

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
AUDACY, INC., <i>et al.</i> ,	§	Case No. 24-90004 (CML)
	§	
	§	(Jointly Administered)
Debtors. ¹	§	(Emergency Hearing Requested)
	§	

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN
ORDER (I) AUTHORIZING SALE OF REAL ESTATE PROPERTY, FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS TO 83 LEO
PROPERTY OWNER LLC, (II) APPROVING PURCHASE AND SALE AGREEMENT,
RELATED LEASE AGREEMENT, AND INTERCREDITOR AGREEMENT,
AND (III) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 2:30 p.m. (prevailing Central Time) on February 20, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing (the "Sale Hearing") will be conducted on this matter on February 20, 2024 at 2:30 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's home page. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/Audacy> (the "**Case Website**"). The location of the Debtors' corporate headquarters and service address for purposes of these chapter 11 cases is: 2400 Market Street, 4th Fl, Philadelphia, PA 19103.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) respectfully state the following in support of this emergency motion (the “**Motion**”):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order (the “**Order**”), substantially in the form attached hereto:

- (i) approving the transactions contemplated by that certain purchase and sale agreement (the “**PSA**”)² by and between Debtor Audacy Atlas, LLC (“**Seller**” or “**Audacy Atlas**”) and 83 Leo Property Owner LLC (“**Purchaser**” or “**83 Leo**”);
- (ii) approving that certain lease agreement (the “**Lease Agreement**”) by and between Debtor Audacy Massachusetts, LLC (“**Tenant**” or “**Audacy Massachusetts**”) and 83 Leo;
- (iii) approving that certain Intercreditor, Subordination and Standstill Agreement (the “**Intercreditor Agreement**”)³ by and between Audacy Atlas, 83 Leo, and Cambridge Savings Bank (the “**Bank**”); and
- (iv) granting related relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and this Court may enter a final order consistent with Article III of the United States Constitution.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the PSA or the First Day Declaration (as defined herein). The First Day Declaration and other relevant case information is available on the Case Website.

³ The PSA, Lease Agreement, and Intercreditor Agreement (together, with any ancillary documents related thereto, the “**Definitive Documents**”) were provided to counsel for the Ad Hoc First Lien Group and Ad Hoc Second Lien Group. The agreements can be made available to the Court upon request but are not attached hereto due to confidentiality concerns.

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

4. The bases for the relief requested herein are sections 105(a) and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended and modified, the “**Bankruptcy Code**”), Rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 4002-1(e) and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

5. On January 7, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced these chapter 11 cases (the “**Chapter 11 Cases**”). A detailed description of the Debtors, their business, and the facts and circumstances of the Chapter 11 Cases is set forth in the *Declaration of Heath C. Gray in Support of the Chapter 11 Petitions and First Day Motions* [Docket No. 26] (the “**First Day Declaration**”).

6. On January 8, 2024, the Court entered an order authorizing the joint administration and procedural consolidation of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1 [Docket No. 45]. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or an examiner has been made in the Chapter 11 Cases, and no official statutory committees have been appointed or designated by the Office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”).

7. These Chapter 11 Cases are “prepackaged” cases commenced for the purpose of implementing an agreed restructuring of the Debtors’ first lien senior secured loan debt and the Debtors’ second lien secured note debt. Prior to the Petition Date, the Debtors entered into the Restructuring Support Agreement, dated as of January 4, 2024 (as may be amended, modified, or

supplemented, the “**Restructuring Support Agreement**”) with beneficial holders of (a) approximately 82.2% of the Debtors’ first lien senior secured loans and (b) approximately 73.6% of the Debtors’ second lien secured notes.

8. The Debtors’ *Joint Prepackaged Plan of Reorganization for Audacy, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 24] (as may be amended, modified, or supplemented, the “**Plan**”) was filed on the Petition Date, along with the Debtors’ *Disclosure Statement for the Joint Prepackaged Plan of Reorganization for Audacy, Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 25] (as may be amended, modified, or supplemented, the “**Disclosure Statement**”). The Plan contemplates that all Allowed General Unsecured Claims (as defined in the Plan) will be paid in full or will otherwise be unimpaired.

9. Prior to the Petition Date, votes on the Plan were solicited from eligible holders of Class 4 First Lien Claims and Class 5 Second Lien Notes Claims (each as defined in the Plan), the only classes entitled to vote under the Plan. On January 8, 2024, the Court entered an order [Docket No. 82], which, among other things, (a) granted conditional approval of the Disclosure Statement and authority to solicit votes on the Plan from the remaining holders of Class 4 First Lien Claims and Class 5 Second Lien Notes Claims, and (b) scheduled a combined hearing to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan on February 20, 2024 at 2:30 p.m. (Prevailing Central Time).

10. In connection with the sale proposed in the Motion (the “**Sale**”), the Debtors will receive over \$11.1 million at closing, with an additional payment of up to \$7 million depending on the market value of the Property (as defined below) when such payment is due. Audacy Massachusetts will continue leasing the Property from the Purchaser, allowing it to continue

operations there for approximately two years. Pursuant to the terms of the PSA, the Debtors will need to enter into additional ancillary agreements, including a junior priority mortgage securing 83 Leo's obligation to make the additional payment to Audacy Atlas and the Intercreditor Agreement with the Bank — which is financing 83 Leo's purchase — that will allow the Bank to have a senior priority mortgage on the Property.

11. Since May 2021, the Debtors have engaged in an extensive marketing and negotiating process in an attempt to locate a potential buyer for the Property, which the Debtors believe is non-core and so can be sold for the benefit of the Debtors' estates without any impact on the Debtors' business operations. In fact, operationally, the Debtors believe that the ultimate relocation of its Audacy Massachusetts facility with updated technology will result in notable savings compared to the current costs of operating and maintaining this large Property. Following substantial due diligence efforts and extensive discussions, the Debtors received an offer from 83 Leo, which the Debtors determined in their reasonable judgment to be the best offer received for the Property. Since the initial offer that 83 Leo made on the Property, the real estate market in the Boston area has changed significantly as a result of a change in local planning, the actions of city officials (including an unofficial hold on certain development projects), and increases in cost of construction and interest rates. Several times since the initial offer was received, the Debtors have consulted with their real estate advisors to understand current market conditions and to discuss the value of the Property in the event the Debtors decided to re-market the Property. The Debtors believe that the current offer from 83 Leo is the best offer that they will receive because 83 Leo is best positioned to close on the Property without any contingencies, and the Purchase Price (as defined below) is superior to any other offer that could be reasonably expected through re-marketing the Property. The Debtors do not believe that additional marketing efforts would be

fruitful and, in fact, are concerned that a further delay in the closing of a sale could adversely affect the sale process and 83 Leo's interest in purchasing the Property. Further, the Debtors are concerned that any other potential purchasers would be willing to pay even less than the Purchase Price given the changing real estate market and need to undertake a substantial due diligence process, which 83 Leo has already completed.

12. The Debtors have shared the Motion with the Ad Hoc First Lien Group and Ad Hoc Second Lien Group, which both support the relief sought herein.

SUMMARY OF THE SALE⁴

13. The following sets forth a summary of the material terms and conditions:

Seller	Debtor Audacy Atlas, LLC, a Delaware limited liability company
Purchaser	83 Leo Property Owner LLC, a Massachusetts limited liability company
Property	83 Leo M. Birmingham Parkway, Boston, MA, including all land as well as any improvements thereto (the " Property ")
Purchase Price	Up to \$18,120,000 (the " Purchase Price "), payable in two installments: <ul style="list-style-type: none"> • \$11,120,000 payable at closing (including a \$1,000,000 deposit payable upon execution of the PSA) (the "First Installment") • Up to \$7,000,000 payable (depending on the market value of the property at the time) upon the later of (i) receipt of certain zoning approvals or (ii) Audacy Massachusetts vacating the Property (the "Second Installment")
Closing Date	No later than March 6, 2024, or Purchaser can terminate
Security for Second Installment	At closing, Purchaser shall deliver to Seller a fully executed mortgage, Assignment of Leases and Rents and Security Agreement as security for Purchaser's obligations in connection with the Second Installment

⁴ This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Definitive Documents, the latter governs in all respects. This is a general overview, not a complete summary of all terms, and is subject in all respects to the terms of the Definitive Documents.

Lease of the Property	<p>At closing, Audacy Massachusetts, as lessee, and Purchaser, as lessor, shall enter into the Lease Agreement, under which Audacy Massachusetts shall lease the Property</p> <p>Audacy Massachusetts will pay a base rent equal to \$40,000 per month (“Base Rent”), with annual increases of three percent (3%) each year, for a term of two (2) years from the Closing Date, with up to an additional ninety (90) days available at Audacy Massachusetts’ option</p> <p>This is a triple net lease pursuant to which Audacy Massachusetts shall pay insurance costs, utility charges, personal property taxes, real estate taxes and operating costs</p> <p>Audacy Massachusetts will not be required to make a security deposit</p>
Intercreditor Agreement	<p>Audacy Atlas, 83 Leo, and the Bank will enter into an Intercreditor Agreement</p> <p>83 Leo will borrow \$6,500,000 from the Bank, and may obtain other senior loans but shall not exceed at any time an aggregate principal amount in excess of \$11,000,000</p> <p>The Bank will hold a senior priority mortgage lien on the Property, and Audacy Atlas will hold a junior priority mortgage interest on the Property</p>

APPLICABLE AUTHORITY

I. The Sale of the Property, the Entry into the Lease Agreement, and the Entry into the Intercreditor Agreement are Fair and Consistent with the Debtors’ Reasonable Sound Business Judgment.

14. The Sale of the Property, entry into the Lease Agreement, entry into the Intercreditor Agreement, and entry into all other Definitive Documents required to close the Sale are sound exercises of the Debtors’ business judgment. Section 363(b)(1) authorizes courts, after notice and a hearing, to permit a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances.”). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business

upon a finding that such use is supported by sound business reasons. *See, e.g., In re BNP Petrol. Corp.*, 642 F. App'x 429, 434–35 (5th Cir. 2016) (citing *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986)) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”).⁵

15. Courts have made clear that a debtor’s business judgment is entitled to substantial deference with respect to selling an estate’s assets. *See, e.g., In re Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc., et al. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business but the movant must articulate some business justification for the sale.”).

16. The Debtors believe that the consideration Audacy Atlas will receive under the PSA — up to \$18.12 million — represents fair market value for the Property. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010) (emphasizing that the goal of a sale process is “maximizing value for the estate”). Here, the sale of the Property to 83 Leo will generate much-needed additional liquidity for the Debtors at a fair and reasonable price, and

⁵ *See also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard. . . .The business judgment standard in section 363 is flexible and encourages discretion.”).

based on the Debtors' prepetition marketing efforts, the Debtors are confident that the transaction maximizes the value of the Property for the Debtors' estates.⁶ Moreover, because of 83 Leo's expertise in development, the Property will be able to be put to a greater and higher use — possibly increasing the sale proceeds to the Debtors under the Second Installment — under 83 Leo's ownership than under the Debtors' ownership.

17. Moreover, one of the key terms of the PSA provides for Audacy Massachusetts continuing to occupy the Property as Tenant. This arrangement preserves for the Debtors the space needed to continue operations while identifying and constructing a more efficient and cost-saving facility and still generating additional value for the Debtors' estates by selling the Property for further development. Additionally, the Debtors believe that the terms of the Lease Agreement represent a fair market value for the property being leased. In connection with the Sale, the Debtors analyzed comparable rental rates and determined that the \$40,000 monthly Base Rent and additional rent to be paid were favorable terms in the local market for approximately 32,000 square feet of office space. By entering into the Lease Agreement and remaining in the Property after the Closing Date of the Sale, the Debtors will ensure that their operations are not disrupted while the zoning and permitting process is undertaken by 83 Leo to redevelop the Property for its best and highest use. As a result, the Lease Agreement will provide Audacy Massachusetts and the Debtors time to secure valuable cost-savings and operational efficiency for the ongoing operations of the Debtors into the future.

⁶ For the avoidance of doubt, the Sale proceeds will be not used to prepay the DIP Loans (as defined in the Plan) as the Property is expressly carved-out from prepayment as provided in the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* [Docket No. 79].

18. Lastly, the Debtors believe that the terms of the Intercreditor Agreement are fair and reasonable, and are necessary for the consummation of the Sale. The Intercreditor Agreement ensures that 83 Leo will have sufficient liquidity to finalize the Sale, by facilitating Bank's loan to 83 Leo (the proceeds of which will go to Audacy Atlas) while also protecting Bank's and Audacy Atlas's respective interests in the event of a default by 83 Leo. Accordingly, the Intercreditor Agreement is a vital component of the Sale and will directly support the Debtors' business objectives in the Sale.

19. For the reasons listed above, the Debtors have determined, in their reasonable business judgment, that the proposed Sale of the Property, and the entry into the PSA, Lease Agreement, and Intercreditor Agreement are in the best interest of the Debtors' estates. Accordingly, the Debtors request that the Court approve the Debtors' entry into the PSA, the Lease Agreement, and the Intercreditor Agreement, and performance of their obligations thereunder.

II. The Proposed Private Sale is Appropriate under Bankruptcy Rule 6004.

20. Bankruptcy Rule 6004(f) permits a debtor to conduct a private sale pursuant to section 363 of the Bankruptcy Code. Specifically, Bankruptcy Rule 6004(f) provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). See *In re Cypresswood Land Partners, I*, 409 B.R. 396, 436 (Bankr. S.D. Tex. 2009) (noting that “there is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction”) (quoting *In re Woodscape L.P.*, 134 B.R. 165, 174 (Bankr. D. Md. 1991)); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *88 (Bankr. D. Del. Aug. 15, 2007) (“Sales of property rights outside the ordinary course of business may be by private sale or public auction.”); *In re Pritam Realty, Inc.*, 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy court's approval of a private sale conducted by a chapter 11 debtor); *In re Wieboldt Stores, Inc.*, 92 B.R. 309, 312 (N.D. Ill. 1988) (“Section 363(b) is not limited to

sales involving competitive bidding. Bankruptcy Rule 6004, which sets forth procedures for section 363(b) transfers, expressly provides for private sales.”). Additionally, courts have held that a debtor has broad discretion to determine the manner in which its assets are sold. *See In re Alisa P’ship*, 15 B.R. 802, 802 (Bankr. D. Del 1981); *In re Bakalis*, 220 B.R. 525, 531–32 (Bankr. E.D.N.Y. 1998) (noting that a trustee has ample authority to conduct a sale of estate property through private sale).

21. Accordingly, in light of Bankruptcy Rule 6004(f) and case law regarding section 363 sales, a debtor may conduct a private sale if a good business reason exists. *See In re Condere Corp.*, 228 B.R. 615, 629 (Bankr. S.D. Miss. 1998) (authorizing private sale of company where “[d]ebtor has shown a sufficient business justification for the sale of the assets to the [p]urchaser”). Here, the Debtors engaged in a months-long marketing process of the Property and more than two years of negotiations prior to coming to agreement with 83 Leo, and the Debtors are confident that this is the best offer for the Property available. Indeed, such good business reasons exist here because the PSA maximizes the value received for the Property being sold and provides a significant and immediate benefit to the Debtors’ estates. If the Sale does not close by March 6, 2024, the Purchaser may forego the transaction entirely, leaving the Debtors with a non-core real property asset and no buyer in a difficult market for commercial real estate. Therefore, the Debtors request that the Court approve the proposed private sale of the Property to Purchaser in accordance with the PSA.

III. The Property May Be Sold Free and Clear of Liens, Claims, Interests, and Encumbrances under Bankruptcy Code Section 363(f).

22. Bankruptcy Code section 363(f) authorizes a debtor to sell assets free and clear of all liens, claims, interests and encumbrances provided that one of the following conditions is met:

- i. applicable non-bankruptcy law permits sale of such property free and clear of such interests;

- ii. such entity consents;
- iii. 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;
- iv. such interest is in bona fide dispute; or
- v. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

This provision is supplemented by Bankruptcy Code section 105(a), which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Property free and clear of the interests.

23. Here, the Debtors are selling the Property in a commercially reasonable manner where the value of the proceeds fairly reflect the value of the Property. Moreover, to the Debtors’ knowledge, there are no mortgages on the Property, and the Debtors are unaware of any other liens, claims, interests, and encumbrances on the Property.⁷ Without a guarantee that the Property is sold free and clear of any encumbrances, the title company has indicated that it will not provide insurance to 83 Leo since Audacy Atlas is in bankruptcy. Without title insurance, 83 Leo has indicated that it will not agree to purchase the Property. Thus, without an order authorizing the sale free and clear under section 363(f), the Debtors will be unable to sell the Property to 83 Leo and may be unable to find any buyer during the Chapter 11 Cases. Selling the Property now will provide critical liquidity to the Debtors and, as described above, the Debtors believe that there

⁷ To the extent that the Court finds that the Sale satisfies section 363(f), the Debtors request that the Court also hold that the Sale is free and clear of successor liability relating to the Debtors’ previous ownership of the Property.

are no holders of liens, claims, or interests in the property who will be impacted by such a sale. Moreover, to the extent such holders exist, the Debtors' Plan proposes to pay them in full.

IV. 83 Leo Should Receive the Protections of Bankruptcy Code Section 363(m).

24. Pursuant to Bankruptcy Code section 363(m), a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014). An appropriate characterization of good faith in a bankruptcy sale is a lack of “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *In re Bleaufontaine, Inc.*, 634 F.2d 1383, 1388 n.7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)). For the same reasons, 83 Leo is a “good faith” purchaser within the meaning of section 363(m) and should be entitled to its protections. The Debtors have engaged in extensive, arms-length negotiations with 83 Leo over the Sale and have reached a deal that will maximize the value of the Property for the Debtors' estates.

EMERGENCY CONSIDERATION

25. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i), the Complex Case Procedures, and Bankruptcy Rules 2002(a)(2) and 6004(b), which authorize a court to approve a use of property of the estate on an emergency basis “for cause shown.” The PSA requires that closing occur by no later than March 6, 2024; thus, any delay in granting the relief requested could prevent consummation of the Sale, depriving the Debtors of a critical source of liquidity and potentially preventing a sale in the foreseeable future. Finally, all creditors who could be conceivably impacted by the Sale are proposed to be unimpaired under the Plan or the Sale is supported by Ad Hoc Groups representing a supermajority of such creditor classes. As such, the Debtors believe

that they have shown “cause” under Bankruptcy Rule 6004, and the Debtors believe that emergency consideration is necessary and respectfully request that this Motion be heard on an emergency basis.

WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

26. To implement the foregoing immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h) for the reasons explained above. Ample cause exists to justify the finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

RESERVATION OF RIGHTS

27. Nothing contained herein is intended or shall be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of any Debtor’s or any other party in interest’s rights to dispute any claim on any grounds; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion, or any order granting the relief requested by the Motion; (e) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor’s estate; (f) a waiver of any Debtor’s or any other party in interest’s rights under the Bankruptcy Code or any other applicable law; or (g) a waiver of any claims or causes of action which may exist against any entity.

REQUEST TO SHORTEN AND LIMIT NOTICE

28. The Debtors have provided or will provide notice of this Motion to: (a) the U.S. Trustee; (b) the agent and counsel for the agent for the First Lien Credit Facility; (c) the trustee and counsel for the trustee for the Second Lien Secured Notes; (d) the agent and counsel for the agent for the Postpetition Securitization Program; (e) counsel for the Ad Hoc First Lien Group; (f) counsel for the Ad Hoc Second Lien Group; (g) the agent and counsel for the agent for the DIP Facility; (h) Cambridge Savings Bank; (i) 83 Leo Property Owner LLC, and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the “**Notice Parties**”).

29. Bankruptcy Rule 2002(a)(2) requires at least 21 days’ notice by mail to all creditors with respect to “a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or direct another method of giving notice[.]”

30. This Court has discretion pursuant to Bankruptcy Rule 9007 and Local Rule 4001-1 to limit notice with regard to this Motion. Given the nature and status of this case, the Debtors believe that service of this Motion on the full creditor matrix (approximately 45,000 creditors) would be unnecessary and would impose an undue burden on the Debtors’ estates financially and administratively. Virtually all such creditors will either be paid in full under the Plan or are part of a creditor class for which an Ad Hoc Group representing a supermajority of such creditor class has already agreed to the Sale. *Most importantly, such creditors do not have an interest in the Property.*

31. Accordingly, the Debtors request that they be authorized to limit notice of this Motion and any related notice of hearing as set forth herein. In light of the nature of the relief requested, the Debtors believe that no other or further notice is required or needed under the circumstances.

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: February 8, 2024

Respectfully submitted,
/s/ John F. Higgins
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Proposed Counsel to the Debtors and Debtors in Possession

⁸ Not admitted to practice in Illinois. Admitted to practice in New York.

CERTIFICATE OF ACCURACY

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Carmela Masi
Carmela Masi

CERTIFICATE OF SERVICE

I certify that on February 8, 2024, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ John F. Higgins
John F. Higgins

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
AUDACY, INC., <i>et al.</i> ,	§	Case No. 24-90004 (CML)
	§	
	§	(Jointly Administered)
	§	
Debtors. ¹	§	

ORDER (I) AUTHORIZING SALE OF REAL ESTATE PROPERTY, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS TO 83 LEO PROPERTY OWNER LLC, (II) APPROVING PURCHASE AND SALE AGREEMENT, RELATED LEASE AGREEMENT, AND INTERCREDITOR AGREEMENT, AND (III) GRANTING RELATED RELIEF

[Relates to the Motion at Docket No. ____]

Upon the emergency motion (the “**Sale Motion**”)² of the Debtors for an order (i) authorizing the transactions contemplated by that certain purchase and sale agreement (“**PSA**”) by and between Debtor Audacy Atlas, LLC (“**Seller**”) and 83 Leo Property Owner LLC (“**Purchaser**”) regarding the sale of 83 Leo M. Birmingham Parkway, Boston, MA, including all land as well as any improvements thereto (the “**Property**”) free and clear of all liens, claims, encumbrances, and other interests; (ii) approving the Lease Agreement by and between Debtor Audacy Massachusetts, LLC and Purchaser (the “**Lease Agreement**”); (iii) approving the Intercreditor Agreement by and between Seller, Purchaser, and Cambridge Savings Bank (the “**Intercreditor Agreement**”); and (iv) granting related relief, all as more fully set forth in the Sale Motion; and the Court having reviewed the Sale Motion and the factual and legal basis provided

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/Audacy>. The location of the Debtors’ corporate headquarters and service address for purposes of these chapter 11 cases is: 2400 Market Street, 4th Fl, Philadelphia, PA 19103.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion.

therein; and the Court having determined that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Sale Motion in this district is proper pursuant to 28 U.S.C. § 1408; and the Court having found that the Debtors provided appropriate notice of the Sale Motion and the opportunity for a hearing on the Sale Motion under the circumstances and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Sale Motion and the hearing with respect to the Sale Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, **THE COURT HEREBY FINDS:**

1. Proper notice of the Sale Motion and the relief requested therein, the sale hearing, and related transactions has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6003, 6004 and 9007, and Local Rule 9013-1.
2. 83 Leo Property Owner LLC is the Purchaser with respect to the sale of the Property pursuant to the Sale Motion.
3. The PSA and other Definitive Documents were offered in good faith, from arm's-length bargaining positions without collusion or fraud, by the parties.
4. The Debtors have demonstrated good, sufficient, and sound business purpose and justification and compelling circumstances for the sale of the Property pursuant to section 363 of the Bankruptcy Code.

5. Purchaser has acted in good faith in this matter and is a good faith purchaser as that term is used in the Bankruptcy Code, and is, accordingly, entitled to the protections set forth in section 363(m) of the Bankruptcy Code. Purchaser is not an “insider” or “affiliate” of the Debtors (as such terms are defined in the Bankruptcy Code).

6. The Property is sold free and clear of all, liens, Claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, and other interests, including mortgages, restrictions, covenants, easements, hypothecations, charges, indentures, loan agreements, instruments, and any other similar interests other than as provided in the Definitive Documents, pursuant to section 363(f) of the Bankruptcy Code (collectively, the “**Encumbrances**”).

7. One or more of the standards set forth in section 363(f)(1) – (5) has been satisfied with regard to each such Encumbrance. Those parties with Encumbrances in or with respect to the Property who did not object, or who withdrew their objections to the Sale Motion, are deemed to have consented to the sale of the Property free and clear of those Encumbrances in the Property pursuant to section 363(f)(2) of the Bankruptcy Code. Those parties with Encumbrances in or with respect to the Property who objected to the Sale Motion, but who did not withdraw any such objection, can be compelled to accept a monetary satisfaction of their Encumbrances within the meaning of section 363(f)(5) of the Bankruptcy Code, or applicable non-bankruptcy law permits sale of the Property free and clear of such Encumbrances under section 363(f)(1).

8. The Debtors have given due and proper notice of the proposed sale of the Property to all parties required to receive notice. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested parties and entities.

9. In order to maximize the value of the Property, it is essential that the sale of the Property occurs within the time constraints set forth in the Sale Motion and PSA. Accordingly, the Court finds that there is cause to waive and/or vacate the stay imposed by Rule 6004(h) of the Bankruptcy Rules, and such stay is hereby vacated and shall have no application to the relief afforded by this Order. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 7062, and 9014, to the extent applicable, the Court finds that there is no just reason for delay in the implementation of this Order.

10. The Property constitutes property of Seller's bankruptcy estate. Seller holds good title thereto. The transfer of the Property to Purchaser will be a legal, valid, and effective transfer of the Property and will vest Purchaser with all right, title, and interest of Seller or the other Debtors, as applicable, in and to the Property free and clear of all Encumbrances.

11. The transfer of the Property to Purchaser does not and will not subject Purchaser to any liability whatsoever with respect to the operation of the Debtors' businesses prior to the closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting successor, alter ego, piercing the corporate veil, transferee or vicarious liability.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT

General Provisions

12. The Sale Motion is hereby granted in its entirety.

13. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding

of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

14. Any objections to the Sale Motion or the relief requested therein are hereby overruled on the merits.

Approval of Sale and Other Transactions

15. The PSA, including all ancillary documents, and all of the terms and conditions thereof, and the Sale contemplated thereby, including the Purchase Price (as defined in the PSA), are hereby approved in all respects.

16. The Lease Agreement, including all ancillary documents, and all of the terms and conditions thereof, and the lease contemplated thereby are hereby approved in all respects.

17. The Intercreditor Agreement, including all ancillary documents, and all of the terms and conditions thereof, and the transactions contemplated thereby are hereby approved in all respects.

18. All other Definitive Documents in connection with the Sale and the transactions contemplated thereby, and all of the terms and conditions thereof, are hereby approved in all respects.

19. The transactions contemplated by the PSA, the Lease Agreement, and the Intercreditor Agreement are APPROVED pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

20. Pursuant to section 363 of the Bankruptcy Code, Seller and the other Debtors, as applicable, acting by and through their existing agents, representatives, and officers, are authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the Sale pursuant to and in accordance with the terms and conditions of this Sale Order, the PSA,

and the other Definitive Documents; (b) transfer and assign all right, title, and interest to the Property, in accordance with the terms and conditions of this Sale Order, the PSA, and the other Definitive Documents; and (c) execute and deliver, perform under, consummate, and implement this Sale Order, the PSA, and the other Definitive Documents, and all additional instruments and documents that may be reasonably necessary or desirable to implement this Sale Order, the Definitive Documents and the Sale, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by this Sale Order or the Definitive Documents.

Transfer of Property

21. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the closing, and pursuant to and except as otherwise set forth in the PSA and Definitive Documents, the Property and Debtors' rights, title and interests therein shall be transferred to Purchaser free and clear of all Encumbrances, with all such Encumbrances to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property, and without any recourse or remedy against Purchaser.

22. Except to enforce the Definitive Documents, all persons and entities (and their respective successors and assigns) including, but not limited to, all lenders, debt security holders, equity security holders, governmental, municipal and departmental agency entities, tax, and regulatory authorities, trade and other creditors holding Encumbrances in connection with, or in any way relating to, the Debtors, the Property, the operation of the Debtors' businesses prior to the closing, or the transfer of the Property to Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' Encumbrances against the Property or Purchaser or any of Purchaser's successors or assigns. Following the closing, no holder of an

Encumbrance shall interfere with Purchaser's title to or use and enjoyment of the Property based on or related to such Encumbrances. Purchaser shall have no liability for any Claims (as defined in section 101(5) of the Bankruptcy Code) against Seller, the other Debtors, as applicable, or their bankruptcy estates.

23. The transfer of the Property to Purchaser pursuant to the PSA constitutes a legal, valid, and effective transfer of the Property, and shall vest Purchaser with all right, title, and interest of the Seller and the other Debtors, as applicable, in and to the Property.

24. On the closing date, this Sale Order will be construed and will constitute for any and all purposes a full and complete conveyance, and transfer of all of the Property to Purchaser pursuant to the terms and conditions set forth in this Sale Order and the PSA.

25. From and after the date hereof, the Debtors or any creditor or other party in interest shall not take or cause to be taken any action that would interfere with the transfer of the Property to Purchaser in accordance with the terms of this Order and the PSA.

Good Faith Purchaser

26. The Sale is undertaken by Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale will not affect the validity of the Sale, unless such authorization and consummation of such Sale are duly stayed pending such appeal.

27. Purchaser is an entity that has purchased the Property in good faith, as contemplated in section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

Additional Provisions

28. This Sale Order will be binding in all respects upon Seller and the other Debtors, their bankruptcy estates, all creditors, all holders of equity interests in the Debtors, all holders of any Encumbrances (whether known or unknown) against the Debtors, any and all alleged holders of Encumbrances against or on all or any portion of the Property, Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of Purchaser, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in the Debtors' Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any or all of the Debtors' cases. The terms and provisions of the Definitive Documents and this Sale Order will inure to the benefit of Seller and the other Debtors, as applicable, Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of Purchaser, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code.

29. This Order shall be binding upon all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Property.

30. Except with respect to liabilities expressly assumed in the Definitive Documents, if any, Purchaser shall not have any liability or other obligation of Seller or the other Debtors, as applicable, arising under or related to the Property prior to the closing. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the

Definitive Documents, Purchaser shall not be liable for any claims against Seller or the other Debtors, as applicable, or any of their predecessors or affiliates, and Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger or substantial continuity, whether known or unknown as of the closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to Seller or the other Debtors, as applicable, or any obligations of Seller or the other Debtors, as applicable, arising prior to the closing, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Property prior to the closing.

31. The consideration provided by Purchaser to the Debtors pursuant to the PSA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and other applicable law within the meaning of section 544(b) of the Bankruptcy Code, and under the laws of the United States, any state, territory, possession, or the District of Columbia.

32. Nothing contained in any plan confirmed in this case or any order of this Court confirming such plan shall modify the provisions of the PSA or the terms of this Order.

33. The automatic stay provisions of section 362 of the Bankruptcy Code are lifted and modified to the extent necessary to implement the terms and conditions of the PSA, the other Definitive Documents, and the provisions of this Order.

34. The failure specifically to include any particular provision of the PSA and the other Definitive Documents in this Order shall not diminish or impair the effectiveness of such

provision, it being the intent of this Court that the PSA and the other Definitive Documents be authorized and approved in their entirety.

35. The PSA and the other Definitive Documents and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the bankruptcy estate(s) of Seller and the other Debtors, as applicable.

36. Notwithstanding the applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, to the extent applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry by the Court.

37. This Court hereby retains exclusive jurisdiction (a) with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order, and (b) to enforce and implement the terms and provisions of the PSA, and the other Definitive Documents (and any amendments thereto), and each of the agreements executed in connection therewith in all respects including, but not limited to, retaining jurisdiction to (i) compel delivery of the Property to Purchaser in accordance with the terms of the PSA, and (ii) resolve any dispute, controversy or claim arising under or related to the PSA, or the breach thereof.

Signed: _____, 2024
Houston, Texas

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE