

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<p><b>In re:</b></p> <p><b>PIPELINE FOODS, LLC, <i>et al.</i>,<sup>1</sup></b></p> <p style="text-align: center;"><b>Debtors.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Chapter 11</b></p> <p><b>Case No. 21-11002 (KBO)</b></p> <p><b>Jointly Administered</b></p> <p>Hearing Date: February 16, 2022 at 10:00 a.m. (ET)</p> <p>Objection Deadline: February 9, 2022 at 4:00 p.m. (ET)</p>
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE SALE OF DEBTORS’ VEHICLES, FREE AND CLEAR OF ENCUMBRANCES,  
AND GRANTING RELATED RELIEF**

Pipeline Foods, LLC (“**Pipeline Foods**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), hereby submit this motion (the “**Motion**”), pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “**Bankruptcy Code**”), for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), authorizing and approving the sale (the “**Sale**”) of thirteen (13) vehicles owned by the Pipeline Foods, as identified and defined in further detail in, and pursuant to, the Asset Purchase Agreement between Pipeline Foods and Nations Capital, Inc. (the “**Purchaser**” or “**Nations Capital**”), a copy of which is attached hereto as **Exhibit B** (the “**Purchase Agreement**”), free and clear of all liens, claims, encumbrances, and other interests (collectively, the “**Encumbrances**”), and granting related relief. In support of this Motion, the Debtors rely on the *Declaration of Matthew W. Smith in Support of Debtors’ Motion for Entry of An Order Authorizing the Sale of Debtors’ Vehicles, Free and Clear of Encumbrances, and*

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Pipeline Foods, LLC (5070); Pipeline Holdings, LLC (5754); Pipeline Foods Real Estate Holding Company, LLC (7057); Pipeline Foods, ULC (3762); Pipeline Foods Southern Cone S.R.L. (5978); and Pipeline Foods II, LLC (9653). The Debtors’ mailing address is P.O. Box 431029, Brooklyn Park, MN 55443.

*Granting Related Relief*, attached hereto as **Exhibit C** (the “**Smith Declaration**”), and respectfully state as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 105 and 363 of the Bankruptcy Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules 2002-1 and 6004-1.

### **BACKGROUND**

3. On July 8, 2021 and July 12, 2021 (together, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On July 22, 2021, the Office of the United States Trustee appointed a committee of unsecured creditors (the “**Committee**”).

4. A detailed description of the Debtors' businesses, capital structure, and the reasons for commencing the chapter 11 cases are set forth in the *Omnibus Declaration of Winston Mar in Support of Debtors' Initial Emergency First Day Motions and Related Relief* [Docket No. 6].

**A. The Debtors' Vehicles**

5. Pipeline Foods owns the following trucks, semi-tractors, semi-trailers, and trailers (collectively, the "**Vehicles**"):

<b>Vehicle Description</b>	<b>Vehicle Identification No.</b>
2015 Ford F-250 Truck	1FT7W2B61FEC65001
2015 Ford F-250 Truck	1FT7W2B65FEC64997
2009 Ford F-250 Truck	1FTNF21529EB29657
2011 Chevy Silverado 2500 Truck	1GC1KXCGXBF151640
2006 Chevy Silverado 2500 Truck	1GCHK29D06E243396
1993 Kenworth Semi-Tractor	1XKADR9X4PS589277
2005 Peterbilt Semi-Tractor	1XPFD9X55N839953
2015 Timppte Hopper Semi-Trailer	1TDH42225FB146201
2015 Timppte Hopper Semi-Trailer	1TDH42227FB146202
2008 Timppte Hopper Semi-Trailer	1TDH422288B116449
2006 Timppte Hopper Semi-Trailer	1TDH4222X6B108480
2015 Sure Gooseneck Trailer	55W3U2528F3118256
2009 Tarnel Bumper Trailer	5PYAT172091008294

6. The Debtors have ceased operating as a going concern and the Debtors no longer require the use of Vehicles.

7. The Vehicles were previously used by Pipeline Foods at its former facility in Hope, Minnesota (the "**Hope Facility**"). On December 29, 2021, pursuant to an order of this Court [Docket No. 638], Pipeline Foods transferred all of its interests in the real and personal property constituting the Hope Facility to an affiliate of Compeer Financial, PCA as part of a deed in lieu transaction.

**B. The Marketing Efforts for the Sale of the Vehicles and the Purchase Agreement**

8. With the consent of the Debtors and the Committee, Meru, LLC (“**MERU**”), the financial adviser for Coöperatieve Rabobank U.A., New York Branch (“**Rabobank**”), undertook the marketing efforts for the sale of the Vehicles. MERU has advised the Debtors that: (a) MERU contacted multiple asset liquidation firms that specialize in monetizing assets of distressed companies to see if they were interested in the Vehicles, and that these firms were selected based upon MERU’s experience working in the industry, the type of assets, and the physical location of the assets, among other factors; (b) the only firm offer received was from Nations Capital, which initially offered to purchase the Vehicles for \$135,000–\$155,000, subject to an inspection at no cost to the Debtors; and (c) the other responses received either stated that value would be contingent on vehicle repair condition and mileage and required Pipeline Foods to document the Vehicles with photographs and other inspection or transport the Vehicles to a third party location from whence they could be sold, or declined to bid due to the quantity and/or location of the assets.

9. Following its inspection of the Vehicles and negotiations, Nations Capital agreed to purchase the Vehicles for \$160,000.

10. MERU advised the Debtors that it researched the fair market value of the Vehicles using reputable third-party internet sources such as KBB.com, Autotrader.com and TruckPaper.com and determined that \$160,000 is a fair and reasonable value for the Vehicles.

11. Pipeline Foods and Nations Capital entered into the Purchase Agreement, subject to approval of this Court. A summary of the material terms of the Purchase Agreement, and the disclosures required by Local Rule 6004-1, are as follows:

<b>TERM</b>	<b>DESCRIPTION</b>	<b>LOCATION IN SALE ORDER OR AGREEMENT</b>
Parties	Seller: Pipeline Foods Purchaser: Nations Capital	Agreement (Introductory Paragraph)
Purchased Assets	Two 2015 Ford F-250 Trucks; One 2009 Ford F-250 Truck; One 2011 Chevrolet Silverado 2500 Truck; One 2006 Chevrolet Silverado 2500 Truck; One 1993 Kenworth Semi-Tractor; One 2005 Peterbilt Semi-Tractor; Two 2015 Timppte Hopper Semi-Trailers; One 2007/2008 Timppte Hopper Semi-Trailer; One 2006 Timppte Hopper Semi-Trailer; One 2015 Sure Gooseneck Trailer; and One 2009 Tarnel Bumper Trailer	Agreement, Exhibit A
Purchase Price	\$160,000.00	Agreement, at ¶ 2(a)
Closing	Subsequent to the entry of the Sale Order, at a date and time mutually agreed upon.	Agreement, at ¶ 7
Sale to an Insider	This is not a sale to an insider.	N/A
Agreements with Management	None.	N/A
Releases	None.	N/A
Private Sale/No Competitive Bidding	The sale proposed in this Motion is a private sale and would not be subject to competitive bidding.	N/A
Interim Arrangements with Proposed Buyer	Purchaser shall promptly arrange for Trident Transport, LLC to transport the Vehicles to Purchaser's facility in Alliance, Ohio. Purchaser shall be responsible for all costs of the transport of the Vehicles; provided, however, if the Court does not approve the Sale: (a) the Debtors shall reimburse Purchaser for all documented costs of the transportation of the Vehicles (estimated at \$19,200); and (b) the Debtors shall be charged a storage fee of \$5 per day for each of the Vehicles that is not removed from the Purchaser's facility starting with the thirty-first day after Purchaser has taken possession.	Agreement, at ¶ 5
Use of Proceeds	None.	N/A
Tax Exemption	None.	N/A
Record Retention	None.	N/A
Sale of Avoidance Actions	None.	N/A
Requested Findings as to Successor Liability	The Debtors seek to sell the property free and clear of all Encumbrances.	Proposed Order, at ¶ 3.

Sale Free and Clear of Unsecured Leases	None.	N/A
Credit Bid	None.	N/A
Relief from Bankruptcy Rule 6004(h)	The Debtors request that any Order approving the Sale be effective immediately.	Proposed Order, at ¶ 4.

### **RELIEF REQUESTED**

12. By this Motion, the Debtors seek the entry of the Proposed Order, authorizing and approving the Sale of the Vehicles on the terms set forth in the Purchase Agreement, free and clear of all Encumbrances, and granting related relief.

### **BASIS FOR RELIEF**

**A. Sufficient Business Justification Exists for Consummation of the Sale under Bankruptcy Code Section 363(b)**

13. Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (same).

14. The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

15. In the present case, the Debtors’ decision to sell the Vehicles represents a reasonable exercise of their business judgment and, accordingly, the Sale should be approved under section 363(b) of the Bankruptcy Code. As discussed above, the Debtors are no longer operating as a going concern and have no need for the use of the Vehicles. The Sale contemplated by the Purchase Agreement also provides the Debtors’ estates with fair and reasonable consideration for the Vehicles. Further, the Sale allows the Debtors to eliminate the carry costs related to the Vehicles and the costs that the Debtors would otherwise have incurred to remove the Vehicles from the Hope Facility.

**B. The Sale of the Vehicles Free and Clear of All Encumbrances is Authorized under Bankruptcy Code Section 363(f)**

16. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of Encumbrances if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which, as noted above, provides that “[t]he court may issue any order, process or judgment that

is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

17. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Vehicles “free and clear” of liens and interests. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met); *see also Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same). Furthermore, a debtor possesses broad authority to sell assets free and clear of liens. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

18. The Debtors are unaware of any Encumbrances on the Vehicles, other than the adequate protection liens granted to Rabobank in connection with the *Final Order (I) Authorizing the Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 105(a), 361, 362, 363 503 and 507; and (III) Granting Related Relief* [Docket No. 341] (the “**Final Cash Collateral Order**”).

19. Rabobank has advised the Debtors that it consents to the Sale. In the event and to the extent that any other party asserts an Encumbrance on the Vehicles, the Debtors submit that the sale of the Vehicles may be sold free and clear of any such Encumbrance in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) will be satisfied, and request that any such Encumbrance attach to the proceeds of the Sale with the same validity and priority existing as of the closing of the Sale.



**C. The Sale Should be Subject to the Protections of Section 363(m)**

20. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m). In approving the Sale, the Debtors request that the Court find and hold that the sale of the Vehicles in accordance with the Purchase Agreement is entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate because the Purchase Agreement is the result of arm's-length, good-faith negotiations. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986).

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

21. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h).

22. Nations Capital desires to take possession of the Vehicles as soon as possible. In addition, any delay in the Debtors’ ability to consummate the Sale will cause the Debtors to incur unnecessary expenses to continue to maintain and store the Vehicles.

23. For the reasons set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

**NOTICE AND REQUEST FOR LIMITED NOTICE**

24. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Committee; (iii) counsel to Rabobank; (iv) counsel

to Compeer Financial, PCA and Compeer Financial, FLCA; (v) counsel to the Purchaser; (vi) the United States Attorney for the District of Delaware; (vii) the United States Attorney for the District of Minnesota; (viii) the Minnesota Department of Agriculture; (ix) the Internal Revenue Service; (x) the Office of the Attorney General for Minnesota, North Dakota and Iowa; and (xi) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

25. Bankruptcy Rules 2002(a)(2) and 6004(a) of the Bankruptcy Rules require that twenty-one (21) days' notice of a proposed sale of assets be sent to all creditors unless the Court for cause shortens the time. Bankruptcy Rule 2002(i), however, permits the Court to limit notice to the United States Trustee, the Committee and to persons that have requested notices in this case.

26. The creditor matrix in this case lists over 3,200 creditors and thus it would be burdensome and expensive for the Debtors to serve all such parties with notice of the Sale, particularly given the amount at issue. The Debtors therefore request that the Court exercise its authority under Bankruptcy Rules 2002(i) and 9007 to find that the proposed notice described above is reasonable and sufficient under the circumstances, and no further notice is necessary.

*[remainder of page intentionally left blank]*

**CONCLUSION**

WHEREFORE, the Debtors request entry of an Order, substantially in the form of the Proposed Order, granting the relief requested herein and such other relief as is just and proper.

Dated: January 26, 2022

**SAUL EWING ARNSTEIN & LEHR LLP**

By: /s/ Monique B. DiSabatino

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