

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BKY No.: 16-30037
Chapter 11

Troje's Trash Pick-Up, Inc.,

Debtor.

NOTICE OF HEARING AND MOTION TO SELL ALL OR SUBSTANTIALLY ALL OF
THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS AND INTERESTS

TO: ENTITIES SPECIFIED IN LOCAL RULE 9013-3(2).

1. Troje's Trash Pick-Up, Inc. (hereinafter referred to as "Debtor"), the Chapter 11 Debtor-In-Possession in the above-referenced proceeding, through its attorney, moves the Court for relief requested below and gives notice of hearing.

2. The Court will hold a hearing with respect to the sale of all of the debtor's assets at 10:30 a.m. on Wednesday, August 10, 2016, in Courtroom No. 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, before the Honorable Kathleen H. Sanberg, or as soon thereafter as counsel can be heard. The assets to be sold are set forth on the term sheet filed with the bankruptcy court and on the attached **Exhibit A**.

3. Any response to this motion to sell, must be filed and served not later than Friday, August 5, 2016 which is five (5) days prior to the hearing date. **Unless a response opposing the motion as to the sale of assets, the court may grant the motion without a hearing.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. Venue of this case and the motion

are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding. The petition commencing this Chapter 11 case was filed on January 7, 2016. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§363 and 365 of the bankruptcy code, and Fed. R. Bankr. P. 2002, 6004, 6006, 9007 and 9014. The Debtor requests that the court enter an order approving the Debtor's intended sale of the estate's assets free and clear of liens and interests.

BACKGROUND

6. The Debtor is a Minnesota corporation having its principal place of business at: 6010 S. Concord Blvd., Inver Grove Heights, MN 55076. The Debtor is a trash hauler. The Debtor services residential and commercial customers. It also conducts a roll-off business.

7. The Debtor has several lease creditors and secured creditors. Those parties are listed on the Debtor's schedules. The Debtor requests that the Court take judicial notice of its schedules. All of the Debtor's assets, to the knowledge of the Debtor, are secured by liens. The Debtor's principal creditor is Vermillion State Bank, which is owed in excess of \$7.2 million dollars.

8. A Notice of Expedited Hearing and Motion to Approve (1) Bidding Procedures with Respect to the Disposition of the Debtor's Assets (2) the Sale of All or Substantially All of the Debtor's Assets Free and Clear of Liens and Interests and (3) Authorizing Assumption and Assignment of Leases and Executory Contracts was filed on July 6, 2016 (Docket Number 121).

9. The Court held a hearing on July 13, 2016 and entered an Order granting the

Bidding Procedures and Official Bid Form and auction procedures (Docket Number 133).

PROPOSED SALE OF DEBTOR'S ASSETS

10. The Debtor has been negotiating with several potential buyers with respect to the sale of the Debtor's assets. The Debtor received a credit bid represented as a stalking horse bid from the Vermillion State Bank dated June 28, 2016. The term sheet proposes to buy certain assets of the Debtor as more particularly described on the term sheet. The term sheet is attached to this Motion as **Exhibit A**. If approved by the Court, the sale to Vermillion State Bank would result in the Debtor having additional assets to sell and/or liquidate.

11. The Debtor requests authority to sell the assets free and clear of liens, claims and other interests.

12. As described in more detail in the bidding procedures that were previously approved by the Court, the Debtor intends to sell assets of the Debtor. The Debtor shall either offer the assets for sale as a single unit or in separate lots either of which may attract higher aggregate bids. These sales are intended to be upon the terms of the official bid form. The Debtor's intention is to maximize the recovery of the estate through any process that will accomplish that result.

13. As more specifically set forth in the bidding procedures, in order to participate in the sale process, each potential bidder must deliver to the Debtor not later than 5:00 p.m. on Thursday, August 4, 2016 (the "bid deadline") a bid package that conforms with the bidding procedures. Under the bidding procedures, a "qualified bidder" is a potential bidder that delivers these items to the Debtor and that the Debtor, with consent of the secured creditors, determines as reasonably likely (based on availability of financing, and

experience and other considerations) to submit a bona fide offer and be able to consummate a sale as the successful bidder. The Debtor may extend the bid deadline once or successively with the consent of the secured creditors, but is not obligated to do so. All bids must also include the following documents (the “required bid documents”).

- (a) An executed copy of an official bid form in substantially the same form as provided by the Debtor.
- (b) An earnest money deposit in the form of a certified check or cashier’s check payable to the order of the Debtor or such other party as the Debtor may designate in an amount equal to at least ten percent (10%) of the value of such bid (hereinafter the “earnest money deposit”); and
- (c) Written evidence of commitment for financing or other evidence of ability to consummate the proposed transaction.

14. After all qualified bids have been received, the Debtor intends to conduct an auction with respect to any assets as to which a qualified bid has been received only if the same bid is received for the same asset by multiple bidders. Subject to court approval, the auction shall take place on Monday, August 8, 2016 at GuideSource, Maple Bank Bldg. – Suite 280, 11660 Theatre Drive North, Champlin MN 55316. The Debtor will permit bidders to appear by telephone at the designated time, if necessary. Only a qualified bidder who has previously submitted a qualified bid will be eligible to participate in the auction. Based on the terms of the qualified bids received, the level of interest expressed as to particular assets, and other information as the Debtor and the secured creditors determine to be relevant, the Debtor, with the consent of the secured creditors, will conduct the auction in accordance with the applicable bid procedures in the manner they determine will result in

the highest or best offer for the assets. The Debtor encourages all interested purchasers to submit their highest bid through the sealed bid process as only bids for the same amount for the same assets will be eligible to participate in the auction. If your bid is not a competing bid in the same amount, there will be no auction as to your bid.

15. Upon the conclusion of the bid process or auction, the Debtor, shall (i) review each qualified bid or bids on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale, (ii) determine which qualified bid is the highest and the best, and (iii) notify the highest and otherwise best offer or group of offers for the assets. Debtor shall present the successful bid(s) to the court for approval at the sale hearing to be held on Wednesday, August 10, 2016 at 10:30 a.m.

16. The above-described procedures are in the best interests of the estate and the creditors that will result in the maximum value available for the estate's assets.

17. If necessary, representatives of the Debtor may be called as witnesses in support of this motion.

**PROPOSED ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND
EXECUTORY CONTRACTS**

18. The Debtor intends as soon as is practicable to separately file a motion under 11 U.S.C. § 365 regarding the assumption and assignment of unexpired leases and executory contracts.

WHEREFORE, the Debtor requests that the Court enter an order approving the sale of the assets free and clear of all liens and interest; and granting such further relief as the court deems just and equitable.

Date: July 19, 2016.

/s/ Steven B. Nosek

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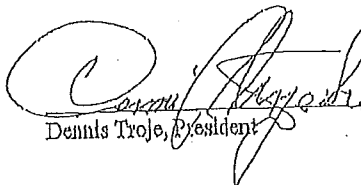
ATTORNEY FOR DEBTOR

VERIFICATION

I, Dennis Troje, President of the Debtor named in the foregoing pleading, declare under penalty of perjury that the foregoing pleading is true and correct according to the best of my knowledge, information and belief.

Dated: _____

7-19-2016


Dennis Troje, President

TERM SHEET

This Term Sheet contains an outline of the material terms by which Troje's Trash Pick-up, Inc., a Minnesota corporation ("Seller"), is willing to sell its waste hauling operations in the Minneapolis/St. Paul, MN area (the "Business") to Vermillion State Bank, assigns, or its designated affiliate ("Buyer") free and clear of all liens, claims, and encumbrances. The provisions of this Term Sheet are intended only as an expression of intent on behalf of the parties and, except as provided herein, are not intended to be legally binding on either party. Further, any purchase of the Business is conditioned upon bankruptcy court approval and the protections set forth in 11 U.S.C. § 363.

Assets to be acquired:	Substantially all of the assets used in the operation of the Business, other than the Excluded Assets, including but not limited to: (a) the rolling stock listed on the attached Schedule A; (b) all front-end loading and rear-end loading type commercial containers located at customer locations and in inventory; (c) all residential carts at customer locations (excluding the excess inventory); (d) all roll-off type containers located at customer locations and in inventory; (e) all accounts receivable of the Business; (f) all Customer accounts and contracts; (g) all customer billing software & hardware; (h) all active employee files & records; (i) all files related to the purchased assets including all rolling stock files, records, maintenance logs and files pertaining to licenses, registrations & permits; and (j) all licenses, permits & registrations.
Excluded Assets:	Seller's cash, cash equivalents, securities and investments and any rolling stock not listed on Schedule A.
Purchase Price:	\$5,300,000, payable by Credit Bid under 11 U.S.C. § 363(k).
Encumbrances:	The purchased assets shall be transferred to Buyer free and clear of encumbrances.
Assignment of contracts and permits:	Prior or contemporaneously with closing, Seller will cure all contractual defaults and assign all current contracts to Buyer on terms acceptable to Buyer.
Closing Date:	Target closing is not earlier than August 1, 2016 nor later than August 31, 2016.
Non-Competition:	At the closing, Seller and its members shall not, for a period of five years following closing, engage in any competitive activity within a 100-mile radius of Seller's hauling facility.
Expenses & Breakup Fee:	Regardless of whether the proposed transaction is consummated, Buyer and Seller shall be responsible for and shall bear all of their respective costs and expenses incurred at any time in connection this transaction. Seller shall seek approval of the sale of the Business to the Buyer through the Bankruptcy Court. If the Seller elects, or the Bankruptcy Court orders, the Buyer to conduct an auction, then Buyer shall act as the stalking-horse bidder. If Buyer is not the successful purchaser of the Business through the auction process, then Seller shall request that the Bankruptcy Court approve a breakup fee for the benefit of the Buyer in the amount of \$100,000.00.

Definitive Agreement:	Promptly following the execution of this Term Sheet, counsel for Buyer will prepare the definitive purchase agreement, the other basic documents fulfilling the terms of this Term Sheet, and such other exhibits, schedules, terms and conditions as are customary in connection with transactions of this type. The definitive agreement will contain representations, warranties, covenants and agreement of Seller, its members and Buyer and closing conditions customary in transactions of this type. The conditions to closing will include the approval of the Bankruptcy Court.
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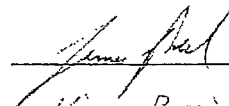
Seller and Buyer acknowledge and agree that, except as to the Section entitled "Expenses" in this Term Sheet, the terms and provisions of this Term Sheet only set forth the general terms pursuant to which the parties desire to proceed with the negotiation of the definitive terms of the transaction, and they do not constitute binding and enforceable obligations of the parties. Prior to the execution and delivery of a definitive purchase agreement, either party may, by notice to the other, elect for any reason not to proceed with the transaction without any liability to the other party whatsoever, except for a breach of the enforceable provisions.

Acknowledged and accepted this 28 day of June 2016.

TROJE'S TRASH PICK-UP, INC.

VERMILLION STATE BANK

By: _____

By: 

Its: _____

Its: Vice President

SCHEDULE A

ROLLING STOCK INCLUDED IN PURCHASED ASSETS

20. Fleet #	21. (VIN)	22. License plate #	23. ID Numbers	24. Make	25. Model	26. Type	27. Year	28. CV Capacity	29. Tare Weight
205	2NPNHD7X03M809846	y/b A1228	Recycling	Peterbuilt	310	Recycling	2003	37 YD	28,760
211	1FV6HFBA2XHA02041	YBC 7634	5836	Freightliner	CC-MCV	Side Load	1999	20 YD	30,000
218	3BPZLOOX98F717957	y/a Z2023	5907	Peterbuilt	320	Front Load	2008	40 YD	40,460
228	3BPZL00X89F718826	YBJ7311		Peterbuilt	320	Side Load	2009	27 YD	55,000
230	1M2AU14C5DM001643	YBJ8923	6163	MACK		Side Load	2013	28 YD	69,000
231	1M2AV17CXDM010380	YBJ8931		MACK	MRU633	Rear Load	2013	25 YD	69,000
232	1M2AV17C1CM010265	YBJ8930	6174	MACK	MRU633	Front Load	2013	40 YD	
233	1M2AV14C6FM002299	YBL8148	Recycling	MACK	LEU633	Crotocan	2014	40 YD	
234	1M2AU14C9FM002300	YBM4450	6212	MACK	LEU633	Crotocan	2014	40 YD	
235	1M2AU14C0FM002301	YBL8149	6227	MACK	LEU633	Crotocan	2014	40 YD	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BKY No.: 16-30037

Troje's Trash Pick-Up, Inc.,

Chapter 11

Debtor.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SELL ALL OR
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS
AND INTERESTS

This Memorandum is submitted in support of Debtor's motion to sell all or substantially all of the Debtor's assets free and clear of liens and interests. The facts supporting the relief requested are set forth in the verified Motion.

I. THE PROPOSED SALE IS A REASONABLE EXERCISE OF BUSINESS JUDGMENT AND WARRANTS APPROVAL PURSUANT TO 11 USC § 363

The proposed sale is in the best interests of the estate. Such a sale is governed by 11 USC §363(b)(1), which provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." In determining whether to authorize the sale of property, courts evaluate whether sound business purpose underlies the proposed sale.¹ When a sound business purpose exists, and the sale is made in good faith, a sale pursuant to s§ 363(b)(1) of the Bankruptcy Code should be approved. The burden of establishing a rational business justification rests with the movant.² However, once

¹ *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). *See also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale); *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *Four B. Com. v. Food Barn Stores, Inc.* (In re Food Barn Stores, Inc.), 107 F.3d 558, 567 n.16 (8th Cir. 1997); *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *In re Crystalin LLC*, 293 B.R. 455,463-64 (8th Cir. B.A.P. 2003); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991).

² *Lionel*, 722 F.2d at 1070-71.

such a showing is made, a presumption will attach that the decision was made on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company.³

In the instant case, Debtor submits that sound business justification exists which merits judicial approval of the proposed sale though the Court approved bidding procedures. Therefore, Debtor requests the Court approve the proposed sale as it is fair and reasonable under the circumstances.

II. THE FACTS SUPPORT A SALE FREE AND CLEAR OF LIENS AND INTERESTS

In order to facilitate the sale, a prompt and efficient sale needs to be made free and clear of liens and interests pursuant to § 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, or interests to attach to the sale proceeds thereof. Specifically, §363(f) of the Bankruptcy Code provides:

The 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 non-bankruptcy 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.

To facilitate the proposed sale, Debtor seeks authorization to sell such rights free and clear of any and all liens and interests, with such liens and interests to attach to the net proceeds

³ See, e.g., *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.* (In re Integrated Resources, Inc.), 147 B.R. 650,656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

of such sale with the same rights and priorities therein. A sale under §363(f) only necessitates meeting one of the five conditions of the disjunctively written Bankruptcy Code section.⁴

Under §363(f)(2) of the Bankruptcy Code, a sale free and clear of all liens, claims, encumbrances and interests is permissible if all parties asserting liens on or other interests in the assets to be sold consent. Debtor is providing proper notice of this transaction and giving all interested parties an opportunity to object. Accordingly, the requirements of §363(f)(2) are satisfied with such notice and the absence of objection.⁵ Further, to the extent consent is not obtained, §363(f)(5) permits lien extinguishment if any party asserting an interest in the assets could be compelled to accept monetary satisfaction of such interest in a legal or equitable proceeding without full satisfaction of the debt. Any such claims to the Debtor's assets could be resolved by such means. Accordingly, the proposed sale satisfies the statutory prerequisites of §363(f) of the Bankruptcy Code and should be given such status.

III. BUYER IS ENTITLED TO GOOD FAITH STATUS PURSUANT TO § 363

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.

Although the Bankruptcy Code does not define "good faith purchaser," the Third Circuit has noted that the phrase "encompasses one who purchases in 'good faith' and 'for value.'"⁶

⁴ 11 U.S.C. §363(f). See *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) ("[Section 363(f)] is written in the disjunctive, not the conjunctive. Therefore, if any of the five conditions of §363(f) are met, the Trustee has the authority to conduct the sale free and clear of all liens.").

⁵ See *Veltman v. Whetzal*, 93 F. 3d 517, 521 (8th Cir. 1986) citing *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988); *In re Shary*, 152 B.R. 724, 725-26 (Bankr. N.D. Ohio 1993).

⁶ *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147.

Further, the recognized 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."⁷ Accordingly, Debtor requests the Court deem the party prevailing at the auction, to be acting in good faith and entitled to all protections afforded therein.

To successfully implement the foregoing, Debtor seeks a waiver of the fourteen-day stay under Rule 6004.

IV. CONCLUSION

For the foregoing reasons, Debtor respectfully requests the Court enter an order granting the relief sought in the motion.

Respectfully submitted,

Dated: July 19, 2016.

/s/ Steven B. Nosek
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Attorney for Debtor

⁷ *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BKY No.: 16-30037

Chapter 11

**Troje's Trash Pick-Up, Inc.,
Debtor.**

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2016 I caused a copy of **Notice of Hearing and Motion to Sell All or Substantially All of the Debtor's Assets Free and Clear of Liens and Interests; Memorandum of Law in Support of Motion to Sell All or Substantially All of the Debtor's Assets Free and Clear of Liens and Interests; Verification; and Exhibit** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

US Trustee: ustregion12.mn.ecf@usdoj.gov, ecfbkup@comcast.net
Sarah J Wencil: Sarah.J.Wencil@usdoj.gov
Michael J Iannacone: mji@iannacone.com, knt@iannacone.com; mfs@iannacone.com
Mary F Sieling: mfs@iannacone.com, knt@iannacone.com; mji@iannacone.com
Jeffrey A. Timmerman: jeff@timmerman.co.dakota.mn.us
Kevin T. Dobie: kevin@uwilllaw.com, alysa@uwilllaw.com, maria@usllaw.com,
Darren@uwilllaw.com, Melissa@uwilllaw.com
Joshua A. Hasko: jhasko@messerlikramer.com, tleupke@messelikramer.com
Joseph W. Lawver: jlawver@messerlikramer.com, kmilner@messerlikramer.com
Sarah E. Doerr: sarah.doerr@lawmoss.com, Maureen.montpetit@lawmoss.com
Bradley J. Halberstadt: bankruptcy@szjlaw.com
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Charles E. Nelson: cnelson@lindquist.com, ddaun@lindquist.com
Sarah J. Sonsalla: ssonsalla@kennedy-graven.com

Dated this 19th day of July, 2016.

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