TO THE DEBTORS OR THEIR ASSETS OR OPERATIONS, OR THE BUSINESS, OR RELATING TO CONTINUING CONDITIONS EXISTING ON OR PRIOR TO CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, WHICH LIABILITIES, DEBTS AND OBLIGATIONS ARE HEREBY EXTINGUISHED INsofar AS THEY MAY GIVE RISE TO SUCCESSOR LIABILITY, WITHOUT REGARD TO WHETHER THE

CLAIMANT ASSERTING ANY SUCH LIABILITIES, DEBTS OR OBLIGATIONS HAS
DELIVERED TO BUYER A RELEASE THEREOF.

9. The Debtors are hereby authorized in accordance with sections 363 and 365 of the Bankruptcy Code and subject to the terms of the Agreement, to (a) sell, assume and assign to the Buyer each of the Real Property Leases and Assumed Contracts pursuant to the provisions of sections 363 and 365 of the Bankruptcy Code, in each case free and clear of all Liens and Claims, and (b) execute and deliver to the Buyer such documents or other instruments as may be necessary to sell, assign and transfer such Real Property Leases and Assumed Contracts to the Buyer. In order to facilitate the transactions contemplated by the Agreement, the Debtors are authorized to submit a "short form" order, without further notice to any party in interest, approving the sale, assumption and assignment of any or all of the Real Property Leases to the Buyer (and to other parties to whom such leases are being sold) in accordance with sections 363 and 365 of the Bankruptcy Code (which assumption and assignment of the Real Property Leases shall be authorized only pursuant to those separate orders of the Court granting relief pursuant to sections 363 and 365 of the Bankruptcy Code).

10. Pursuant to the terms of the Agreement and consistent with the requirements of the Bankruptcy Code, the Debtors are hereby authorized to pay out of the net proceeds of sale the undisputed Cure Amounts, if any, in respect of the assumption, assignment and sale to Buyer of the Assumed Contracts being assigned to such Buyer, by paying all undisputed Cure Amounts prior to Closing or as otherwise ordered by the Court. Buyer shall have no obligation to pay, or any liability for, such Cure Amounts.

11. The Assumed Contracts shall, upon assignment to the Buyer, be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms, and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any liability for any breach of such Assumed Contracts occurring after such assignment.

12. This Sale Order (a) is and shall be effective as a determination that, on the Closing Date, all Liens and Claims existing as to the Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyance of the Assets, free and clear of all Liens and Claims, described herein has been effected, and (b) is and shall be binding upon and govern the acts of all entities (including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets).

13. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens or Claims on or interests in the Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens and Claims or other interests which the person or entity asserts with respect to the Assets, the Debtors are

hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets.

14. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Assets are hereby directed to surrender possession of said Assets to the Buyer or Buyer's designee on the Closing Date.

15. This Court retains jurisdiction (i) to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to compel delivery of the Assets to the Buyer, (iii) to compel delivery of the Purchase Price under the Agreement in accordance with its terms, (iv) to resolve any disputes, controversies or claims arising out of or relating to the Agreement, and (v) to interpret, implement and enforce the provisions of this Sale Order.

16. Nothing contained in any chapter 11 plan confirmed in these cases or the order of confirmation confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Agreement or the terms of this Sale Order.

17. In the absence of a stay pending appeal, if the Buyer elects or is required to close under the Agreement at any time after entry of this Sale Order, then, with respect to the sale transaction contemplated by the Agreement, including the assumption and assignment of the Assumed Contracts approved and authorized herein, the Buyer shall be entitled to the protections of section 363(m) of the Bankruptcy Code if this Sale Order or any authorization contained herein or related hereto is reversed or modified on appeal.

18. The terms and provisions of the Agreement, together with the terms and provisions of this Sale Order, shall be binding in all respects upon the Debtors, their estates and creditors, the Buyer, and their respective affiliates, successors and assigns, and any affected third parties, including but not limited to all non-debtor parties to the Real Property Leases and Assumed Contracts to be assigned to the Buyer pursuant to the Agreement, and all persons asserting a claim against or interest in the Debtors' estates or any of the Assets to be sold to the Buyer pursuant to the Agreement. The Agreement and the transactions contemplated thereby, shall be specifically performable, enforceable against, binding upon and not subject to rejection by the Debtors or any chapter 7 or chapter 11 trustee of the Debtors and their respective estates.

19. The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the efficiency of such provisions, it being the intent of the Court that the Agreement, all transactions contemplated thereby and all documents required to effectuate the Agreement are approved in their entirety.

20. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

21. The transfer of the Assets to the Buyer is not subject to taxation under any state or local law imposing a stamp, transfer or similar tax in accordance with sections 1146(c) and 105(a) of the Bankruptcy Code. Each and every federal, state and local government agency or department is hereby directed to accept any and all documents and instruments necessary and

appropriate to consummate the sale and assignment of the Assets to Footstar, all without imposition and payment of any stamp tax, transfer tax or similar tax, pursuant to section 1146(c) of the Bankruptcy Code.

22. If the Debtors have any obligation to pay Buyer any amount pursuant to the Agreement, including section 3.3 thereof, and the Debtors do not then possess or have access to sufficient funds to satisfy in full such obligation, then, to the extent of any such shortfall (the "Shortfall"), creditors of the Debtors that have received any portion of the Purchase Price shall be required to pay to the Buyer, without offset, deduction or other reduction, the share of such Shortfall, in accordance with the following order of priority. The obligation to repay the Shortfall shall be allocated first to those creditors holding unsecured claims not entitled to priority under the Bankruptcy Code until the entire portion of the Purchase Price proceeds paid to the holders of such claims has been applied to the Shortfall; any remaining Shortfall shall next be repaid by creditors holding claims in the most junior class of claims entitled to priority under the Bankruptcy Code that received any portion of the Purchase Price until the entire portion of the Purchase Price proceeds paid to the holders of such claims has been applied to the Shortfall; and any remaining Shortfall shall be repaid by the holders of priority claims in ascending order of priority from the most junior to the most senior under the Bankruptcy Code until the entire Shortfall has been paid in full. If any Shortfall shall then remain, it shall be allocated first to those creditors holding secured claims in the most junior class of claims (with respect to the Purchase Price proceeds) to have received a portion of the Purchase Price, and continuing in this manner until the entire Shortfall has been allocated among creditors receiving the Purchase Price

enforceable immediately upon entry and (ii) not be stayed pursuant to Bankruptcy Rules 6004(g) or 6006(d) (which became effective December 1, 1999).

25. Except as expressly provided in the Agreement, Buyer is not acquiring or assuming, and the consummation of the sale transaction contemplated by the Agreement shall not subject the Buyer to, any debts, liabilities, obligations, commitments, responsibilities or Claims of any kind or nature whatsoever, whether known or unknown, contingent or otherwise, existing as of the date hereof or hereafter arising, of or against the Debtors, any affiliate of the Debtors, or any other person by reason of such transfer, assignment and delivery under the laws of the United States, any state, locality, territory or possession thereof or the District of Columbia or other governmental authority applicable to such transactions.

Dated: Wilmington, Delaware
February 25 2000


UNITED STATES DISTRICT JUDGE

Inst. # 2000-07409
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Shelby County Judge of Probate
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