

This order is **SIGNED**.

Dated: May 26, 2016



JOEL T. MARKER
U.S. Bankruptcy Judge



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

<p>In re:</p> <p>M SPACE HOLDINGS, LLC,</p> <p>Debtor.</p>	<p>Bankruptcy No. 16-24384</p> <p>Chapter 11</p> <p>Honorable Joel T. Marker</p>
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ORDER GRANTING DEBTOR’S MOTION FOR AN ORDER APPROVING PROCEDURES TO SELL CERTAIN *DE MINIMIS* ASSETS, FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES WITHOUT FURTHER COURT APPROVAL

This matter coming before the Court on the *Motion for an Order Approving Procedures to Sell Certain De Minimis Assets, Free and Clear of Liens, Claims and Encumbrances Without Further Court Approval* (the “**Motion**”)¹ filed by M Space Holdings, LLC (the “**Debtor**”); and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(b), (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (iii)

¹ Terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

notice of the Motion was sufficient under the circumstances, and no additional notice of or a hearing on the Motion is required; and there being no objections to the requested relief; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found and determined that the relief granted herein is in the best interests of the Debtors' estates and creditors, it is hereby

ORDERED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. The Debtor is authorized to consummate any sales of real and personal property outside of the ordinary course of business subject to an aggregate purchase price cap for such sales of \$1,000,000 (the "*De Minimis Assets*"), and subject to (a) any requisite consents required and (b) the Sale Notice Procedures (as defined below), as applicable, and the other terms of this Order set forth below, but without further notice or further Court approval. Any sales of *De Minimis Assets* shall be free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. § 363(f), with any such liens, claims, and encumbrances attaching to the net sale proceeds with the same force, validity, priority, amount perfection and effect, and subject to the same defenses, claims and offsets of the Debtors, as such liens, claims, and encumbrances had on the property immediately prior to the sale. Notwithstanding anything to the contrary set forth in the Motion or in this Order, all sales of *De Minimis Assets* shall be Dispositions (as such term is defined in the Cash Collateral Orders), and the Debtor's use, or payment to Agent for the benefit of the Secured Parties, of the Proceeds (as such term is defined in the Cash Collateral Order)

thereof shall be subject in all respects to the terms and conditions of the Cash Collateral Order and the Approved Budget (as such term is defined therein).

3. Individual sales of *De Minimis* Assets with gross sales prices of less than \$250,000 are approved subject to the following notice procedures (the “**Sale Notice Procedures**”):

- (a) The Debtor will give notice of each proposed sale (the “**Sale Notice**”), to (i) members of and any counsel to any Committee appointed in this case, and until an Official Committee of Unsecured Creditors is appointed in this case, to the 20 largest unsecured creditors as shown on Official Form 204 filed in this case; (ii) counsel to PNC and HSBC; (iii) the US Trustee’s office, (iv) any other known holder of a lien, claim or encumbrance against the specific property to be sold; and (v) the proposed purchaser (the “**Proposed Purchaser**”) (collectively, the “**Sale Notice Parties**”).

The Sale Notice will be served on the Sale Notice Parties by facsimile or e-mail, if possible, and by overnight mail. The Sale Notice will specify (i) the assets to be sold; (ii) the identity of the Proposed Purchaser (including a statement that the Proposed Purchaser is not an “insider” as defined in Section 101(31) of the Bankruptcy Code); (iii) the proposed sale price; and (iv) a copy of any documentation executed in contemplation of the transaction. The Debtor may, but is not required to, file a copy of the Sale Notice with the Court.

- (b) The Sale Notice Parties will have until 4:00 p.m. (prevailing Mountain Time) on the fifth business day following the service of the Sale Notice (the “**Objection Deadline**”) to object to the Proposed Sale. Any such objection (an “**Objection**”) must be: (i) made in writing, stating the objection with specificity; and (ii) filed with the Court and served on counsel to the Debtor and the other Sale Notice Parties so as to be received by the Objection Deadline. The Objection Deadline and required service addresses will be identified in the Sale Notice.
- (c) If (i) no Objection is properly filed and served by the Objection Deadline, and (ii) the Debtor has obtained the consent of the Secured Parties and any party asserting a lien in the property to be sold, the Debtor will be authorized, without further notice and without further Court approval, to:

- (i) consummate the sale of the *De Minimis* Assets in accordance with the terms and conditions of the underlying contract or contracts and (ii) take such other actions as are necessary to close the transaction and collect the proceeds of such sale.
- (d) If a Sale Notice Party files and serves an Objection to the Proposed Sale by the Objection Deadline, the Debtor and such objecting party will use good faith efforts to resolve the objection consensually. If the Debtor and the objecting Sale Notice Party are unable to resolve the objection, the Debtor will not consummate the proposed transaction without first obtaining Court approval of such Proposed Sale upon notice and a hearing; *provided, however*, that, with the agreement of the Proposed Purchaser, the Debtor may consummate any portion of the Proposed Sale that is not a subject of the Objection.
- (e) In the event the terms of a proposed sale or transfer are materially amended after transmittal of the Sale Notice but prior to the Sale Objection Deadline, the Debtor will send a revised Sale Notice to the Sale Notice Parties. The Sale Objection Deadline will be extended such that the Sale Notice Parties will have an additional five (5) calendar days to object in accordance with the Sale Notice Procedures.
- (f) Any valid and enforceable liens on the property to be sold will attach to the net proceeds of the Proposed Sale in the same priority as existed prior to such sale and subject to any claims and defenses that the Debtor may possess with respect thereto (except, with respect to Agent and Secured Parties, to the extent not waived and/or released pursuant to the Cash Collateral Orders). Net sale proceeds will be paid and/or utilized by the Debtor in accordance with the terms of the Approved Budget and the Cash Collateral Orders.
- (g) To the extent that a competing bid is received for the purchase of *De Minimis* Assets in a particular Proposed Sale after service of the Sale Notice that, in the Debtor's sole discretion in the exercise of its business judgment, materially exceeds the value of the purchase price contained in the Sale Notice, then the Debtor may file and serve an amended Sale Notice for the Proposed Sale to the subsequent bidder pursuant to the Sale Notice Procedures, even if the proposed purchase price exceeds the Sale Cap.
- (h) The Debtor may consummate a Proposed Sale prior to the expiration of the applicable Objection Deadline if the Debtor obtains each Sale Notice

Party's written consent to the Proposed Sale. The applicable Proposed Sale will be deemed final and fully authorized by the Court upon either (i) the expiration of the Objection Deadline without the assertion of any Objections or (ii) the written consent of all Notice Parties.

4. The Sale Notice shall be in substantial form to the report attached hereto as

Exhibit A.

5. If the Debtor fails to close on the Anticipated Sales within 45 days of entry of this Order, the projects intended to be sold through the Anticipated Sales may be marketed for sale by the Disposition Agent, as defined in the Motion for Interim Order Authorizing Debtor's Use of Collateral and Cash Collateral And Granting Adequate Protection and Lien filed contemporaneously herewith.

6. Upon consummation of a Proposed Sale, the Debtor shall file with the Court a sales report describing the assets sold, the buyer, and the sale price (the "**Sales Report**") in substantial form to the report attached hereto as **Exhibit B**. The Sales Report will be served via e-mail to the Sale Notice Parties.

7. Notwithstanding any other provision of this Order, this Order does not apply to sales to insiders, as such term is defined in section 101(31).

8. The 14-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived with respect to each Proposed Sale conducted in accordance with this Order, and the Debtor may close Proposed Sales as set forth herein without reference to such stay.

9. Nothing in the foregoing Sale Notice Procedures shall prevent the Debtor, in its sole discretion, from seeking Court approval of any Proposed Sale upon notice and a hearing or,

if necessary to comply with a condition on a sale or transfer imposed by a purchaser, to submit a separate order to the Court along with a notice of presentment to be entered without need for a hearing on the matter.

10. Sales of *De Minimis* Assets shall be deemed to be arm's-length transactions entitled to the protections of section 363(m) of the Bankruptcy Code.

11. All purchasers or transferees shall take *De Minimis* Assets sold by the Debtor free and clear of liens, claims and interests pursuant to section 363(f) of the Bankruptcy Code, and "as is" and "where is" without any representations or warranties from the Debtor as to quality or fitness for either their intended purposes or any particular purposes, pursuant to the authority granted in this Order.

12. The Debtor and its respective officers, employees and agents are authorized to perform all obligations, take whatever actions may be necessary or appropriate and issue, execute and deliver whatever documents may be necessary or appropriate to implement and effectuate any disposition of *De Minimis* Assets.

13. Each and every federal, state and local government agency or department is hereby directed to accept any and all documents and instruments necessary or appropriate to consummate the disposition of *De Minimis* Assets. The register or recorder of deeds (or other similar recording agency) is hereby directed to accept and include a certified copy of this Order along with any other appropriate conveyance documents used to record and index the transfer of any *De Minimis* Assets in the appropriate public records.

14. No further orders of this Court are necessary to effectuate the terms set forth herein for the transactions contemplated herein.

15. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

16. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation and/or enforcement of this Order.

---END OF DOCUMENT---

Approved as to form:

HAHN & HESSEN

/s/ Joshua I. Divack
Joshua I. Divack
Attorneys for Secured Parties
Office of U.S. Trustee

/s/ Peter J. Kuhn
Peter J. Kuhn
Trial Attorney for Office of U.S. Trustee

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

In re:	Bankruptcy No. 16-24384
M SPACE HOLDINGS, LLC,	Chapter 11
Debtor.	Honorable Joel T. Marker

**NOTICE OF *DE MINIMIS* ASSET SALE, FREE AND CLEAR OF LIENS, CLAIMS
AND ENCUMBRANCES**

PLEASE TAKE NOTICE that on May 19, 2016, M Space Holdings, LLC (the “**Debtor**”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that on May __, 2016, the United States Bankruptcy Court for the District of Utah entered an Order Establishing Procedures for the Sale of Certain *De Minimis* Assets (the “**Sale Order**”), Docket No. [__], authorizing the Debtor to sell certain surplus, obsolete, non-core, unused, or burdensome assets (collectively, the “*De Minimis Assets*”).

PLEASE TAKE FURTHER NOTICE that pursuant to the Sale Order, the Debtor proposes to sell the *De Minimis* Assets as set forth on the attached **Exhibit A** (the “**Assets**”).

PLEASE TAKE FURTHER NOTICE that the Debtor represents and believes that to the best of its knowledge (i) the proposed sale has been negotiated in good faith and pursuant to arm’s length negotiations and (ii) the buyer is purchasing the Assets in good faith.



PLEASE TAKE FURTHER NOTICE that pursuant to the Sale Order, any recipient of this notice will have until 4:00 p.m. (prevailing Mountain Time) on the fifth business day following the service of the Sale Notice (the “**Objection Deadline**”) to object to the Proposed Sale and the payment of any Commissions. Any such objection (an “**Objection**”) must be: (i) made in writing, stating the objection with specificity; and (ii) filed with the Court and served on counsel to the Debtor and the other Sale Notice Parties so as to be received by the Objection Deadline. The Objection Deadline and required service addresses are identified in **Exhibit A** to this Sale Notice.

Date: _____, 2016

Respectfully submitted,

HOLLAND & HART LLP

/s/ Sherilyn A. Olsen

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Proposed Attorneys for Debtor

Approved by:

M Space Holdings, LLC

By _____
Its _____

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

In re:

M SPACE HOLDINGS, LLC,

Debtor.

Bankruptcy No. 16-24384

Chapter 11

Honorable Joel T. Marker

***DE MINIMIS* ASSET SALE REPORT**

Pursuant to this Court's Order Establishing Procedures for the Sale of Certain *De Minimis* Assets (the "**Sale Order**"), Docket No. [___], entered on May [___], 2016, M Space Holdings, LLC (the "**Debtor-in-Possession**") submits this Sale Report relating to the sale of [_____] located in [_____] (the "Assets").

1. On [_____] , the Debtor-in-Possession entered into a [_____] (the "Purchase Agreement") with [_____] (the "Buyer") for the sale of the Assets.

2. In accordance with the Sale Order, on [_____] , the Debtor-in-Possession provided notice of the proposed sale to (i) the members of and counsel to the Unsecured Creditors Committee appointed in this case [or to the 20 largest unsecured creditors



as shown on Official Form 204 filed in this case]; (ii) counsel to PNC and HSBC; (iii) the US Trustee's office, (iv) _____ [any other known holder of a lien, claim or encumbrance against the specific property to be sold]; and (v) the Buyer.

3. No party objected to the Proposed Sale.

4. The sale of the Assets closed on [_____] for the gross sales price of [\$_____]. The Debtor-in-Possession has received the proceeds of the sale.

Date: _____, 2016

Respectfully submitted,

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