

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

In re:) Chapter 11
)
AQUION ENERGY, INC.,¹) Case No. 17-10500 (KJC)
)
Debtor.)

**DEBTOR’S MOTION FOR ORDER UNDER SECTIONS 105, 363, 1107 AND 1108 OF
THE BANKRUPTCY CODE (I) APPROVING PRIVATE SALE OF CERTAIN ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS THEREUNDER
AND (II) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor”) moves the Court for the entry of an order, pursuant to sections 105, 363, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) approving the private sale (the “Sale”) of certain machinery and equipment (the “Surplus Assets”) as described in and subject to the terms and conditions of that certain *Bill of Sale and Agreement* (the “Purchase Agreement”) between the Debtor and Federal Machinery & Equipment Company (d.b.a. “Federal Equipment Company”), an Ohio Corporation (the “Buyer”), free and clear of liens, claims, encumbrances, and interests (“Interests”); and (b) granting related relief. In support of this motion (the “Motion”), the Debtor respectfully represents as follows:

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.



Introduction

1. By this Motion, the Debtor seeks authorization for the sale of certain surplus machinery and equipment to the Buyer outside the ordinary course of the Debtor's business. The Surplus Assets to be sold by this private sale are non-core and, as described in more detail below, not included in the ongoing sale process for substantially all the business assets of the Company. The Sale will generate more than \$400,000 for the estate and its creditors. For these reasons, as further discussed below, the Debtor believes that the relief sought in the Motion is a reasonable exercise of the Debtor's business judgment, is in the best interests of the estate, and should be granted.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over 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 February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent 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") 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 in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief sought herein are sections 105, 363, 1107 and 1108 of chapter 11 of the Bankruptcy Code, Bankruptcy Rules 2002(a)(2), 6004, and 9014 and Local Rules 2002-1(b), 6004-1 and 9006-1.

Background

5. On March 8, 2017 (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 31, 2017, the Office of the United States Trustee appointed a committee of unsecured creditors (the "Committee") in this case.

6. The Debtor manufactures saltwater batteries with a proprietary, environmentally-friendly electrochemical design. Based in Pittsburgh, the Debtor was founded in 2008 and had its first commercial product launch in 2014. Designed for stationary energy storage in pristine environments, island locations, homes, and businesses, the Debtor's batteries have been Cradle to Cradle Certified™, an environmental sustainability certification that has never previously been given to a battery producer. The Debtor's battery technology has won multiple prestigious awards including *Popular Science Best of What's New Innovation of the Year* (2014), *MIT Technology Review 50 Smartest Companies* (2015), *Global Cleantech 100 North American Company of the Year* (2017), among others. The Debtor's batteries contain no heavy metals or toxic chemicals and are non-flammable and non-explosive. The Debtor's products include battery stacks, modules and monitoring systems. More than 55 global dealers and distributors sell the Debtor's products directly to end users and other customers that

incorporate the batteries into third party systems and equipment such as inverters, controls, solar/wind generators, gensets, racking, and enclosures.

7. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating the chapter 11 filing, is set forth in detail in the *Declaration of Suzanne Roski, Chief Restructuring Officer, in Support of First Day Motions* (the “First Day Declaration”) and is fully incorporated herein by reference.²

The Debtor’s Marketing Efforts

8. As provided in the First Day Declaration, the Debtor filed its case to undertake a robust, yet expedited, sale of substantially all of its assets. Prior to the Petition Date, the Debtor engaged Citi Global Markets, Inc. (“Citi”) as investment bankers to undertake a marketing process for the Debtor, its assets or to obtain a capital raise. During the pendency of Citi’s engagement, the Debtor attracted several interested parties, but Citi was unsuccessful in attracting a buyer or obtaining a capital raise.

9. Shortly after filing its chapter 11 case, the Debtor reached out to twenty-two parties Citi had contacted during the earlier marketing process and to other parties known to the Debtor who may have an interest in acquiring the Debtor’s business. After the Petition Date, additional parties also began contacting the Debtor expressing interest in acquiring all or substantially all of the Debtor’s assets. To date, thirty-nine such parties have made expressions of interest with thirty-one executing a non-disclosure agreement to permit further due diligence.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

The Debtor anticipates that it will execute an agreement for the purchase of substantially all of its business assets in the near future.

10. In parallel with its efforts to sell substantially all of its core business assets, the Debtor has also continued its efforts to separately sell non-core, obsolete equipment not currently used to manufacture its products, which equipment includes the Surplus Assets. As with its larger sale efforts, these non-core sales continue efforts that began prior to the filing of this chapter 11 case. Prior to the Petition Date, the Debtor occasionally made available for sale assets it deemed surplus to operations or obsolete. In some instances, the Debtor sold individual pieces of equipment to buyers through one-off sales. At other times, the Debtor made available groups of assets through organized sale processes such as on-line auctions conducted by equipment auction houses or resellers. The Debtor held one such auction in February 2017, approximately one month prior to filing for chapter 11 protection, during which bidding did not reach the reserve for any single item.

11. Through these and other efforts, Aquion had marketed for sale certain of the Surplus Assets for up to four years without consummating any transactions. With respect to one large piece of equipment included in the contemplated Sale, Aquion also attempted to negotiate a return or sale to the vendor immediately upon delivery after realizing the Company could not use the item. Separately, the Debtor had engaged, pre- and postpetition, in extensive discussions with a large, international manufacturing company for this same piece of equipment. The interested party conducted a site visit and inspection but was unable to finalize a bid.

The Sale

12. Beginning on the Petition Date and continuing through the date of this Motion, independent third parties have contacted the Debtor's representatives expressing interest in purchasing fixed assets of the Debtor. The Debtor's representatives compiled all such inquiries and added other parties to whom the Debtor had previously sold surplus assets or it thought might be interested in submitting bids. On or about May 1, 2017, after engaging in a number of individual communications with interested buyers for the Surplus Assets, the Debtor sent an email to fifteen parties and subsequently to three additional parties advising them of the availability of certain surplus assets, including the Surplus Assets which are the subject of this Sale. The email provided a link to an electronic data room that contained pictures and other pertinent information about the equipment, a draft Bill of Sale, and indicated a bid deadline of May 5, 2017. The Debtor hosted three parties for site visits and received bids from five parties for all or substantially all of the listed assets and one bid for specific items. The Debtor determined that the Buyer had submitted the highest and best bid at \$400,888.88 on an "as-is-where-is" basis for the Surplus Assets, with no representations or warranties of any kind. On May 9, 2017, after engaging in arm's length negotiations with the Buyer, the Debtor entered into the Purchase Agreement pursuant to which the Debtor agreed to sell to the Buyer the Surplus Assets specifically listed on the exhibits to the Purchase Agreement.

13. The Debtor believes that the Surplus Assets are non-core and not integral to (or included as part of) the sale process it is undertaking for the core business assets of the Company. The Debtor has not used many of the Surplus Assets for months and/or years, has

previously offered many of the assets for sale, and retains many of the assets in a scrap area designated as the “boneyard” signifying the total obsolescence of the items. In fact, the Debtor did not use or even uncrate certain of these Surplus Assets because the Debtor’s technology had changed prior to receipt of the Surplus Assets. Most of the items have been carried on the Debtor’s books and disclosed in its audited financial statements beginning in the year ended December 31, 2014 as “assets held for sale.” Any items not characterized as such have been removed from lists of personal property available to interested parties seeking to purchase substantially all the assets of the Aquion business as a whole. Considering the specialized nature of the Surplus Assets and the extensive marketing described above, the Debtor believes that the consideration to be received under the Purchase Agreement is fair value for the Surplus Assets.

14. In connection with the Purchase Agreement, the Buyer has submitted a deposit of \$40,888.88. The Buyer is not an officer, director, shareholder, or other insider of the Debtor. As of the date hereof, the only liens on the Surplus Assets of which the Debtor is aware are the liens of Trinity Capital Fund II, L.P. (“Trinity”), the Debtor’s prepetition secured lender.³

³ One of the Surplus Assets was obtained with funds from a cost-share arrangement that the Debtor had with the Department of Energy (“DOE”). Pursuant to the terms of the funding, the Debtor is required to seek DOE authorization to sell any asset obtained with funds from the cost-share arrangement with a net book value of \$5,000 or greater. The DOE-funded asset included in the private sale has a net book value of less than \$5,000; accordingly, pursuant to the terms of the cost-share agreement itself the Debtor does not require authorization from the DOE to sell this item.

Relief Requested

15. By this Motion, the Debtor seeks an order (i) authorizing the Debtor to perform under the Purchase Agreement⁴ and (ii) approving the Sale of the Surplus Assets free and clear of Interests.

Authority for the Requested Relief

A. The Proposed Sale of the Surplus Assets Should be Approved Under Sections 363(b) and 365 of the Bankruptcy Code

16. Because the sale of the Surplus Assets continues efforts that pre-date the filing of this chapter 11 case by several years, the Debtor believes that selling the Surplus Assets is in the ordinary course of its business. The Debtor nonetheless brings this Motion to seek approval of the transaction outside the ordinary course of its business. The Court should enter an order granting the relief requested herein because it represents a sound exercise of the Debtor's business judgment pursuant to sections 363(b)(1) and 365 of the Bankruptcy Code and is appropriate under section 105(a) of the Bankruptcy Code.

17. Section 363(b) of the Bankruptcy Code provides, in relevant part, 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)(1). Although section 363 of the Bankruptcy Code does not set forth a standard for determining when a sale or disposition of property of the estate should be authorized, courts in the Third Circuit generally authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *Meyers*

⁴ In compliance with Local Rule 6004-1 and for the convenience of the reader, the salient terms of the transaction as currently set forth in the Purchase Agreement have been summarized and are attached hereto as **Exhibit B**.

v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

18. Specifically, courts in this district have held consistently that the sale of estate assets outside the ordinary course of business is appropriate if: (a) there is a sound business purpose for the sale; (b) the proposed sale price is fair; (c) the debtor has provided interested parties with adequate and reasonable notice; and (d) the buyer has acted in good faith. *See, e.g., In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008); *In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at *7-8 (D. Del. May 20, 2002).

19. Moreover, if a valid business justification exists for the sale of property of the estate, a debtor's decision to sell property out of the ordinary course of business enjoys a strong presumption "that in making a business decision the directors . . . 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 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re Bridgeport Hldgs., Inc.*, 388 B.R. 548, 567 (Bankr. D. Del. 2008) (stating that directors enjoy a presumption of honesty and good faith with respect to negotiating and approving a transaction involving a sale of assets). Parties objecting to the debtor's decision to sell property of the estate must make a showing of "bad faith, self interest or gross negligence." *Integrated Res.*, 147 B.R. at 656; *see also In re Johns Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or

capriciously), courts will generally not entertain objections to the debtor's conduct.”).

Accordingly, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

20. Here, the Debtor respectfully submits that sound business reasons support its decision to enter into the Purchase Agreement. First, in light of the extensive marketing efforts, the Debtor respectfully submits that it is reasonably likely that no bidder will submit a bid approaching, let alone exceeding, the amount offered by the Buyer in the Purchase Agreement. Second, the transaction will help the Debtor to fund an orderly wind-down of its business through this chapter 11 case without incurring additional operating expenses at a time when the Debtor has no operating business. The sale and removal of unused, non-core equipment will allow the Debtor to expedite the exit from its manufacturing facilities upon the closing of a sale of its business, thereby reducing or eliminating any continuing rent as a cost of wind-down. Third, this sale of certain of the Debtor's obsolete or unused machinery and equipment will provide funding for this chapter 11 case and provide additional time for the Debtor to continue to market the remainder of its assets.

21. Accordingly, the Debtor, in its sound business judgment, believes that sale of the Surplus Assets to the Buyer is in the best interests of its estate and that the proposed transaction should be approved by the Court pursuant to section 363(b) of the Bankruptcy Code.

B. The Court Should Authorize the Sale of the Surplus Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests Pursuant to Section 363(f) of the Bankruptcy Code

22. The Debtor also seeks to sell the Surplus Assets free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of any interest in such property 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 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). Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements is sufficient to permit the sale of the Surplus Assets “free and clear” of liens and interests. *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *Decora Indus., Inc.*, 2002 WL 32332749, at *7; *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988). The Court also may authorize the sale of a debtor’s assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) does not apply. *See In re Trans World Airlines, Inc.*, No. 01–0056 (PJW), 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001).

23. As discussed above, the only liens on the Surplus Assets of which the Debtor is aware is the lien of Trinity asserted on all of the Debtor’s assets. The Debtor believes

that Trinity will consent to the Sale free and clear of its liens, with such liens attaching to the proceeds of the Sale, provided that the Debtor shall use such proceeds subject to and in accordance with any order for use of cash collateral and budget and its agreements with the Debtor. In any event, the Debtor submits that the Sale free and clear of every Interest will satisfy at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such Interest will be adequately protected by either being paid in full at the time of closing, or by having it attach to the net proceeds of the Sale, subject to any claims and defenses the Debtor may possess with respect thereto. Thus, a Sale free of Interests is permitted.

C. The Court Should Grant the Buyer the Full Protections Afforded to a Good Faith Buyer Pursuant to Section 363(m) of the Bankruptcy Code

24. Section 363(m) of the Bankruptcy Code provides, in relevant part:

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). Section 363(m) of the Bankruptcy Code thus protects a purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit has stated that a good faith purchaser is “one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Dairies*, 788 F.2d 143, 147 (3d Cir. 1986). To constitute a lack of good faith, a party’s conduct in connection with the sale usually must amount to “fraud, collusion between the purchaser and

other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.” *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

25. Here, there is no fraud or collusion between the Buyer or any of its affiliates and the Debtor. Before the execution of the Purchase Agreement, the Debtor and the Buyer engaged in extensive arm’s-length discussions to reach a deal. The Debtor and the Buyer were represented by separate counsel in connection with the negotiation and documentation of the Purchase Agreement, which the Debtor’s Chief Restructuring Officer approved and ratified. Accordingly, the Debtor requests that the Court determine that the Buyer has negotiated and acted at all times in good faith and, as a result, is entitled to the full protections of a good faith purchaser under section 363(m) of the Bankruptcy Code, and that the Purchase Agreement does not constitute an avoidable transaction pursuant to section 363(n) of the Bankruptcy Code.

D. A Private Sale of the Surplus Assets is Appropriate Under Bankruptcy Rule 6004

26. Bankruptcy Rule 6004(f) and Local Rule 6004-1(b)(iv)(D) permit a debtor to conduct a private sale pursuant to section 363. Specifically, Bankruptcy Rule 6004(f) provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1) (emphasis added); *see also In re Alisa P’ship*, 15 B.R. 802, 802 (Bankr. D. Del 1981) (holding that manner of sale is within the debtor’s discretion); *In re Bakalis*, 220 B.R. 525, 531–32 (Bankr. E.D.N.Y. 1998) (stating that debtor has authority to conduct public or private sales of estate property).

27. Accordingly, in light of Bankruptcy Rule 6004(f) and case law regarding section 363 sales, a debtor may conduct a private sale if a good business reason exists. *See, e.g.*,

In re Pritam Realty, Inc., 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy court's approval of a private sale conducted by a chapter 11 debtor); *In re Condere Corp.*, 228 B.R. 615, 629 (Bankr. S.D. Miss. 1998) (authorizing private sale of debtors' tire company where "[d]ebtor has shown a sufficient business justification for the sale of the assets to the [p]urchaser"); *In re Embrace Sys. Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) ("A large measure of discretion is available to a bankruptcy court in determining whether a private sale should be approved. The court should exercise its discretion based upon the facts and circumstances of the proposed sale."); *In re Wieboldt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale).

28. Indeed, courts in this and other districts have approved private sales of estate property pursuant to section 363(b)(1) when there has been a valid business reason for not conducting an auction. *See, e.g., Buffets Holdings, Inc.*, No. 08-10141 (MFW) (Bankr. D. Del. Feb. 3, 2009) (approving the private sale of real property for approximately \$2.4 million); *In re W.R. Grace & Co.*, No. 01-01139 (JKF) (Bankr. D. Del. Dec. 18, 2008) (approving the private sale of real property for approximately \$3.8 million); *In re Wellman, Inc.*, No. 08-10595 (SMB) (Bankr. S.D.N.Y. Oct. 6, 2008) (approving private sale of industrial complex capable of converting recycled carpet *into* nylon engineered resins for \$17.9 million); *In re W.R. Grace & Co.*, No. 01-01139 (JKF) (Bankr. D. Del. July 23, 2007) (authorizing private sale of business line which designs and manufactures materials used in catalytic converters to remove pollutants produced by engines for approximately \$22 million); *In re Solutia, Inc.*, No. 03-17949

(SCC) (Bankr S.D.N.Y. Dec. 28, 2006) (approving private sale of real property for approximately \$7.1 million).⁵

29. The Debtor submits that the proposed private sale of the Surplus Assets to the Buyer in accordance with the Purchase Agreement is appropriate in light of the facts and circumstances of this chapter 11 case. Prior to entry into the Purchase Agreement, the Debtor marketed to a target group of potential purchasers, set a bid deadline and then valued and considered the bids of five parties who submitted a bid. The Buyer emerged from this process as providing the highest and best bid for the Surplus Assets. Given the proposed purchase price for the Surplus Assets and the competitive bidding process already undertaken by the Debtor, the probability that a competing bidder will actually emerge with an offer higher or better to top the bid does not justify the costs associated with approval of bidding procedures and the scheduling of an auction by this Court.

30. The transaction with the Buyer allows the Debtor to maximize the value of the Surplus Assets and provides much needed liquidity to the Debtor's estate. Because a private sale is specifically authorized under Bankruptcy Rule 6004 and the Debtor believes that the Buyer's offer is the highest and best offer for the Surplus Assets (indeed, the Debtor does not believe any other offer could be obtained on better terms), the Debtor requests that the Court approve the proposed private sale of the Surplus Assets to the Buyer in accordance with the Purchase Agreement.

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtor's counsel.

Waiver of Bankruptcy Rule 6004

31. To implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent these rules are applicable. As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to generate revenues for its estate. Accordingly, the Debtor respectfully requests that the Court waive the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), so that the Debtor may perform its obligations timely under the Purchase Agreement.

Notice

32. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) the Debtor's prepetition lenders; (d) the Buyer; (e) all parties who have expressed a written interest in acquiring some or all of the Debtor's assets; (f) all known holders of liens, claims, and other encumbrances secured by the assets constituting the Surplus Assets; (g) all applicable federal, state, and local taxing authorities, including the Internal Revenue Service; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor respectfully submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

33. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Sale Order, substantially in the form attached hereto as Exhibit C, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: May 10, 2017

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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EXHIBIT A

(Purchase Agreement)

BILL OF SALE AND AGREEMENT

THIS BILL OF SALE AND AGREEMENT (the "**Agreement**") is made and entered into as of May 8th, 2017, by and between Federal Machinery & Equipment Company (d.b.a. "Federal Equipment Company"), an Ohio Corporation (the "**Buyer**"), on the one hand, and Aquion Energy, Inc., a Delaware Corporation (the "**Seller**" and, together with Buyer, the "**Parties**"), Seller being a Debtor and Debtor in Possession under Case No. Case No. 10500 (the "**Case**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

RECITALS

A. Upon satisfaction of the last of the Closing Conditions (as defined below), Seller is selling to Buyer and Buyer is acquiring from Seller Seller's right, title and interest in and to the personal property consisting of the finished goods inventory which is specifically listed or described on **Exhibit "A"** attached hereto and incorporated herein by this reference (collectively, the "**Personal Property**"). For the avoidance of all doubt, the Property shall not include any assets or property of Seller other than that specifically included above.

B. Buyer and Seller wish to provide for the transfer of such right, title and interest in and to the Property and for other terms and conditions applicable to such transfer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Transfer of Assets. Subject to and upon the terms, conditions, disclaimers and acknowledgments hereinafter set forth (including, without limitation, those set forth in Section 4 and the conditions set forth in Section 6, below (collectively, the "**Closing Conditions**"), Seller hereby sells, assigns, transfers, conveys and delivers to Buyer the Property.

2. Purchase Price. The cash purchase price for the Property shall be FOUR HUNDRED THOUSAND EIGHT HUNDRED EIGHTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS (\$400,888.88) (the "**Purchase Price**"), which Buyer shall pay to Seller as follows:

(a) Concurrently with the mutual execution and delivery of this Agreement, Buyer shall deliver to Seller's counsel (in accordance with written wire transfer instructions to be provided by Seller's counsel) a deposit in the amount of ten percent (10%) of the Purchase Price FORTY THOUSAND EIGHTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS (\$40,088.88) (the "**Deposit**") to be held in trust by Seller's counsel. The Deposit shall be delivered to Seller concurrently with the consummation of the transaction contemplated herein (such consummation, the "**Closing**") and shall, at such time, be credited and applied toward payment of the Purchase Price. In the event that the Closing fails to occur by reason of the failure of any condition set forth herein (where such failure is not the result of a default of Buyer's obligations under this Agreement), Buyer shall be entitled to the prompt return of the Deposit.

(b) Concurrently with the satisfaction of the last of the Closing Conditions, Buyer shall pay to Seller in accordance with such written wiring instructions as Seller shall hereafter provide to Buyer (the "**Seller Wiring Instructions**") an amount equal to THREE HUNDRED SIXTY THOUSAND EIGHT HUNDRED DOLLARS (\$360,800.00), representing the balance of the Purchase Price.

3. Sales, Use and Other Taxes. In addition to the Purchase Price, Buyer shall (i) bear and pay any and all sales, purchases, transfer, stamp, documentary stamp, use or similar taxes under the laws of the state(s) where the Property (or any portion thereof) is located, or any subdivision of any such state(s), which are or will be payable by reason of the sale and transfer of the Property (collectively, "**Transfer Taxes**"), and (ii) indemnify, defend, protect, and save and hold Seller harmless of, from and against any and all claims, demands, causes of action, actions, liabilities, obligations, losses, costs and expenses (including, without limitation, court or tribunal costs and reasonable attorneys' fees) as Seller may suffer or incur with respect to any Transfer Taxes.

4. "AS IS" Transaction. Buyer hereby acknowledges and agrees that Seller neither makes nor has made any representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property (including, without limitation, income to be derived or expenses to be incurred in connection with the Property, the physical condition of the Personal Property, the value of the Property (or any portion thereof), the title of the Property (or any portion thereof), what liens or encumbrances may exist and whether the same are valid or enforceable against the Property, any matter relating to any licenses, purchase orders or contracts comprising part of the Property, the merchantability or fitness of the Personal Property or any other portion of the Property for any particular purpose, or any other matter or thing relating to the Property or any portion thereof). Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Buyer has conducted an independent inspection and investigation of the title and physical condition of all portions of the Property and all such other matters relating to or affecting the Property as Buyer deemed necessary or appropriate and Buyer is acquiring the Property based solely upon such independent inspections and investigations. Accordingly, Buyer shall accept the Property at the Closing "**AS IS, "WHERE IS,"**and "**WITH ALL FAULTS.**"

5. Bankruptcy Condition. Both Buyer's and Seller's obligations under this Agreement are subject to Seller's obtaining, on or before June 2nd, 2017, entry of an order authorizing the transaction contemplated herein, which order shall provide that the sale and transfer of the Property at Closing shall be free and clear of liens and encumbrances to the extent provided in Section 363 of the United States Bankruptcy Code and otherwise in form and content reasonably satisfactory to both Buyer and Seller (the "**Sale Order**" attached as **Exhibit "B"**). Seller shall use commercially reasonable efforts to obtain such Sale Order and Buyer shall cooperate in all commercially reasonable respects in such efforts.

6. Additional Closing Conditions. In addition to the condition set forth in Section 5 above:

(a) Buyer's obligations to consummate the transaction contemplated herein shall be conditioned upon the occurrence of the following:

- (i) The Closing shall have occurred by no later than June 2nd, 2017; provided, however, Buyer shall not be entitled to rely upon the condition set forth in this clause (i) should the Closing fail to occur by such date by reason of Buyer's breach or default hereunder.

(b) Seller's obligations to consummate the transaction contemplated herein shall be conditioned upon the occurrence of the following:

- (i) Buyer shall have paid to Seller the portion of the Purchase Price Buyer is required to pay to Seller pursuant to Section 2(b) above; and
- (ii) The Closing shall have occurred by no later than June 2nd, 2017; provided, however, Seller shall not be entitled to rely upon the condition set forth in this clause (ii) should the Closing fail to occur by such date by reason of Seller's breach or default hereunder.

Upon the timely satisfaction of each of the Closing Conditions, the Closing shall be deemed to have occurred. A Closing Condition may be waived or extended only in a writing providing for the same from the party for whose benefit such Closing Condition was included in this Agreement.

7. Miscellaneous.

7.1 Risk of Loss. Notwithstanding anything to the contrary herein, the risk of loss or damage to the Property shall shift to the Buyer immediately upon the satisfaction of the last of the Closing Conditions and the occurrence of the Closing, irrespective of where the Property are located as of the applicable date.

7.2 Attorneys' Fees. In the event that either party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

7.3 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of mailing. Mailed notices shall be addressed as set forth below, but each party may change his address by written notice in accordance with this paragraph.

To Seller:

Facsimile: () -
Email:

With a copy to: Laura Davis Jones, Esq.
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19899-8705(courier 19801)
Fax: 302.652.4400
Email: ljones@pszjlaw.com

To Buyer: Federal Equipment Company
Attention: David Winger
Facsimile No.: 216-271-5210
Email: david@fedequip.com

With a copy to: Federal Equipment Company
Attention: Matt Hicks, General Counsel
Facsimile No.: 216-271-5210
Email: matt.hicks@fedequip.com

7.4 Entire Agreement. This Agreement contains the entire agreement between Buyer and Seller relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

7.5 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto.

7.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

7.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

7.8 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.9 Brokerage Obligations. Seller and Buyer each represent and warrant to the other that such party has incurred no liability to any broker or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without

limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or Seller in connection with this transaction, all such claims shall be handled and paid by the party whose actions form the basis of such claim and such party shall indemnify, defend (with counsel reasonably satisfactory to the party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

7.10 Survival. The respective covenants and agreements of Seller and Buyer herein shall not be deemed waived or otherwise affected by the Closing.

7.11 Binding Effect. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

7.12 Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of Delaware, without regard to its choice of law principles.

7.13 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

7.14 Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

7.15 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

7.16 Bankruptcy Court Jurisdiction. BUYER AND SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT; AND/OR (ii) THE PROPERTY, AND BUYER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION.

7.17 Waiver of Claims. Effective upon the Closing, Buyer hereby waives and fully releases and discharges any and all rights, claims, causes of action, demands, setoffs and interests of whatever type or kind (whether arising in contract or otherwise, whether at law or in equity, and whether liquidated or contingent) (“collectively, **“Claims”**”) against Seller that Buyer may now have or hold. For the avoidance of doubt, the waiver and release set forth in this Section 7.17 (i) shall include any and all purchase orders and other contracts between Seller and Buyer, all of which shall terminate and cease to be of any further force or effect upon the Closing, and (ii) shall not include any Claims against Seller arising pursuant to the express terms of this Agreement.

7.18 Further Assurances. From time to time after the Closing, and without further consideration, Buyer and Seller shall each execute and deliver such other documents and

instruments of transfer, conveyance, assignment, and delivery, and take such other actions as the other may reasonably request in order (i) more effectively to transfer, convey, and assign the Property to the Buyer, and (ii) otherwise to fully consummate the transaction contemplated herein; provided that nothing in this Section 7.18 shall be deemed to impose on either Buyer or Seller any obligation to incur any material cost or expense or to initiate or join in any litigation or other action or proceeding, nor shall Seller be required to keep the Case open merely to enable it to continue performing its obligations under this provision.

7.19 Buyer's Obligations In Connection With Removal of Property. Not later than fourteen (14) days following the Closing, Buyer shall remove, or cause to be removed from Seller's facility located at 1001 Technology Drive, Mount Pleasant, PA 15666 and 32 39th St., Pittsburgh, PA 15201 (collectively, the "**Real Property**") at Buyer's sole cost and expense, all of the Property. Buyer shall cause such removal to be accomplished in such manner as will minimize any damage to the Real Property or any other assets of Seller or any other party having an interest in the Real Property. Buyer shall, at Buyer's sole cost and expense, immediately cause any damage to the Real Property or any other assets resulting from Buyer's removal, handling, shipping, disposition or other activities in connection with the Property to be fully and completely repaired or restored. As a condition to Buyer's right to enter upon the Real Property to remove or cause the removal of the Property, however, Buyer shall provide to Seller a certificate of insurance which names Seller, Seller's bankruptcy estate, and Seller's affiliates and, if applicable, the landlord under lease pursuant to which Seller occupies the Real Property, as additional insureds and which evidences a general public liability insurance policy (issued by an insurer, in an amount and otherwise in form and content satisfactory to Seller) which covers Seller and such other additional insureds against any loss, damage or liability as Seller or such other additional insureds may suffer or incur in connection with Buyer's removal of the Property as contemplated by this Section 7.19; provided, however, Buyer expressly agrees that the coverage amounts under such insurance policy shall not be deemed to limit Buyer's obligations to Seller or the other indemnitees identified in the indemnification provision set forth below in this Section 7.19. Buyer shall indemnify, defend (with counsel satisfactory to Seller) and protect and hold Seller, Seller's bankruptcy estate, Seller's affiliates, the landlord of the Real Property, if any, and the respective successors and assigns of each of the foregoing indemnitees harmless of, from and against any and all claims, demands, losses, damages, liabilities, obligations, actions, causes of action and costs and expenses (including, without limitation, all court costs and all attorneys' fees, costs and charges) as Seller or such other indemnitees may suffer or incur in connection Buyer's or Buyer's representatives', employees', agents', contractors', shippers' removal or handling of the Property at or from the Real Property. It is expressly understood that Buyer shall bear any and all costs and expenses of packing, shipping and handling the Property following its removal from the Real Property.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale and Agreement as of the day and year first above written.

SELLER:

**Aquion Energy, Inc., a
Delaware corporation
and Debtor and Debtor in Possession**

By: _____
Name: Suzanne Roski
Its: Chief Restructuring Officer

BUYER:

**Federal Machinery & Equipment Company (d.b.a "Federal
Equipment Company"),
an Ohio Corporation**

By: MRZ
Name: ~~David Winger~~ *MATTHEW R. HICKS*
Its: ~~Vice President~~ *C.O.O.*

EXHIBIT "A" – Equipment / Personal Property List

Ref#	Description	Asset #	Tag#	Manufacturer	Model	Capacity/Size	Year
1	Autocon Mixer (OS-10 Autocon Mixer)	W/M/L01.02.00001		Autocon	OS-10/SS-DB		
2	Fluid Energy Jet Mill (Model 24 Micro Jet)	W/M/L01.02.00002		Fluid Energy			
3	Littelford Mixer Jacketed Plow blender	W/M/L01.06.00003	1206	Littelford	FKM-4200D	4200L	
4	Eirich R 19	W/M/L01.41.00003		Eirich	R19	1500L	2004
5	Eirich R 24	W/M/L01.03.00002		Eirich	R24	2250L	2013
6	Wyssmont Turbo Dyer	W/M/L01.41.00002		Wyssmont	OE-20		
7	Centrifuge	201	1175	Heinkel	HF500		1993
8	2000L 316SS Reactor	202	1176	dei INC		2000L	
9	Littelford Mixer 130L Plowblender	133	1131	Littelford	FM-130	130L	
10	Accurate Feeder			Schneek Accurate	73441-01A-MECVMI		2002
11	Clausing 15" Lathe	49	1047	Clausing	Colchester 15	15"	
12	Clausing 600 Radial Drill	210	W-1020	Clausing	CL920A		
13	Clausing Surface Grinder	231	W-1023	Clausing	CSG-818H	8"x18"	2012
14	Edwards Vacuum Pump	146	1140	Edwards	80 Two Stage		
15	Haas VF-2 Vertical CNC Mill	56/58	1054/1056	Haas	2		1997
16	Littelford 600L Plow Blender	250	W-1069	Littelford	FKM-600-D	600L	
17	Rollin Bandsaw	211	W-1017	Roll-In Saw	JE1320		2012
18	Fitzpatrick Chilsonator	1059	61	Fitzpatrick	4LX10D	4x10	
19	Bartlet Snow Rotary Calciner (2 units)			Bartlet Snow			
20	Alexanderwerks Compactor Granulator	W/M/L01.03.000001		Alexanderwerks	PP500	16"x90"	

Exhibit "B" – Bankruptcy Court Sale Order

[TO BE ATTACHED]

EXHIBIT B

(Highlighted Provisions Pursuant to Del. Bankr. L.R. 6004-1)

In accordance with Local Rule 6004-1, the Debtor respectfully represents the following:

- (1) **Sale to an Insider**: The Buyer is not an insider of the Debtor.
- (2) **Agreements with Management**: Not applicable to Sale.
- (3) **Releases**: Effective upon the Closing, the Buyer waives and fully releases and discharges any and all rights, claims, causes of action, demands, setoffs and interests of whatever type or kind (whether arising in contract or otherwise, whether at law or in equity, and whether liquidated or contingent) against Aquion that Buyer may now have or hold.
- (4) **Private Sale/No Competitive Bidding**: The Sale is being proposed as a private sale. No auction is contemplated. Competitive bidding was accomplished through the Debtor's marketing process as detailed in the Motion. The proposed Sale is subject to higher and better bids that may be received prior to entry of an order approving the Motion.
- (5) **Closing and Other Deadlines**: Both Buyer's and Debtor's obligations under the Purchase Agreement are subject to Debtor obtaining, on or before June 2, 2017, entry of an order authorizing the transaction contemplated herein, which order shall provide that the sale and transfer of the Property at Closing shall be free and clear of liens and encumbrances to the extent provided in Section 363 of the United States Bankruptcy Code and otherwise in form and content reasonably satisfactory to both Buyer and Debtor.
- (6) **Good Faith Deposit**: Concurrently with the mutual execution and delivery of the Purchase Agreement, Buyer delivered to Seller's counsel (in accordance with written wire transfer instructions to be provided by Seller's counsel) a deposit in the amount of ten percent (10%) of the Purchase Price FORTY THOUSAND EIGHTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS (\$40,088.88) held in trust by Debtor's counsel. In the event that the Closing fails to occur by reason of the failure of any condition set forth in the Purchase Agreement (where such failure is not the result of a default of Buyer's obligations), Buyer shall be entitled to the prompt return of the deposit.
- (7) **Interim Arrangements with Proposed Buyer**: The Debtor has not entered into any interim arrangements with the Buyer.
- (8) **Use of Proceeds**: Upon Closing, the net sale proceeds shall be, to the extent permitted and appropriate, treated as cash collateral and shall not be used except to meet obligations payable in connection with the Sale.
- (9) **Tax Exemption**: No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Sale.
- (10) **Record Retention**: Not applicable to Sale.

EXHIBIT C

(Proposed Order)

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

In re:)	Chapter 11
)	
AQUION ENERGY, INC., ¹)	Case No. 17-10500 (KJC)
)	
Debtor.)	Docket Ref. No. _____

ORDER GRANTING DEBTOR’S MOTION FOR ORDER UNDER SECTIONS 105, 363, 365, 1107 AND 1108 OF THE BANKRUPTCY CODE (I) APPROVING PRIVATE SALE OF CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS THEREUNDER; AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² filed by the debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case seeking entry of an Order under sections 105, 363, 365, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) (a) approving the private sale (the “Sale”) of certain machinery and equipment (the “Surplus Assets”) as described in and subject to the terms and conditions of that certain *Bill of Sale and Agreement* (the “Purchase Agreement”) between the Debtor and Federal Machinery & Equipment Company (d.b.a. “Federal Equipment Company”), an Ohio Corporation (the “Buyer”), free and clear of liens, claims, encumbrances, and interests (“Interests”); and (b) granting related relief; and finding that notice of the Motion was appropriate and sufficient and that no other notice need be given, after due deliberation and sufficient cause appearing therefor;

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

² Unless otherwise noted, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion is granted and approved in all respects.
2. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. § 1334.
3. As evidenced by the declarations of service previously filed with this Court, proper, timely, adequate and sufficient notice of the Motion, the Hearing and the Sale has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, and no other or further notice of the Motion, the Hearing or of the entry of this order is required.
4. All objections to the Motion not withdrawn are overruled and denied.
5. Where appropriate herein, findings of fact shall be deemed conclusions of law and conclusions of law shall be deemed findings of fact.
7. The Sale of the Surplus Assets to Buyer on the terms and conditions set forth in the Purchase Agreement is hereby approved.
8. The Debtor is authorized to proceed with the Sale. This Order shall constitute all approvals and consents, if any, required by applicable business, corporation, limited liability company, trust and other laws of applicable governmental units with respect to the implementation and consummation of the Purchase Agreement and this Order and the transactions contemplated thereby and hereby.
9. Upon the closing date, all right, title and interest in and to the Surplus

Assets shall be immediately vested in the Buyer pursuant to section 363(b) and (f) of the Bankruptcy Code free and clear of Interests.

10. Effective upon the Closing Date, any Interests against the Surplus Assets shall attach to the proceeds of the Purchase Agreement with the same extent, validity, priority and effect, if any, as the Interests formerly had against the Surplus Assets, subject to the Debtor's ability to challenge the extent, validity, priority and effect of the Interests (except to the extent such ability is limited by any order granting the Debtor's use of cash collateral).

11. This Order is and shall be effective as a determination that all Interests existing as to the Surplus Assets conveyed to the Buyer have, effective as of the closing date, been and hereby are terminated and declared to be unconditionally released, discharged and terminated, and such determination shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, administrative agencies or units, governmental departments or units, 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 the Surplus Assets conveyed to the Buyer. Each of the Buyer and the Debtor may take such further steps and execute such further documents, assignments, instruments and papers to implement and effectuate the transactions contemplated in this paragraph. All Interests of record as of the date of this Order and the closing date shall be forthwith removed and stricken as against the Surplus Assets.

12. As the Sale was non-collusive, fair and reasonable and conducted in good

faith, and the transactions contemplated by the Purchase Agreement have been bargained for and undertaken by the Debtor and the Buyer at arm's length and without collusion, the Sale approved by this Order is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

13. The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered converting the Debtor's case from Chapter 11 to a case under Chapter 7 of the Bankruptcy Code.

14. The terms and provisions of the Purchase Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, any trustee appointed in this case (whether in Chapter 7 or Chapter 11), its creditors, the Buyer and its respective affiliates, successors and assigns, and any affected third parties, including but not limited to, any and all persons asserting a claim against or interest in the Debtor's estate or the Surplus Assets.

15. Because the Court finds that the Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, in the event that the parties to the Sale consummate the transactions contemplated thereby while an appeal of this Order is pending, the Buyer shall be entitled to rely upon the protections of section 363(m) of the Bankruptcy Code, absent any stay pending appeal granted by a court of competent jurisdiction prior to such consummation.

16. This Court retains jurisdiction to:

a. Interpret, implement and enforce the terms and provisions of this Order and the terms of the Purchase Agreement, all amendments thereto and any waivers and

consents thereunder and of each of the agreements executed in connection therewith or related thereto;

b. Until the entry of final decrees in this case, resolve any disputes arising under or related to the Sale; and

c. Adjudicate all issues concerning alleged Interests and any other alleged interests in and to the Surplus Assets or the proceeds of the Sale, including the extent, validity, enforceability, priority and nature of all such alleged interests relating to the proceeds of the Sale.

17. Notwithstanding Bankruptcy Rules 6004 and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing, and the Motion or notice thereof shall be deemed to provide sufficient notice of the Debtor's request for waiver of the otherwise applicable stay of the order. This Order shall be effective immediately upon entry pursuant to Rule 7062 and 9014 of the Federal Rules of Bankruptcy Procedure.

Dated: _____, 2017

The Honorable Kevin J. Carey
United States Bankruptcy Judge