

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.,<sup>1</sup></b>	)	<b>Case No. 18-10274</b>
	)	
	)	
<b>Debtors.</b>	)	<b>(Joint Administration Requested)</b>
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**MOTION FOR AUTHORITY TO SELL SURPLUS ASSETS  
WITH DE MINIMIS VALUE FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES**

Fibrant, LLC (“Fibrant”) and its affiliated debtors-in-possession (collectively, the “Debtors”) move this Court for authority to sell surplus assets of low value free and clear of liens, claims, interests, and encumbrances without further order of the Court. In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief requested herein are Sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

### **BACKGROUND**

3. On February 23, 2018 (the “Petition Date”), the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code.

4. The factual background relating to the Debtors’ commencement of these cases is set forth in detail in the *Declaration of David Leach in Support of First-Day Motions and Applications* (the “First-Day Declaration”),<sup>2</sup> filed on the Petition Date and incorporated herein by reference.

5. The Debtors have continued in possession of their properties and have continued to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. As of the date of this filing, no official committee of unsecured creditors has been appointed in these cases, and no request has been made for the appointment of a trustee or examiner.

### **RELIEF REQUESTED**

7. By this Motion, the Debtors respectfully request the entry of an order, pursuant to Sections 105(a) and 363 of the Bankruptcy Code, authorizing the Debtors to sell surplus assets with low value, free and clear of liens, claims, interests, and encumbrances (collectively, “Lien(s)”), subject to the notice procedures outlined below.

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<sup>2</sup> Capitalized terms that are used but not defined in this Application have the meanings ascribed to such terms in the First-Day Declaration.

**BASIS FOR RELIEF**

8. Since the Petition Date, the Debtors have identified certain excessive and/or burdensome property and anticipate identifying additional property rendered unused, excessive, and burdensome as a result of decisions made by the Debtors in their restructuring process (the “Surplus Assets”). In some cases, the sale of Surplus Assets will save the Debtors the expense of disassembling and decommissioning those assets. The Debtors request authority to sell Surplus Assets for an aggregate purchase price not to exceed \$250,000 per transaction, free and clear of any Liens on such assets. The Debtors propose to conduct such sales according to the following procedures (the “Sale Procedures”) in lieu of filing a separate motion and requesting a hearing on each proposed sale:

- (a) The Debtors shall give written notice of each proposed sale (the “Sale Notice”) to counsel for any Official Committee of Unsecured Creditors appointed in these cases (the “Committee”) and any known holder of a Lien on the property proposed to be sold (collectively, the “Notice Parties”).
- (b) Sale Notices will be served on the Notice Parties by facsimile or electronic transmission, if available, or by overnight, courier, or U.S. mail if not, and shall specify the Surplus Assets to be sold, the identity of the seller and the proposed purchaser, and the purchase price.
- (c) The Notice Parties shall have ten (10) days from the date the Sale Notice is sent to provide the Debtors with a written objection to proposed transaction. Any such objection shall specify the basis for the objection and shall be addressed to Jonathan W. Jordan at King & Spalding LLP, 1180 Peachtree Street Atlanta, Georgia 30309-3521.
- (d) If no written objection is received by the Debtors by 5:00 p.m. eastern time on the tenth (10th) day following the Sale Notice, the Debtors shall be authorized to consummate the proposed sale transaction, and any entities having a Lien in the property sold shall be deemed to have consented to the sale.
- (e) If a Notice Party provides a timely written objection to the proposed transaction, the Debtors and such objecting Notice Party shall use good faith efforts to consensually resolve the objection. If the Debtors and the objecting Notice Party are unable to reach a consensual resolution, the Debtors shall be required to seek Court approval of

the proposed transaction after notice and a hearing before consummating the proposed transaction.

9. Section 363(b)(1) of the Bankruptcy Code provides that a trustee or debtor in possession may, after notice and a hearing, use property of the estate outside of the ordinary course of business. 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a “sound business purpose” that justifies the requested action. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Big Shanty Land Corp. v. Comer Properties, Inc.*, 61 B.R. 272, 278 (N.D. Ga. 1985); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991). In essence, this inquiry amounts to a “business judgment test.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147 (D. Del. 1999) (citations omitted).

10. The Debtors have determined, in the exercise of their business judgment, that the Surplus Assets are no longer of use to the Debtors and that the sale of Surplus Assets will generate funds for the Debtors’ estates. Furthermore, the sale of Surplus Assets will reduce the Debtors’ costs associated with disassembling, cleaning, decommissioning, and storing or moving them to other locations the Surplus Assets. The Debtors have determined that the sale of the Surplus Assets, in accordance with the Sale Procedures, will enable the Debtors to realize maximum net value and, therefore, is in the best interests of the Debtors’ estates and their creditors.

11. The Debtors have determined that it is in the best interests of their estates and creditors to sell the Surplus Assets in accordance with the proposed procedures to avoid the unnecessary expenses that would otherwise be incurred if they had to seek approval of such sales separately. The proceeds generated by many of the proposed sale transactions do not warrant

incurring such expenses. As such, the Debtors submit that these proposed procedures are fair and appropriate, and balance the need for a reduction of burdensome costs to the Debtors' estates with the desire of the parties most interested in these transactions for notice and an opportunity to object.

12. Section 363(f) of the Bankruptcy Code provides that a debtor-in-possession may sell property free and clear of a lien, claim, or interest of another entity in such property if, among other things, such entity consents or such entity could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest. *See* 11 U.S.C. § 363(f); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (finding that a creditor's failure to make a timely objection after receiving notice of the sale constituted consent for purposes of Section 363(f)(2)); *In re 18th Avenue Development Corp.*, 14 B.R. 862, 863-64 (Bankr. S.D. Fla. 1981) (holding that the requirements of Section 363(f) were met where each creditor could be compelled to accept the money satisfaction of its interest). To facilitate the proposed sales in accordance with the Sale Procedures, the Debtors request that the Court authorize the sale of the Surplus Assets, pursuant to Section 363(f) of the Bankruptcy Code, free and clear of Liens, with such Liens to be transferred and attached to the net proceeds obtained for the Surplus Assets. The Debtors will give notice of any proposed sale of Surplus Assets to all entities known to have an interest in the property subject to sale. The Debtors believe that such lienholders (if any) will consent to the sales, recognizing that this is likely to result in an increased return on this property. Nevertheless, to the extent that any lienholders object to the sale of the Surplus Assets, they will have an opportunity for a hearing before this Court.

13. For the foregoing reasons, the Debtors respectfully submit that the relief requested in this Motion is appropriate and in the best interests of their estates and creditors.

**NOTICE**

14. Notice of this Application has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. ("DSM") and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

15. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court:

- (a) enter an order in the form set forth as Exhibit A authorizing the sale of surplus assets free and clear of liens, claims, interests, and encumbrances, subject to the procedures described herein; and
- (b) grant the Debtors such other and further relief as is just and proper.

Dated: February 28, 2018  
Augusta, Georgia

Respectfully submitted,

KING & SPALDING LLP

/s/ Paul K. Ferdinands

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PROPOSED COUNSEL FOR THE  
DEBTORS-IN-POSSESSION

**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 18-10274</b>
	)	
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
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**ORDER AUTHORIZING THE SALE OF CERTAIN SURPLUS ASSETS  
WITH DE MINIMIS VALUE FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES**

This matter is before the Court upon the *Motion for Order Authorizing the Sale of Certain Surplus Assets with De Minimis Value Free and Clear of Liens, Claims, Interests, and Encumbrances* (the “Motion”) filed by Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. ("DSM") and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. \_\_\_) is GRANTED.
2. The Debtors are authorized to sell Surplus Assets with a value not to exceed an aggregate total of \$250,000 per sale transaction, without further Order of this Court.
3. The Debtors shall comply with the following procedures for proposed sales of

Surplus Assets:

- (a) The Debtors shall give written notice of each proposed sale (the "Sale Notice") to counsel for any Official Committee of Unsecured Creditors appointed in these cases

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

(the “Committee”) and any known holder of a Lien on the property proposed to be sold (collectively, the “Notice Parties”).

- (b) Sale Notices will be served on the Notice Parties by facsimile or electronic transmission and shall specify the Surplus Assets to be sold, the identity of the seller and the proposed purchaser, and the purchase price.
- (c) The Notice Parties shall have ten (10) days from the date the Sale Notice is sent to provide the Debtors with a written objection to proposed transaction. Any such objection shall specify the basis for the objection and shall be addressed to Jonathan W. Jordan at King & Spalding LLP, 1180 Peachtree Street Atlanta, Georgia 30309-3521.
- (d) If no written objection is received by the Debtors by 5:00 p.m. eastern time on the tenth (10th) day following the Sale Notice, the Debtors shall be authorized to consummate the proposed sale transaction, and any entities having a Lien in the property sold shall be deemed to have consented to the sale.
- (e) If a Notice Party provides a timely written objection to the proposed transaction, the Debtors and such objecting Notice Party shall use good faith efforts to consensually resolve the objection. If the Debtors and the objecting Notice Party are unable to reach a consensual resolution, the Debtors shall be required to seek Court approval of the proposed transaction after notice and a hearing before consummating the proposed transaction.

4. Pursuant to Section 363(f) of the Bankruptcy Code, the Surplus Assets shall be sold and transferred free and clear of all Liens thereon, if any, with any such valid and perfected Liens to attach to the net sale proceeds, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties to any asserted Liens.

5. Notwithstanding Federal Rule of Bankruptcy Procedure 6004(g), any sale of Surplus Assets may be consummated immediately upon the expiration of the objection period described above.

6. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

8. Counsel to the Debtors is directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
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<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.,<sup>1</sup></b>	)	<b>Case No. 18-10274</b>
	)	
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
<hr/>	)	

**ORDER AUTHORIZING THE SALE OF CERTAIN SURPLUS ASSETS  
WITH DE MINIMIS VALUE FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES**

This matter is before the Court upon the Motion for Authority to Sell Certain Surplus Assets with De Minimis Value Free and Clear of Liens, Claims, Interests, and Encumbrances (the “Motion”) filed by Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). All

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. 26) is GRANTED.
2. The Debtors are authorized to sell Surplus Assets with a value not to exceed an aggregate total of \$250,000 per sale transaction, without further Order of this Court.
3. The Debtors shall comply with the following procedures for proposed sales of Surplus Assets:
  - (a) The Debtors shall give written notice of each proposed sale (the "Sale Notice") to counsel for the Official Committee of Unsecured Creditors appointed in these cases

(the “Committee”) and any known holder of a Lien on the property proposed to be sold (collectively, the “Notice Parties”).

- (b) Sale Notices will be served on the Notice Parties by facsimile or electronic transmission, if available, or by overnight, courier, or U.S. mail if not, and shall specify the Surplus Assets to be sold, the identity of the seller and the proposed purchaser, and the purchase price.
- (c) The Notice Parties shall have ten (10) days from the date the Sale Notice is sent to provide the Debtors with a written objection to each proposed transaction. Any such objection shall specify the basis for the objection and shall be addressed to Jonathan W. Jordan at King & Spalding LLP, 1180 Peachtree Street Atlanta, Georgia 30309-3521.
- (d) If no written objection is received by the Debtors by 5:00 p.m. eastern time on the tenth (10th) day following the Sale Notice, the Debtors shall be authorized to consummate the proposed sale transaction, and any entities having a Lien in the property sold shall be deemed to have consented to the sale.
- (e) If a Notice Party provides a timely written objection to the proposed transaction, the Debtors and such objecting Notice Party shall use good faith efforts to consensually resolve the objection. If the Debtors and the objecting Notice Party are unable to reach a consensual resolution, the Debtors shall be required to seek Court approval of the proposed transaction after notice and a hearing before consummating the proposed transaction.

4. Pursuant to Section 363(f) of the Bankruptcy Code, the Surplus Assets shall be sold and transferred free and clear of all Liens thereon, if any, with any such valid and perfected Liens to attach to the net sale proceeds, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties to any asserted Liens.

5. Notwithstanding Federal Rule of Bankruptcy Procedure 6004(h), any sale of Surplus Assets may be consummated immediately upon the expiration of the objection period described above.

6. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

8. Counsel to the Debtors is directed to serve a copy of this Order on the parties listed on the Master Service List within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

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