

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

ARMSTRONG FLOORING, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 22-10426 (MFW)

(Jointly Administered)

Hearing Date: March 28, 2023 at 11:30 a.m. (ET)  
(REQUESTED)

Objection Deadline: March 21, 2023 at 4:00 p.m. (ET)  
(REQUESTED)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING  
THE PRIVATE SALE OF CERTAIN NONRESIDENTIAL REAL PROPERTY  
LOCATED IN LANCASTER, PENNSYLVANIA FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AND (II) GRANTING OTHER  
RELATED RELIEF**

Armstrong Flooring, Inc. and its affiliated debtors (collectively, the “**Debtors**”), by and through their undersigned counsel, hereby move this Court (the “**Motion**”) for an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), (i) authorizing and approving the private sale of certain nonresidential real property located at 1260 Loop Road, Lancaster, Pennsylvania (“**1260 Loop Rd.**”), and more specifically described in that certain *Agreement for the Sale of Commercial Real Estate* (the “**Purchase Agreement**”), attached as **Exhibit B**, between debtor Armstrong Flooring, Inc. (the “**Seller**”) and Site Construction Properties, L.P. and/or Assigns (the “**Purchaser**”), free and clear of claims, liens, encumbrances and interests (except as set forth in the Purchase Agreement), and (ii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Armstrong Flooring, Inc. (3305); AFI Licensing LLC (3265); Armstrong Flooring Latin America,

## **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over the Chapter 11 Cases, the Debtors, property of the Debtors’ estates, and this matter under 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. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). 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 judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue of these cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested are sections 105(a), 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”). The relief is also appropriate under Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 6004-1.

## **BACKGROUND**

### **A. GENERAL BACKGROUND.**

4. On May 8, 2022 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court, thereby commencing these cases (the “**Chapter 11 Cases**”). The Chapter 11 Cases are being jointly administered.

---

Inc. (2943); and Armstrong Flooring Canada Ltd. (N/A). The address of the Debtors’ corporate headquarters is PO Box 10068, 1770 Hempstead Road, Lancaster, PA 17065.

5. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On May 18, 2022, the Office of the United States Trustee for Region 3 (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”) [Docket No. 175].

7. On June 3, 2022, the Court entered an order [Docket No. 284] authorizing and directing the U.S. Trustee to appoint a committee of retired employees pursuant to section 1114 of the Bankruptcy Code.

8. Additional factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in the *Declaration of Michel S. Vermette in Support of Chapter 11 Petitions and First-Day Papers* [Docket No. 16] (the “**Vermette Declaration**”), which was filed on the Petition Date and is incorporated herein by reference.

**B. COURT AUTHORIZED SALE OF ASSETS AND MISCELLANEOUS ASSET SALES.**

9. Following a hearing on July 12, 2022, the Court entered orders on July 13, 2022 [Docket Nos. 549, 550 and 551], authorizing (i) the sale of North American assets (the “**North America Sale**”) to AHF LLC and Gordon Brothers Commercial & Industrial, LLC (the “**AHF/GB Consortium**”); (ii) the sale (the “**Australia Sale**”) of the Debtors’ Australia business to Braeside Mills Investments Pty Ltd, Gippsland Lakes Victoria Holdings Pty Ltd, and HS McKendrick Family Nominees Pty Ltd as trustee of the Mills Unit Trust; and (iii) the sale (the “**China Sale**”) of the Debtors’ equity in their China business to Zhejiang Gimig Technology Co., Ltd. The Debtors closed the North America Sale to the AHF/GB Consortium on July 22, 2022. The Australia Sale and China Sale each closed in August, 2022.

10. To provide streamlined, cost-effective procedures for the disposition of any remaining assets following the closings of their major sale transactions, the Debtors sought and obtained the Court's approval of certain procedures for the approval of *de minimis* asset sales, with increasing degrees of prior notice and formality dependent upon the size of the proposed sale (the "**DMAS Order**").<sup>2</sup> The Debtors have since conducted at least five separate *de minimis* sales under the approved procedures, which are reflected in orders approving each of the transactions.<sup>3</sup> In addition, the Debtors have entered into several prior amendments to the North American Sale asset purchase agreement with the AHF/GB Consortium to, among other things, document the sale of certain *de minimis* assets.

**C. THE PROPOSED SALE OF THE 1260 LOOP ROAD PROPERTY.**

11. As described in the Vermette Declaration, the Debtors became independent companies on April 1, 2016 through a spin-off transaction. *See* Vermette Declaration at 4. The property located at 1260 Loop Road was to have been conveyed to the Debtors in connection with the spin-off transaction. The Debtors' former corporate parent completed the conveyance of 1260 Loop Road to Armstrong Flooring, Inc. during the Chapter 11 Cases so that such property could be sold. To assist the Debtors with the marketing and sale of the 1260 Loop Rd. property, the Debtors employed a real estate broker, Bennett Williams Commercial (the "**Broker**") and real estate counsel, Barley Snyder LLP. *See* Docket Nos. 1064 and 1042. The

---

<sup>2</sup> *See Order (I) Approving Procedures For The Sale Of De Minimis Assets Free And Clear Of Liens, Claims, Interests, And Encumbrances, (II) Approving The Sale Of De Minimis Assets Free And Clear Of Liens, Claims, Interests, And Encumbrances In Accordance With Such Procedures, And (III) Granting Related Relief* [D.I. 721].

<sup>3</sup> *See, e.g., Order Approving Miscellaneous Asset Sales* (Docket No. 801, Entered 9/12/22); *Order Approving Miscellaneous Asset Sales* (Docket No. 848, Entered 9/21/22); *Order Approving Miscellaneous Asset Sales* (Docket No. 904, Entered 10/11/22); *Order Approving Miscellaneous Asset Sales* (Docket No. 926, Entered 10/17/22); and *Order (A) Approving Transactions with Montebello Distribution Associates Regarding (I) Abandonment of Machinery and Equipment, (II) Rejection of Executory Lease of Non-Residential Real Property, and (B) Granting Related Relief* (Docket No. 1007, Entered 11/21/22).

Broker commenced marketing 1260 Loop Rd. in December 2022. After two months of marketing, the Broker identified a purchaser for 1260 Loop Rd.

12. After arms' length negotiations, the Debtors and Purchaser have agreed to a purchase price of \$295,000 (the "**Purchase Price**") and terms for the sale of 1260 Loop Rd. as set forth in the Purchase Agreement. The Debtors believe in their business judgment that they are unlikely to receive a higher offer and that the Purchase Agreement represents the highest and best price obtainable at this time and under current market conditions. Accordingly, the Debtors seek to sell 1260 Loop Rd. to the Purchaser pursuant to a private sale free and clear of all liens, claims, encumbrances, and other interests (except as set forth in the Purchase Agreement).

13. In accordance with Local Rule 6004-1, below is a summary of the proposed sale.<sup>4</sup>

<b>Seller/Debtor</b>	Armstrong Flooring, Inc.
<b>Purchaser</b>	Site Construction Properties, L.P. and/or Assigns
<b>Purchased/Assigned Assets</b>	Purchaser will purchase AFI's owned nonresidential real property located at 1260 Loop Road, Lancaster, Pennsylvania 17601.
<b>Closing and Other Deadlines (Del. Bankr. L.R. 6004-1(b)(iv)(E))</b>	<p><b><u>Sale Hearing:</u></b> The Sale Hearing is proposed to take place on or before March 28, 2023 at 11:30 a.m. At the Sale Hearing, the Debtor will present the proposed sale to the Court for approval.</p> <p><b><u>Closing:</u></b> Settlement shall be held within sixty (60) days upon satisfaction of all contingencies contained in the Purchase Agreement, unless extended by agreement in writing signed by all parties.</p> <p><b><u>Condition to Closing:</u></b> The Bankruptcy Court shall have entered the proposed order approving the Purchase Agreement and transactions provided therein; and Purchaser shall have a forty-five (45) day Due Diligence Period to carry out and perform environmental inspections.</p>
<b>Other Highlighted Terms Under Del. Bankr. L.R. 6004-1(b)(iv)</b>	<p><b><u>Sale to an Insider:</u></b> The proposed purchaser is not an insider (as defined in the Bankruptcy Code) of the Debtors.</p> <p><b><u>Agreements with Management:</u></b> No agreements in connection with the proposed sale have been entered into between Purchaser and the Debtors' management.</p> <p><b><u>Deposit:</u></b> Purchaser provided Broker with a \$20,000 initial deposit (the "<b>Deposit</b>") in connection with the Purchase Agreement. Pursuant to Para. 11 of the Purchase</p>

<sup>4</sup> The following summary is qualified in its entirety by reference to the Purchase Agreement, which shall control in the event of any inconsistency. Capitalized terms used but not otherwise defined shall have the meaning ascribed in the Purchase Agreement.

	<p>Agreement, the Deposit is refundable to Purchaser under certain circumstances, but otherwise may be retained by the Debtors if the Purchaser fails to close.</p> <p><b><u>Releases:</u></b> Pursuant to Para. 26 of the Purchase Agreement, Purchaser “releases, quit claims and forever discharges seller, all brokers, their licensees, employees and any officer or partner of any one of them and any other person, firm or corporation who may be liable by or through them, from any and all claims, losses or demands” as provided therein.</p> <p><b><u>Private Sale/No Competitive Bidding:</u></b> The Sale is a private sale following extensive marketing and competitive bidding for the Debtors’ worldwide assets. No additional marketing or competitive bidding is contemplated.</p> <p><b><u>Interim Arrangements with Proposed Buyer:</u></b> None.</p> <p><b><u>Use of Proceeds:</u></b> The cash proceeds of the proposed sale shall be applied to the Debtors’ costs incurred in seeking approval of the sale, including Broker fees, costs of sale and other professional fees, with one-third of the remaining proceeds paid to the Debtors’ estate and the balance paid to the Debtors’ secured lender Pathlight.</p> <p><b><u>Tax Exemption:</u></b> Not applicable.</p> <p><b><u>Record Retention:</u></b> No books and records are included in the proposed sale.</p> <p><b><u>Sale of Avoidance Actions:</u></b> The proposed sale does not include avoidance claims.</p> <p><b><u>Requested Findings as to Successor Liability:</u></b> The sale of the assets is proposed to be free and clear of all liens, claims and encumbrances with no successor liability resulting from the sale.</p> <p><b><u>Relief from Bankruptcy Rule 6004(h):</u></b> As noted in the Motion, the Debtors request relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).</p>
<p><b>Bid Deadline (Del. Bankr. L.R. 6004-1(c)(i)(B)(1)); Bid Protections (Del. Bankr. L.R. 6004-1(c)(i)(C)); Bid Increments (Del. Bankr. L.R. 6004-1(c)(i)(C)(3)); Modification of Procedures (Del. Bankr. L.R. 6004-1(c)(i)(D)); Backup Bids (Del. Bankr. L.R. 6004-1(c)(i)(E)); Auction (Del. Bankr. L.R. 6004-1(c)(ii))</b></p>	<p>Not applicable.</p>
<p><b>Notice and Consultation Parties</b></p>	<p>The Debtors have provided notice of the proposed transaction to their lenders and official committees through service of this Motion.</p>

14. The DMAS Order requires a separate approval motion for sales in excess of \$250,000. Accordingly, the Debtors file this Motion because the gross sale proceeds (\$295,000) exceed the threshold amount.

**RELIEF REQUESTED**

15. By this Motion, the Debtors seek entry of the Proposed Order, pursuant to sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 6004, and Local Rule 6004-1(b), (i) approving the private sale of 1260 Loop Rd. to the Purchaser as set forth in the Purchase Agreement, and (ii) granting other related relief.

**BASIS FOR RELIEF**

**A. The Sale is Appropriate Under Section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004(f)(1).**

16. Section 363(b) of the Bankruptcy Code provides, in relevant part: “The trustee, 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)(1). This Court’s power under section 363 of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides in relevant part: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” *Id.* § 105(a).

17. Further, pursuant to Bankruptcy Rule 6004(f)(1), sales of property may be by private sale or public auction. The paramount goal of either process is to maximize the proceeds of such sale and the recovery for the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (noting that the debtor “had a fiduciary duty to protect and maximize the estate’s assets.”); *see also CFTC v. Weintraub*, 471 U.S. 343, 352 (1985) (same); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010) (same).

18. Courts review a debtor's decision to use, sell, or lease property out of the ordinary course under the business judgment rule. *In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) (“In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the Debtor] to show that a sound business purpose justifies such actions.’ If the [Debtor’s] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale.” (quoting *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999))).

19. “Under Delaware law, the business-judgment rule operates as a presumption ‘that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest.’” *Continuing Creditors’ Comm. of Star Telecomms., Inc. v. Edgecomb*, 385 F. Supp. 2d 449, 462 (D. Del. 2004) (quoting *Grobow v. Perot*, 539 A.2d 180, 187 (Del. 1988)); accord *Ad Hoc Comm. of Equity Holders of Tectonic Network, Inc. v. Wolford*, 554 F. Supp. 2d 538, 555 n.111 (D. Del. 2008).

20. Courts have applied the following four factors in determining whether a sound business justification exists: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See *In re Del. & Hudson Ry. Co.*, 124 B.R. at 175–76 (adopting *Lionel* factors to consider in determining whether sound business purpose exists for sale outside ordinary course of business in this District); *Lionel Corp.*, 722 F.2d at 1071 (setting forth the “sound business” purpose test); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147–49 (3d Cir. 1986)



(implicitly adopting the articulated business justification test set forth in *Lionel* and adding the “good faith” requirement).

21. Once debtors articulate a valid business justification, their decision to sell property out of the ordinary course of business enjoys a strong “presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company.” *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)). Therefore, any party objecting to a debtor’s proposed asset sale must make a showing of “bad faith, self-interest, or gross negligence,” as courts are loath to interfere with corporate decisions absent such a showing. *See id.* at 656; *see also In re Promise Healthcare Group, LLC*, et al., Case No. 18-12491 (CSS) [D.I. 770] (order approving the private sale of the Debtor’s certain Louisiana facilities upon the Debtor’s showing they properly exercised their business judgment and set forth sound business justifications for pursuing such a private sale, having marketed the private sale and showing that the purchaser was the only bidder for the Louisiana facilities that could close a sale promptly on terms favorable to the Debtors).

22. It is well settled that the sale of assets outside of the ordinary course of business by means of a private sale can, and in appropriate cases should, be approved. *See, e.g., In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion... to conduct public or private sales of estate property.”) (internal quotations and citations omitted); *In re Dewey & LeBeouf*, Case No. 12-12321 (MG), 2012 WL 5386276, at \*6 (Bankr. S.D.N.Y. Nov. 1, 2012) (authorizing private sale of art collection because the debtor established a good business reason to proceed by private sale); *Penn Mut. Life Ins. Co.*

*v. Woodscape Ltd. P'ship (In re Woodscape Ltd. P'ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect to sales of estate property pursuant to section 363 of the Bankruptcy Code, “[t]here is no prohibition against a private sale... and there is no requirement that the sale be by public auction.”); *see also In re Promise Healthcare Group, LLC, et al.*, Case No. 18-12491 (CSS) [D.I. 426, 770, and 778] (orders approving the private sale of the Debtor’s Louisiana facilities and their St. Alexius facility outside the ordinary course of business). Such a sale was specifically contemplated by the DMAS Order.

23. The Debtors, in their business judgment, believe that the sale of 1260 Loop Rd. to the Purchaser represents the fair market value for such property under the circumstances of these cases. Furthermore, the Debtors believe that the proposed sale is reasonable and likely to maximize value given that (a) the Purchaser can consummate the private sale transaction more quickly than if an auction were held, and (b) thus far, no other expressions of interest have been received. The Debtors believe in their business judgment that it is unlikely an auction, or additional time marketing with the Broker, will lead to a higher or otherwise better bid. Accordingly, the Debtors respectfully submit that the proposed private sale of 1260 Loop Rd. should be approved.

**B. Any Sale Should be Approved Free and Clear of Liens, Interests and Encumbrances.**

24. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, interest or encumbrance in such property if, among other things:

- (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 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).

25. Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale. *See In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995) (“Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the Court to approve the proposed sale”); *Scherer v. Fed. Nat’l Mortg. Ass’n (In re Terrace Chalet Apts., Ltd.)*, 159 B.R. 821, 827 (N.D. Ill. 1993) (sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies).

26. The Debtors submit that section 363(f)’s standard for sales free and clear of liens, claims and interests is also easily met, because the Debtors obtained consent from their prepetition and postpetition secured lenders prior to filing the instant Motion. Specifically, 1260 Loop Rd. is collateral of the Debtors’ secured lender Pathlight Capital LP (“**Pathlight**”), which would have a lien on all proceeds from the sale. Pathlight has agreed that all costs related to the sale, including Brokers’ and professional fees, will be paid from the gross proceeds, with one-third of the remaining proceeds paid to the Debtors’ estate and the remaining balance paid over to Pathlight. The Debtors also believe that any parties that do object on the basis that they hold liens or claims against 1260 Loop Rd. will either (a) be holders of liens or claims that are subject to a bona fide dispute or (b) could be compelled to accept cash in satisfaction of their interests. *Cf.* 11 U.S.C. §§ 363(f)(3) & 363(f)(5). Therefore, the Debtors request that the private sale be approved free and clear of all encumbrances and interests, with the proceeds of the Sale to be distributed in accordance with further order.

**C. The Sale is Proposed in Good Faith.**

27. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property 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.

11 U.S.C. § 363(m).

28. Section 363(m) “reflects the . . . ‘policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.’” *Abbotts Dairies of Penn., Inc.*, 788 F.2d at 147 (quoting *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 55 (7th Cir. 1983)). *See also United States v. Salerno*, 932 F.2d 117, 123 (2d Cir. 1991) (noting that section 363(m) furthers the policy of finality in bankruptcy sales and “assists bankruptcy courts in maximizing the price for assets sold in such proceedings”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (same).

29. While the Bankruptcy Code does not define “good faith”, some courts have held that a good faith purchaser is one who “purchases the assets for value, in good faith, and without notice of adverse claims.” *Hardage v. Herring Nat'l Bank*, 837 F.2d 1319, 1323 (5th Cir. 1988) (quoting *Willemain v. Kivitz (In re Willemain)*, 764 F.2d 1019, 1023 (4th Cir. 1985)). Furthermore, the good faith status of a purchaser can be destroyed with evidence of “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014).

30. The private sale has been proposed in good faith. The Purchase Agreement was the product of extensive good faith, arm's length negotiations between the Debtors, on the one hand, and the Purchaser, on the other. The Debtors believe and submit that the sale of 1260 Loop Rd. to the Purchaser pursuant to the terms and conditions of the Purchase Agreement is not the product of collusion or bad faith. No evidence suggests that the Purchase Agreement is anything but the product of arm's length negotiations between the Debtors and the Purchaser. In connection with approval of the proposed private sale, the Debtors request that the Court make a finding that the Purchaser is a good faith purchaser and entitled to the protections of section 363(m) of the Bankruptcy Code.

31. Furthermore, the Debtors are unaware of any circumstances or facts that could be perceived as or that the Purchaser or any other party colluded.

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

32. The Debtors respectfully request that the Court waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h). Timely consummation of the proposed sale is of critical importance to both the Debtors and the Purchaser and is vital to the Debtors' efforts to maximize the value of the Debtors' estates. Accordingly, the Debtors hereby request that the Court waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

**NOTICE AND NO PRIOR REQUEST**

33. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) counsel for the Committee; (iv) the Purchaser; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) counsel to the DIP Lenders; and (viii) any parties

requesting notice pursuant to Rule 2002. In light of the nature of the relief in it, the Debtors respectfully submit that no further notice of this Motion is required.

**WHEREFORE**, the Debtors respectfully request that this Court (i) enter the Proposed Order, substantially in the form of attached hereto as Exhibit A, granting the relief requested in this Motion, and (ii) grant such other and further relief as this Court may deem just and proper.

Dated: Wilmington, Delaware  
March 9, 2023

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Joseph O. Larkin (I.D. No. 4883)  
Carl T. Tullson (I.D. No. 6704)  
Jacqueline M. Dakin (I.D. No. 6650)  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-3000  
Joseph.Larkin@skadden.com  
Carl.Tullson@skadden.com  
Jacqueline.Dakin@skadden.com

- and -

Ron E. Meisler (admitted *pro hac vice*)  
Jennifer Madden (admitted *pro hac vice*)  
155 North Wacker Drive  
Chicago, Illinois 60606-1720  
Telephone: (312) 407-0700  
Ron.Meisler@skadden.com  
Jennifer.Madden@skadden.com

- and -

CHIPMAN BROWN CICERO & COLE, LLP

*/s/ Mark D. Olivere*

Robert A. Weber (I.D. No. 4083)

Mark D. Olivere (I.D. No. 4291)

Hercules Plaza

1313 North Market Street, Suite 5400

Wilmington, Delaware 19801

Telephone: (302) 295-0191

Weber@chipmanbrown.com

Olivere@chipmanbrown.com

*Counsel to Debtors and Debtors-in-Possession*