

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: : **Chapter 11**
:
SPECTRUM ALLIANCE, LP, :
:
Debtor. :
: **Bankruptcy No. 17-14250(JKF)**

MOTION OF SPECTRUM ALLIANCE, LP FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 363 AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002, 6004 AND 9013 (I) SCHEDULING AN OPEN AUCTION OF ALL OF THE DEBTOR’S ASSETS, AS A BULK SALE OR ON AN INDIVIDUAL BASIS, (II) APPROVING FORM, MANNER AND NOTICE OF BIDDING PROCEDURES, (III) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (IV) SCHEDULING AN EXPEDITED HEARING AND REDUCING THE NOTICE PERIOD, AND (V) GRANTING RELATED RELIEF

Spectrum Alliance, LP (the “Debtor”), by and through undersigned counsel, Ciardi Ciardi & Astin, hereby submits this motion for the entry of an order (I) scheduling an open auction of the Debtor’s Assets, either as a bulk sale or on an individual basis (the “Auction”), (II) approving the form, manner and notice of bidding procedures, (III) authorizing the sale of assets, described herein, free and clear of liens, claims and encumbrances, (IV) scheduling an expedited hearing and reducing the notice period, and (V) granting related relief (the “Motion”), and, in support thereof, respectfully avers as follows:

JURISDICTION

1. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief

requested herein are §§105 and 363 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9013.

BACKGROUND

2. On June 20, 2017 (the “Filing Date”), the Debtor filed a voluntary petition for reorganization pursuant to chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

3. Since the Filing Date, the Debtor has remained in possession of its assets and continued management of its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. An official committee of unsecured creditors (the “Committee”) was appointed by the Office of the United States Trustee on July 7, 2017. See Docket Item 36.

5. An official committee of equity security holders (the “Equity Security Committee”) was appointed by the Office of the United States Trustee on September 8, 2017. See Docket Item 120.

6. Formed in 2001, the Debtor is a private, open-ended investment fund comprising both stabilized and developmental real estate assets located in New Jersey, Pennsylvania, and Delaware. The Debtor focuses on two property types: Class A suburban office and suburban retail. Spectrum is a Pennsylvania limited partnership, with each of its properties separately owned by a limited liability company or limited partnership in accordance with institutional financing requirements. Ownership interests in the Debtor are structured as limited partnership interests, denominated in “Units”.

7. The Debtor owns all or a portion of various subsidiary entities that hold real estate. The income-producing entities owned by the Debtor are set forth below (collectively, the “Stabilized Portfolio”):

(a) **Cedar Hill Shopping Center:** VSC-EE, LLC owns Units 2A, 2B, 3 and 4 and VSC-5, LLC, a debtor-in-possession (identified with bankruptcy case number (17-17848)) owns Unit 5 in the Cedar Hill Shopping Center Condominium in Voorhees Township, Camden County, New Jersey. The property is a retail power center comprised of nearly 400,000 rentable square feet (approximately 360,000 constructed, with additional development pending). Shem Creek Cedar Hill, LLC has a first lien on Units 2A, 2B, 3 and 4. MAREIF has a first lien on Unit 5.

(b) **Hillcrest Shopping Center:** HC Spectrum Partners, LP owns a 78.38% tenant-in-common interest in this approximately 133,797 square foot community shopping center located in the Borough of Lansdale, Montgomery County, Pennsylvania. Malvern Federal Savings Bank has a first lien on the property.

(c) **Towamencin Corporate Center:** CB Spectrum Partners, LP (“CB”) owns this approximately 77,000 square foot, three-story office building and a 550 car parking garage located at 1690 Sumneytown Pike, Kulpsville, Montgomery County, Pennsylvania, also known as Unit 4 in the Kulpsville Business Campus, a Condominium. The Debtor owns a 51.1% limited partnership interest in CB and 1690 Partners, LLC owns a 48.9% limited partnership interest in CB.

(d) **Mount Laurel Corporate Center:** ML Spectrum Partners DE, LLC owns a tenant-in-common interest in an approximately 87,011 square foot office building located at the intersection of Route 73 and Howard Boulevard in Mount Laurel, Burlington County, New Jersey.¹ Wells Fargo Commercial Mortgage Servicing services the first lien CMBS loan on this property.

(e) **Gwynedd Corporate Center:** GCC Building Associates, LP owns a 75.03%

¹ ML Spectrum Partners DE, LLC owns at least 22% of the tenant-in-common interest in this corporate center. The Debtor believes that it is actually a 33.33% tenant in common owner but, per this Motion, is only selling its interest (which is at least a 22% ownership interest).

tenant-in-common interest in Buildings 1 and 2, and 100% of Building 3, in this three-building, approximately 122,803 square foot office complex located on PA Route 63 (Welsh Road) in North Wales, Montgomery County, Pennsylvania. The property was formed as a condominium known as the Gwynedd Corporate Center, a Condominium. Shem Creek GCC, LLC has a first lien on each of the condominium units comprising the property.

The Debtor also owns all or a portion of four (4) entities that own title to undeveloped land assets as follows (collectively, the “Undeveloped Land Portfolio”):

(a) **Lehighton**. Spectrum 209 Partners, LP owns approximately 9.3 acres of undeveloped land in Carbon County, Pennsylvania. Harleysville National Bank has a first mortgage on this property.

(b) **Hawthorne Court**. Hawthorne Court Associates, LP owns two condominium units on this approximately 13 acre parcel of undeveloped land in North Wales, Montgomery County, Pennsylvania. Wohlsen Construction holds a first lien on the condominium units and appurtenances owned by the Debtor.

(c) **Cedar Lake**. MVI Spectrum Partners, LLC owns approximately 10 acres of undeveloped land in Voorhees, Camden County, New Jersey. MAREIF holds a first mortgage on this land. Luciano DiVentura has a preferred equity interest in MVI Spectrum Partners, LLC.

(d) **Pond Building**. PB Spectrum Partners, LP owns an approximately 2.23 acre tract (also known as Unit 6 of the Kulpville Business Campus, a Condominium) in Kulpville, Montgomery County, Pennsylvania. The International Union of Operating Engineers of Eastern Pennsylvania and Delaware Pension Fund holds a \$10,000,000 preferred equity position in PB Spectrum Partners, LP and has executed on a pledge of the Debtor’s Limited Partnership interest in PB Spectrum Partners, LP.

8. The Debtor seeks to auction off all of its interests in the Stabilized Portfolio including its interests in VSC-EE, LLC, VSC-5, LLC, HC Spectrum Partners, LP, CB Spectrum Partners, LP, ML Spectrum Partners DE, LLC and GCC Building Associates, LP, along with their respective General Partnership interest in SAS-CB, LLC, Spectrum Alliance Services GCC, LLC, SAS-HC, LLC, ML Spectrum Partners, LLC and Spectrum Alliance Services ML, LLC and SAS-EE, LLC; MVI Spectrum Partners, LLC, along with its respective General Partnership and Managing Member interest in that entity and any other entity through which the Debtor directly or indirectly owns any part of the Stabilized Portfolio; the Debtor's profit sharing and development rights in the CSC Project to be identified. This shall also include all fixtures, furniture, computers, records, files, websites, approvals, permits plans and all personal property of any nature or kind, except fund level cash for Spectrum Alliance, L.P. For purposes of this Motion, we will refer to this portfolio of limited partnership interests, general partnership interests, membership interests and managing membership interest as the "Stabilized Property". The Stabilized Property shall include all claims that Seller or its General Partner may have against all related tenants in common ("TIC") or other members, partners or owners, for money owed for unpaid capital calls or capital contributions from other limited partners of companies in the Stabilized Portfolio.

9. The Debtor also seeks to auction off all of its interest in Cedar Lake and Leighton in the same manner (the "Undeveloped Property" and together with the Stabilized Property, is referred to herein as the "Property").

10. Closing under any sale may be as early as the Sale Hearing but no later than January 31, 2018.

11. The Debtor is *only* selling its member or partnership interest in the listed entities comprising the definition of “Property” herein.

12. The Debtor will file a Plan setting forth the manner and amount of the distribution of the sale proceeds to the Debtor’s creditors.

13. The Debtor avers the contemplated auction provides the best-case scenario for a payment to the Debtor’s unsecured creditors.

BIDDING PROCEDURES

14. The Debtor seeks to sell the Property subject to higher and better offers at an open auction to be held under the auspices the Bankruptcy Court on or before January 17, 2018.

15. Accordingly, the Debtor requests authority to continue to market the Property and solicit bids pursuant to certain written procedures (the “Bidding Procedures”) in order to entertain higher and better offers and confirm the highest and best offer at the Sale Hearing.

16. The establishment of Bidding Procedures and minimum bids as set forth in the Motion is not an agreement of the Debtor to sell all or some of its assets for the minimum bid or any other price. The Debtor and each of its official committees reserve and preserve all rights to review the bids of and negotiate with any and all bidders.

17. As of the date of the filing of this Motion, the Debtor is aware of several potential bidders for the Property and for individual assets, and, therefore, will entertain all bids it receives pursuant to the Bid Procedures Order.

THE BASIS FOR RELIEF AND THE REASONS THEREFOR

18. By this Motion, the Debtor seeks the entry of three (3) orders by the Court:

- a) an order setting an auction date of January 17, 2018 with a bid deadline of January 11, 2018, and a sale hearing on January 18, 2018 with closing to occur by January 31, 2018;
- b) an order to be entered outlining the procedure for entertaining higher and better offers at the Sale Hearing (the “Bidding Procedures Order”); and
- c) an order to be entered at the Sale Hearing pursuant to section 363 of the Bankruptcy Code approving the sale of the Property free and clear of liens, claims, encumbrances and interests (the “Sale Approval Order”).

19. The orders requested by the Debtor, as well as the reasons and authority for the entry thereof, are discussed in detail in the Motion.

THE MARKETING PROCESS

20. Commencing in September 2016, the Debtor retained Griffin Financial Group, LLC to assist with a refinancing or sale of its assets.

21. Griffin Financial Group, LLC prepared analyses of both the Debtor’s stabilized and developed portfolios for a possible sale or refinancing scenario.

22. From January 2017 to May 2017, the Debtor and Griffin Financial Group, LLC populated a data room, approached approximately 285 potential lenders and investors, and provided access to approximately 30 entities upon the execution of a confidentiality agreement.

23. During this period of time, prior to the Petition Date, the Debtor received five tentative offers, each of which was withdrawn by the respective bidders, or the Debtor decided not to pursue.

24. The five proposals were generally for the following consideration:

- a) A \$5 million offer plus the assumption of first mortgage debt for Spectrum's ownership interest in the five stabilized properties ("Stabilized Portfolio").
- b) A \$12 million offer plus the assumption of the first mortgage debt to acquire 100% interest in the Stabilized Portfolio, requiring the waiver of claims from all existing Tenants in Common.
- c) A \$65 million senior loan used to repurchase all Stabilized Portfolio outstanding debt, secured by first mortgages on all properties at an interest rate of LIBOR + 800 bps with a 12% lookback IRR. The loan had a 3 year term.
- d) A \$6 million fund level subordinated loan that would be used to repay existing subordinated debt holders at a substantial discount.
- e) A \$10 million fund level subordinated loan that would be used to repurchase Tenant in Common interest and fund property level expenses. The loan assumed that the existing subordinated debt would be converted to equity.

25. The Debtor subsequently began negotiating with the ad hoc creditor and limited partner committees with regard to the concept of a restructuring plan.

26. At this time in March 2017, the Debtor's projected cash flow showed a deficit in August 2017 and the need for a sale, borrowing, or other cash infusion at that time.

27. While the Debtor hoped to file for bankruptcy protection in March 2017, the Debtor was unable to acquire the requisite approvals from its limited partners until June 19, 2017.

28. The Debtor, upon the filing of its bankruptcy proceeding, prepared and circulated a Plan of Reorganization incorporating the terms of the pre-petition, previously circulated, plan negotiated with the ad hoc committees.

29. The Debtor also sought proposals for financing to meet its cash flow requirements in July 2017. At this time, Griffin Financial Group, LLC solicited potential lenders from a list of more than one hundred prospective sources.

30. The DIP Lender provided one financing proposal. Griffin Financial Group, LLC obtained a second proposal from a third party potential lender which was more expensive than the offer submitted by the DIP Lender. Of the 27 parties contacted by Griffin for the financing only one submitted a proposal and it was much more expensive than the proposal of the DIP Lender.

31. The Debtor and the Committee actively negotiated the DIP Lender's Proposal.

32. The Committee also sought alternative financing proposals at this time.

33. Ultimately, the Debtor-in-Possession Financing from the DIP Lender was approved and the DIP Loan closed in August 2017.

34. The Debtor and the Committee continued to negotiate a potential Plan of Reorganization but, given the six month delay since the start of negotiations, several roadblocks to confirmation became apparent:

- a) The Committee and current management of the Debtor could not reach an arrangement for future post-confirmation management services. Current management of the Debtor agreed to step aside upon confirmation and provide an orderly transition. However, no substitute guarantors were located or nominated by the Committee which would create an immediate default situation upon the transition out of current management.
- b) Two of the Debtor's stabilized property mortgages, representing approximately 50% of the roughly \$60,000,000 in first mortgages on the stabilized portfolio, reach maturity within twelve months.

c) The retail leasing environment continues to deteriorate with approximately two dozen major retailers having declared bankruptcy within the past year, highlighted most recently by the Toys “R” Us bankruptcy.

d) The Debtor required financing for tenant fit out and improvements at two stabilized properties. However, without a guarantor, such financing is in doubt.

35. Notwithstanding the filing of its reorganization plan, the Debtor had also been simultaneously marketing its portfolio for sale as a result of objections it received to its filed Disclosure Statement regarding the manner in which the Debtor valued its assets.

36. Again, Griffin Financial Group, LLC went to market and again it reached out to approximately 120 parties. Twenty three of those parties provided signed confidentiality agreements and 14 of those parties providing signed confidentiality agreements actually entered the data room and performed extensive due diligence.

37. The Debtor received two bids. The first bid was initially rejected because it was too low. However, the rejected bid had no contingencies. The second bid was substantially higher (\$8,500,000) but had contingencies and due diligence concerns.

38. The Debtor and Griffin Financial Group, LLC provided significant additional due diligence to the second bidder in the hope of addressing its concerns. Unfortunately, that bidder ultimately withdrew its bid entirely.

39. Griffin Financial Group and the Debtor were able to negotiate a higher price from the first bid coupled with a very short closing window. However, this bidder, too, withdrew its bid citing due diligence concerns.

40. Continued marketing and sales efforts prior to the hearing on the Motion, the Auction, and the Sale Hearing will determine if there are any other potential bidders.

THE BIDDING PROCEDURES ORDER

41. The Debtor seeks entry of an order approving bidding procedures for the Auction and Sale Hearing to encourage only serious offers for the Property and promote a productive and business-like Auction and Sale Hearing.

42. The proposed bidding procedures provide that, in order to be considered at the Auction, bids must be made by January 11, 2018 and must satisfy all of the following criteria (any such bid hereinafter referred to as a "Qualified Bid"):

- a. Only a party who has submitted a Qualified Bid may bid at the Auction;
- b. A Qualified Bid must meet the following conditions:

(i) Any party desiring to make a bid for the Property or for a single asset shall submit a bid in writing by 5:00 p.m. on January 11, 2018 to (i) counsel for the Debtor, Ciardi, Ciardi & Astin, 2005 Market Street, Suite 3500, Philadelphia, PA 19103, Attn: Albert A. Ciardi, III, Esquire and Jennifer C. McEntee, Esquire, with a copy to (ii) Office of the United States Trustee, 833 Chestnut Street, Ste. 500, Philadelphia, PA 19103, (iii) counsel for the Committee, and (iv) counsel for the Equity Committee. The minimum bid for a bulk sale and for each individual asset will be discussed, in detail, *supra*. Such bid shall include an execution ready sale agreement which shall fully delineate all terms of the offer with any financing or due diligence contingency waived as of the Auction.

(ii) the maker of such bid must provide to counsel for the Debtor reasonably satisfactory evidence of financial capability and good faith intent to fulfill all of the terms and conditions of any submitted sale agreement on a

timely basis, accompanied by payment of an initial deposit in available funds in the amount of ten percent (10%) of any bid which shall be refunded to any unsuccessful bidder, as soon as practicable after the conclusion of the Auction and proof of ability to assume the first mortgage debt relative to the property that is the subject of the bid, whether it is a bulk bid or a single asset bid;

(iii) any dispute as to any bidder's intent or ability shall be resolved by the Court at the Sale Hearing;

(iv) any bid that does not contemplate the satisfaction of any mortgage obligations shall disclose the assumption or non-assumption of any such mortgage obligations; and

(v) to the extent a bidder wants any contract of the Debtor assumed and assigned, such contract(s) shall be identified in the bid.

- c. Prior to the Sale Hearing and after the Auction, the Debtor, after consulting with the Committee and the Equity Committee, shall decide which of the bids, if any, is the highest and best offer and shall submit that Bid to the Court at the Sale Hearing. To be clear, qualification as a bidder does not equate to the Debtor's agreement to sell.
- d. To the extent a party wishes to bid for all of the Property, the minimum bid for the Property shall be \$2,500,000 and, to the extent there are additional bids for the Property, any additional bid increments shall be in multiples of no less than \$50,000.
- e. To the extent a party wishes to bid for the Debtor's interest in units 2A, 2B, 3 and 4 of the Cedar Hill Shopping Center, the minimum bid for the Debtor's interest in the Cedar Hill Shopping Center is \$500,000 and, to the extent there are additional bids

for the Cedar Hill Shopping Center, any additional bid increments shall be in multiples of no less than \$50,000.

- f. To the extent a party wishes to bid for the Debtor's interest in the Hillcrest Shopping Center, the minimum bid for the Debtor's Interest in the Hillcrest Shopping Center is \$500,000 and, to the extent there are additional bids for the Hillcrest Shopping Center, any additional bid increments shall be in multiples of no less than \$50,000.
- g. To the extent a party wishes to bid for the Debtor's interest in Towamencin Corporate Center, the minimum bid for the Debtor's Interest in the Towamencin Corporate Center is \$500,000 and, to the extent there are additional bids for the Towamencin Corporate Center, any additional bid increments shall be in multiples of no less than \$50,000.
- h. To the extent a party wishes to bid for the Debtor's interest in the Mount Laurel Corporate Center, the minimum bid for the Debtor's Interest in the Mount Laurel Corporate Center is \$500,000 and, to the extent there are additional bids for the Mount Laurel Corporate Center, any additional bid increments shall be in multiples of no less than \$50,000.
- i. To the extent a party wishes to bid for the Debtor's interest in the Gwynedd Corporate Center, the minimum bid for the Debtor's Interest in the Gwynedd Corporate Center is \$500,000 and, to the extent there are additional bids for the Gywnedd Center, any additional bid increments shall be in multiples of no less than \$50,000.

- j. There will be no minimum bid for the Debtor's interest in Lehighton and, to the extent there are multiple bids for the Debtor's interest in Lehighton, any additional bid increments shall be in multiples of no less than \$5,000.
- k. There will be no minimum bid for the Debtor's interest in Cedar Lake and, to the extent there are multiple bids for the Debtor's interest in Cedar Lake, any additional bid increments shall be in multiples of no less than \$5,000.
- l. There will be no minimum bid for the Debtor's interest in Unit 5 of the Cedar Hill Shopping Center and, to the extent there are multiple bids for the Debtor's interest in unit 5 of the Cedar Hill Shopping Center, any additional bid increments shall be in multiples of no less than \$5,000.
- m. Bids may be made for the Property or the Debtor's interests in individual assets as long as the bid meets the standards outlined in the bidding procedures to be deemed a Qualified Bid. A bidder may also make a bid to acquire the underlying real estate in VSC-5, LLC, VSC-EE, LLC or MVI Spectrum Partners, LLC
- n. No bidder is required to submit a bid in the same format as any other bidder. This proposed process is designed to encourage bidders to make the best offer possible without restricting such bidder to another bidder's format.
- o. The Property or any single asset component of the Property is being conveyed "as is."
- p. Closing may occur as early as the day of the Sale Hearing and must occur no later than January 31, 2018.

43. The Bid Procedures allow the Debtor to conduct the Sale Hearing in a controlled, fair, and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtor will receive the best possible consideration for the Property.

44. Bid procedures should be approved when they provide a benefit to the estate by maximizing the value of the assets and enhance competitive bidding. Calpine Corp. v. O'Brien Env'tl. Energy, Inc., 181 F.3d 527, 535-37 (3d Cir. 1999) (detailing situations where bidding incentives are appropriate in bankruptcy because they provide a benefit to the estate).

45. The Debtor asserts that the Bid Procedures are consistent with other procedures previously approved in other bankruptcy courts in this circuit.

46. The Debtor submits that the Bid Procedures and the Sale Hearing will ensure that the Debtor's estate receives the highest or best value available by allowing the market to test the Purchase Price for the Property.

47. The Debtor hereby requests this Court's approval of the process and procedures set forth in the Bid Procedures for the submission and consideration of bids from other interested parties for the Property or a single asset component of the Property.

THE SALE APPROVAL ORDER

48. Finally, and most importantly, the Debtor seeks the entry of an order pursuant to section 363 of the Bankruptcy Code, approving any Sale Agreement and the sale of the Property, either *in toto* or piecemeal, in all respects, free and clear of any and all liens, claims, encumbrances and interests in or on the Property. The Sale Approval Order will ultimately reflect the terms of the winning bid(s) at the Auction.

49. Pursuant to section 541 of the Bankruptcy Code, the property to be sold at the Auction consists of assets of the Debtor's bankruptcy estate.

50. In accordance with sections 363, 1107 and 1108 of the Bankruptcy Code, debtors-in-possession are authorized to sell property of the estate and maximize recoveries for their creditors.

51. Section 363(b) of the Bankruptcy Code authorizes a debtor or a trustee to sell its assets outside of the ordinary course of business. See 11 U.S.C. § 363(b)(1).

52. Section 363(f) of the Bankruptcy Code provides, in pertinent part, as follows:

(f) [t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

53. Generally, a debtor must show that each of the following elements have been met before a section 363(b) sale may be approved: (i) that a sound business reason exists for the proposed transaction; (ii) that the sale has been proposed in good faith; (iii) that the sale price is fair and reasonable; and (iv) that accurate and reasonable notice has been provided of the transaction. See In re WDH Howell, LLC, 298 B.R. 527, 534 (D. N.J. 2003); In re Stroud Ford, Inc., 163 B.R. 730 (Bankr. M.D. Pa. 1993).

54. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. In re Dura Automotive, 2007 Bankr. LEXIS 2764 at *258, (citing Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996)); Comm. of Equity Sec.

Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of Lionel Corp. and requiring good faith); In re Del. And Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the Abbotts Dairies decision); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1991) (same).

55. Courts have made it clear that a debtor’s showing of a sound business justification need not be exhaustive, but rather a debtor or trustee is “simply required to justify the proposed disposition with sound business reasons.” In re Baldwin-United Com., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

56. Whether or not there are sufficient business reasons to justify a sale depends upon the facts and circumstances of each case. In re Lionel Com., 722 F.2d 1063, 1071 (2d Cir. 1983).

57. In the circumstances of valid business justifications, applicable principles of law attach to a debtor’s decision a strong presumption “that in making a business decision[,] the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has “vitality by analogy” in chapter 11), (quotations omitted).

58. Therefore, the Debtor submits that the decision to sell the Property is based upon its sound business judgment and should be approved. The Debtor worked diligently to explore alternatives to the proposed Auction and sale. However, the current economic climate resulted in the Debtor’s determination that the sale of the Property is a necessary step toward a distribution to the

Debtor's creditors. The Debtor thus believes that the sale of the Property, in whole or in part, will provide the best result for its estate and creditors.

59. Once a court is satisfied that there is a sound business justification for the proposed sale, the court should then determine whether (i) the debtor in possession has provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. In re Del. and Hudson Ry. Co., 124 B.R. at 166; accord In re Decora Indus., Inc., Case No. 00-4459, 2002 WL 32332749, at *3 (Bankr. D. Del. May 20, 2002.).

60. "The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings." In Re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 142, 147 (3d Cir. 1986). "Typically, the misconduct that would destroy s purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." Id.

61. Here, the ultimate agreement(s) of sale will be negotiated at arm's length after a marketing process conducted by the Debtor and the Auction.

62. The potential buyers, therefore, will not be controlled by, or acting on behalf of any insider of the Debtor.

63. The Debtor submits that the proposed sale to Buyer constitutes a sale in good faith and for fair value within meaning of Section 363 of the Bankruptcy Code and, specifically, should be afforded the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of the Property. See id.

64. Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. Section 363(m) 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).

65. Although the Bankruptcy Code does not define “good faith,” the Third Circuit has noted that the phrase “encompasses one who purchases in ‘good faith’ and ‘for value.’” In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986).

66. Further, the Third Circuit has recognized that the type of misconduct that would destroy a purchaser’s good faith status involves ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’ Id. (remanding case involving insider transaction back to the bankruptcy court for further consideration of good faith where there was evidence that the sale had been orchestrated between insiders and some of the sale conditions were not disclosed to the debtor’s creditors) (quoting In re Rock Indus. Machine Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)).

67. Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.” See, e.g., In re Stroud Ford, Inc., 163 B.R. 730, 732-33 (Bankr. M.D. Pa. 1993); In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Machine Corp., 572 F.2d at 1198).

68. As will be further demonstrated at the Sale Hearing, the sale of the Property was proposed in good faith as a result of arms’-length negotiations by and between or among the Debtor and the Purchaser and was the product of good faith as a result of the Auction.

69. The Debtor believes that the prompt sale of the Property, either *in toto* or piecemeal, as proposed at Auction, is in the best interests of the creditors and the estate.

70. In the interest of attracting the best offers, the Sale of the Property, either *in toto* or piecemeal, should be free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code, with holders of any such liens, claims and encumbrances being paid from the proceeds of the Sale of the Property and/or being given replacement liens, claims, and encumbrances attaching to the proceeds of the Sale of the Property.

71. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell property of the estate “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) 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).

72. The Debtor requests that the Court authorize the Sale of the Property, either *in toto* or piecemeal, free and clear of all liens, claims, encumbrances, and other interests (collectively, the “Liens and Claims”). The Sale of the Property pursuant to the Bid Procedures will satisfy section 363(f) of the Bankruptcy Code because any entities holding liens and claims will have received notice of this Motion and the Sale Notice. All parties in interest will be given sufficient opportunity

to object to the relief requested herein and any such entity that does not object to the Sale of the Property should be deemed to have consented. See Futuresource LLC v. Reuters Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); Hargrave v. Twp. of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)). As such, to the extent that no party holding a lien or claim objects to the relief requested in the Sale Order, the Sale of the Assets free and clear of all liens and claims satisfies section 363(f)(2) of the Bankruptcy Code. To the extent a party holding a lien or claim objects to the relief requested in the Sale Order, the Sale of the Property, either *in toto* or piecemeal, free and clear of such liens and claims satisfies one or more of sections 363(f)(1) or (3)-(5), as applicable.

73. Accordingly, the Debtor requests that the Property, either *in toto* or piecemeal, be transferred to the winning bidder(s) free and clear of all liens, claims, encumbrances, and interests with the same to attach to the net sale proceeds of the Property.

**THE SALE COMPLIES WITH FEDERAL RULE OF
BANKRUPTCY PROCEDURE 6004(f)(1).**

74. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by public auction.

75. The Debtor believes a sale of the Property, either *in toto* or piecemeal, pursuant to a public Auction governed by the proposed Bid Procedures will maximize the sale proceeds received

by the estate, which is the paramount goal in any proposed sale of property of the estate. In re Dura Automotive Sys., Inc., Case No. 06-11202(KJC), 2007 Bankr. LEXIS 2764, *253 (Bankr. D. Del. Aug. 15, 2007) (“The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.”).

WAIVER UNDER RULE 6004(h)

76. The Debtor has set forth herein and will demonstrate at the hearing on the Motion, the potential harm of any delay.

77. The Debtor requests a waiver of the stay as provided under Rule 6004(b) to allow for a closing within the fourteen (14) day period referenced in Rule 6004(h).

REQUEST FOR EXPEDITED CONSIDERATION

78. The Debtor therefore requests the Auction be held within 10 days of the filing of the Motion with a bid deadline of 5:00 p.m. on January 11, 2018.

79. The Debtor requests a sale hearing on or before January 31, 2017.

80. The Debtor’s DIP Loan matures in mid-February 2018 and, absent a sale of the Property, either *in toto* or piecemeal, there are insufficient funds available in the Debtor’s estate to repay the DIP Loan.

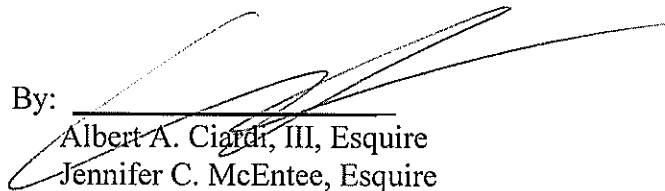
81. The Debtor and each of the Committees support the request for an expedited Auction and Sale Hearing.

WHEREFORE, the Debtor respectfully request that this Court (i) enter an Order approving the Bidding Procedures and the sale of the Property either *in toto* or piecemeal, in a form substantially similar to the attached proposed form of Order, (ii) enter an Order approving the sale of the Property, either *in toto* or piecemeal, free and clear of liens, claims, encumbrances and interest,

(iii) scheduling an expedited hearing and reducing the notice period, and (iv) granting such other and further relief as this Court deems just.

CIARDI CIARDI & ASTIN

Dated: *12/22/17*

By: 
Albert A. Ciardi, III, Esquire
Jennifer C. McEntee, Esquire
One Commerce Square
2005 Market Street, Suite 3500
Philadelphia, PA 19103
Attorneys for the Debtor and
Debtor-In-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: : **Chapter 11**
:
SPECTRUM ALLIANCE, LP, :
:
:
Debtor. :
: **Bankruptcy No. 17-14250(JKF)**

ORDER (I) APPROVING PROCEDURES FOR THE SUBMISSION OF BIDS FOR THE PROPOSED SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES; AND (II) SCHEDULING AN OPEN AUCTION

Upon consideration of the Motion of Spectrum Alliance, LP (the “Debtor”) for entry of an order (I) scheduling an open auction of the Debtor’s Assets, either as a bulk sale or on an individual basis (the “Auction”), (II) approving the form, manner and notice of bidding procedures, (III) authorizing the sale of assets, described herein, free and clear of liens, claims and encumbrances, (IV) scheduling an expedited hearing and reducing the notice period, and (V) granting related relief, (the "Motion")¹; and the Court having considered the Certifications of Service evidencing service of Motion papers on the persons and in the manner required thereby; and the Court having conducted the January 3, 2018 hearing on the Motion and considered any objections to the Motion related thereto; proper notice under the circumstances having been given and due deliberation having been had and good and sufficient cause appearing therefore,

1. The Motion is GRANTED only to the extent set forth herein.
2. The procedures set forth below for submission of bids for the Property or for the Debtor’s interest in individual assets (the “Bid Procedures”) are hereby approved. The Debtor is authorized to take any and all actions necessary and/or appropriate to implement the Bid Procedures.

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

3. As provided in the Bid Procedures, if bids are received, an auction (the "Auction") shall be held at the offices of Ciardi Ciardi & Astin located at One Commerce Square, 2005 Market Street, Suite 3500, Philadelphia, Pennsylvania 19103, on January 17, 2018 at 11:00a.m. prevailing Eastern Time

4. The Debtor shall afford each Prospective Bidder (as defined below) due diligence access to the Property. Due diligence access may include management presentations as may be scheduled by the Debtor, access to the data room, onsite inspections and such other matters which a Prospective Bidder may request. Prospective Bidders will be required to execute a confidentiality agreement with the Debtor before obtaining due diligence information.

5. The proposed sale shall be subject to the following Bid Procedures:

- a. No party submitting a bid ("Prospective Bidder") for the Property shall be entitled to any expense reimbursement or any breakup or termination payments.
- b. A Prospective Bidder will not be considered by the Seller as qualified to participate in the Auction, unless as part of its bid (the "Bid"), such Prospective Bidder meets the following requirements:
 - i. Any party desiring to make a bid for the Property or for a single asset shall submit a bid in writing by 5:00 p.m. on January 11, 2018 to (i) counsel for the Debtor, Ciardi, Ciardi & Astin, 2005 Market Street, Suite 3500, Philadelphia, PA 19103, Attn: Albert A. Ciardi, III, Esquire and Jennifer C. McEntee, Esquire, with a copy to (ii) Office of the United States Trustee, 833 Chestnut Street, Ste. 500, Philadelphia, PA 19103, (iii) counsel for the Committee, and (iv) counsel for the Equity

Committee. The minimum bid for a bulk sale and for each individual asset will be discussed, in detail, *supra*. Such bid shall include an execution ready sale agreement which shall fully delineate all terms of the offer with any financing or due diligence contingency waived as of the Auction;

- ii. the maker of such bid must provide to counsel for the Debtor reasonably satisfactory evidence of financial capability and good faith intent to fulfill all of the terms and conditions of any submitted sale agreement on a timely basis, accompanied by payment of an initial deposit in available funds in the amount of ten percent (10%) of any bid which shall be refunded to any unsuccessful bidder, as soon as practicable after the conclusion of the Auction and proof of ability to assume the first mortgage debt relative to the property that is the subject of the bid, whether it is a bulk bid or a single asset bid;
- iii. any dispute as to any bidder's intent or ability shall be resolved by the Court at the Sale Hearing;
- iv. any bid that does not contemplate the full satisfaction of any mortgage obligation shall disclose the assumption or not of any such mortgage obligation; and
- v. to the extent a bidder wants any contract of the Debtor assumed and assigned, such contract(s) shall be identified in the bid.

- c. Prior to the Sale Hearing and after the Auction, the Debtor, after consulting with the Committee and the Equity Committee, shall decide which of the bids, if any, is the highest and best offer and shall submit that Bid to the Court at the Sale Hearing. To be clear, qualification as a bidder does not equate to the Debtor's agreement to sell.
- d. To the extent a party wishes to bid for all of the Property, the minimum bid for the Property shall be \$2,500,000 and, to the extent there are additional bids for the Property, any additional bid increments shall be in multiples of no less than \$50,000.
- e. To the extent a party wishes to bid for the Debtor's interest in units 2A, 2B, 3 and 4 of the Cedar Hill Shopping Center, the minimum bid for the Debtor's interest in the Cedar Hill Shopping Center is \$500,000 and, to the extent there are additional bids for the Debtor's interest in units 2A, 2B, 3 and 4 of the Cedar Hill Shopping Center, any additional bid increments shall be in multiples of no less than \$50,000.
- f. To the extent a party wishes to bid for the Debtor's interest in the Hillcrest Shopping Center, the minimum bid for the Debtor's Interest in the Hillcrest Shopping Center is \$500,000 and, to the extent there are additional bids for the Hillcrest Shopping Center, any additional bid increments shall be in multiples of no less than \$50,000.
- g. To the extent a party wishes to bid for the Debtor's interest in Towamencin Corporate Center, the minimum bid for the Debtor's Interest in the Towamencin Corporate Center is \$500,000 and, to the extent there are additional bids for the

Towamencin Corporate Center, any additional bid increments shall be in multiples of no less than \$50,000.

- h. To the extent a party wishes to bid for the Debtor's interest in the Mount Laurel Corporate Center, the minimum bid for the Debtor's Interest in the Mount Laurel Corporate Center is \$500,000 and, to the extent there are additional bids for the Mount Laurel Corporate Center, any additional bid increments shall be in multiples of no less than \$50,000.
- i. To the extent a party wishes to bid for the Debtor's interest in the Gwynedd Corporate Center, the minimum bid for the Debtor's Interest in the Gwynedd Corporate Center is \$500,000 and, to the extent there are additional bids for the Gwynedd Center, any additional bid increments shall be in multiples of no less than \$50,000.
- j. There will be no minimum bid for the Debtor's interest in Lehighton and, to the extent there are multiple bids for the Debtor's interest in Lehighton, any additional bid increments shall be in multiples of no less than \$5,000.
- k. There will be no minimum bid for the Debtor's interest in Cedar Lake and, to the extent there are multiple bids for the Debtor's interest in Cedar Lake, any additional bid increments shall be in multiples of no less than \$5,000.
- l. There will be no minimum bid for the Debtor's interest in Unit 5 of the Cedar Hill Shopping Center and, to the extent there are multiple bids for the Debtor's interest in unit 5 of the Cedar Hill Shopping Center, any additional bid increments shall be in multiples of no less than \$5,000.

- m. Bids may be made for the Property or the Debtor's interests in individual assets as long as the bid meets the standards outlined in the bidding procedures to be deemed a Qualified Bid. A bidder may also make a bid to acquire the underlying real estate in VSC-5, LLC, VSC-EE, LLC or MVI Spectrum Partners, LLC.
- n. No bidder is required to submit a bid in the same format as any other bidder. This proposed process is designed to encourage bidders to make the best offer possible without restricting such bidder to another bidder's format.
- o. The Property or any single asset component of the Property is being conveyed "as is."
- p. Closing may occur as early as the day of the Sale Hearing and must occur no later than January 31, 2018.
- q. Prospective Bidders who meet the requirements set forth in Sections (i) through (iv) above shall be determined to be a "Qualified Bidder" and the Bid submitted by such Qualified Bidder shall be considered a "Qualified Bid".
- r. After a Winning Bidder is selected, the second highest bidder who has submitted a Qualified Bid shall register its bid as a second bid (the "Second Registered Bid"). In the event that the holder of the Winning Bid fails to consummate the sale of the Property or otherwise defaults, then the Second Registered Bid shall become the Winning Bid. In the event that the Debtor determines that the Second Registered Bid has become the Winning Bid, they shall provide notice to parties-in-interest and request a hearing before the Bankruptcy Court to formally recognize the Second Registered Bid as the Winning Bid and approve such sale.

- s. Deposits made by Qualified Bidders (other than the Winning Bidder and the Second Registered Bidder, if any) shall be returned to such Qualified Bidders not later than five (5) business days following the determination of the Winning Bid. The Deposit made by the Winning Bidder, if any, shall be credited against the purchase price paid by the Winning Bidder or, if the Winning Bidder materially breaches the terms of its winning bid, retained by the Debtor. The deposit by the Second Registered Bidder (if any), shall be returned upon the earlier of: (i) closing of the transaction contemplated by the Winning Bid; or (ii) January 31, 2018.

6. A hearing (the "Sale Hearing") shall be held before the Honorable Jean K. FitzSimon on _____, 2018 at _____ .m. prevailing Eastern Time at the United States Bankruptcy Court for the Eastern District of Pennsylvania, 900 Market Street, Courtroom 3, Philadelphia, Pennsylvania 19107. During the Sale Hearing, the Court shall confirm that the Winning Bidder has submitted the highest and best bid for the Property, either *in toto* or piecemeal, and shall consider approval of the proposed sale to the Winning Bidder. Objections to the selection of the Winning Bidder and approval of the sale to the Winning Bidder must be filed with the clerk of the Court for the Eastern District of Pennsylvania (via CM/ECF) on or before _____ p.m. eastern time on _____, 2018.

7. Within three (3) business days after entry of this Order, the Debtor shall provide a copy of the Order to its creditor Matrix.

8. Within three (3) business days after entry of this Order, the Debtor shall serve a copy of this Order on (i) the Office of the United States Trustee; (ii) counsel to the Debtor's Committee and Equity Committee; (iii) counsel for any interested party; and (iv) those parties

that request notice of all pleadings pursuant to Federal Rule of Bankruptcy Procedure 2002; as well as (v) any known Prospective Bidders, including but not limited to, those parties that have previously communicated with the Debtor regarding purchase of the Property, those parties that have previously signed confidentiality agreements during the process by which the Debtor has previously marketed the Property for sale, and any other known parties that the Debtor believes may have any interest in bidding at the Auction. These parties shall be served with a copy of the Notice via overnight delivery, e-mail, or facsimile, as appropriate.

9. Within three (3) business days after entry of this Order, the Debtor shall serve a copy of the Notice and this Order by first class mail on all known creditors of the Debtor.

10. The Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the Bid Procedures and this Order. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control.

BY THE COURT:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: : **Chapter 11**
SPECTRUM ALLIANCE, LP :
Debtor. : **Bankruptcy No. 17-14250(JKF)**

NOTICE OF MOTION, RESPONSE DEADLINE, AND HEARING DATE

Spectrum Alliance, LP, (the “Debtor”) by and through its counsel, Ciardi Ciardi & Astin, has filed a Motion of Spectrum Alliance, LP, for Entry of an Order Pursuant to 11 U.S.C. Section 105(A) and 363 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9013 (I) Scheduling an Open Auction of All of the Debtor’s Assets, as a Bulk Sale or on an Individual Basis, (II) Approving Form, Manner and Notice of Bidding Procedures, (III) Authorizing the Sale of Assets Free and Clear of Liens, Claims, and Encumbrances, (IV) Scheduling an Expedited Hearing and Reducing the Notice Period, and (V) Granting Related Relief (the “Motion”) with the Court.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have any attorney, you may wish to consult an attorney.)

1. If you do not want the court to grant the relief sought in this Motion or if you want the Court to consider your views on the Motion, then on or before **JANUARY 2, 2018** by **5:00 p.m.** you or your attorney must do all of the following:

- (a) file an answer explaining your position at:

U.S. Bankruptcy Court
Attn: Clerk’s Office
Robert N.C. Nix Sr. Federal Courthouse
900 Market Street, Suite 400
Philadelphia, PA 19107

If you mail your answer to the Bankruptcy Court Clerk’s Office for filing, you must mail it early enough so that it will be received on or before the date stated above; and

- (b) mail a copy to the Movant’s attorney:

Albert A. Ciardi, III, Esquire
Jennifer C. McEntee, Esquire
CIARDI CIARDI & ASTIN
One Commerce Square – Suite 3500
2005 Market Street
Philadelphia, PA 19103

Telephone: 215-557-3550

Telecopier: 215-557-3551

aciardi@ciardilaw.com

jcranston@ciardilaw.com

2. If you or your attorney do not take the steps described in paragraphs 1(a) and 1(b) above and attend the hearing, the court may enter an Order granting the relief requested in the Motion.

3. A hearing on the Motion is scheduled to be held before the Honorable Jean K. FitzSimon, on **JANUARY 3, 2018** at **9:30 a.m.** in Courtroom #3, U.S. Bankruptcy Court, Robert N.C. Nix Sr. Federal Courthouse, 900 Market Street, Philadelphia, PA 19107.

4. If a copy of the Motion is not enclosed, a copy of the Motion will be provided to you if you request a copy from the attorney named in paragraph 1(b).

5. You may contact the Bankruptcy Clerk's Office at 215-408-2800 to find out whether the hearing has been cancelled because no one filed an answer.

Dated: December 22, 2017

CIARDI CIARDI & ASTIN

/s/ Albert A. Ciardi, III

Albert A. Ciardi, III, Esquire

Jennifer C. McEntee, Esquire

One Commerce Square

2005 Market Street, Suite 3500

Philadelphia, PA 19103

Telephone: (215) 557-3550

Facsimile: (215) 557-3551

Counsel to the Debtor