

1 ROBERT E. OPERA -- State Bar No. 101182  
ropera@wghlawyers.com  
2 PETER W. LIANIDES -- State Bar No. 160517  
plianides@wghlawyers.com  
3 **WINTHROP GOLUBOW HOLLANDER, LLP**  
1301 Dove Street, Suite 500  
4 Newport Beach, CA 92660  
Telephone: (949) 720-4100  
5 Facsimile: (949) 720-4111

6 [Proposed] General Insolvency Counsel for  
7 Debtor and Debtor-in-Possession

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **RIVERSIDE DIVISION**

11 In re:

12 SILVER CREEK INDUSTRIES, LLC

13 Debtor and  
14 Debtor-in-Possession.

Case No. 6:23-11677-SY

Chapter 11 Proceeding

**DEBTOR'S MOTION FOR ORDER  
APPROVING: (1) SALE AND BIDDING  
PROCEDURES IN CONNECTION WITH  
THE SALE OF SUBSTANTIALLY ALL OF  
THE ASSETS OF THE DEBTOR FREE  
AND CLEAR OF LIENS AND INTERESTS;  
(2) PROPOSED BREAK-UP FEE; AND (3)  
MANNER OF NOTICE TO BE PROVIDED  
TO CREDITORS AND PARTIES-IN-  
INTEREST IN CONNECTION WITH SALE  
MOTION; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
MOTION**

**[11 U.S.C. §§ 363 AND 365 AND LOCAL  
BANKRUPTCY RULE 6004-1(b)]**

**[DECLARATION OF JAMES MCGEEVER  
IN SUPPORT OF THE MOTION FILED  
CONCURRENTLY HEREWITH]**

Date: May \_\_, 2023

Time: \_\_: \_\_

Place: Courtroom 302  
3420 Twelfth Street  
Riverside, CA 92501

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION ..... 5

3 II. STATEMENT OF FACTS ..... 5

4 A. General Description of the Debtor ..... 5

5 B. Financial Performance of the Debtor ..... 6

6 C. Secured Claims Asserted Against the Debtor ..... 7

7 1. CIT’s Secured Claims ..... 7

8 2. No Other Valid Secured Claims ..... 8

9 D. Debtor’s Financial Difficulties ..... 8

10 1. COVID-19 Pandemic/Change in Business Mix ..... 8

11 2. Losses on Residential Projects ..... 9

12 3. Surety Bond Issues ..... 10

13 4. Burdensome Secured Debt ..... 10

14 E. CIT’S Asserted Claims ..... 10

15 F. Need for Expedited Sale Proceedings ..... 11

16 G. Marketing of Debtor’s Assets ..... 12

17 H. Material Provisions of the Term Sheet ..... 13

18 1. Sale and Assignment of Assets and Properties of the Debtor ..... 13

19 2. Excluded Assets ..... 13

20 3. Assumed Liabilities ..... 14

21 4. Purchase Price ..... 14

22 5. Closing of the Transaction ..... 14

23 6. Break-Up Fee ..... 14

24 7. Good Faith Finding ..... 15

25 8. No Financing Contingency ..... 15

26 9. No Diligence Condition ..... 15

27 10. Debtor’s Right to Solicit Other Bids ..... 15

28 I. Auction/Sale Motion Hearing ..... 15

J. The Proposed Sale and Bidding Procedures ..... 15

III. GOOD CAUSE EXISTS TO APPROVE THE DEBTOR’S PROPOSED SALE AND  
BIDDING PROCEDURES ..... 16

A. The Proposed Sale Procedures Are Fair ..... 16

1. Same Diligence Rights ..... 16

2. Fair Procedures for Qualifying Bidders ..... 17

3. Same Disclosure Regarding Bids ..... 17

4. Consultation with CIT and Committee Regarding Bids ..... 17

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. Open Auction Proceeding.....	17
B. The Proposed Break-Up Fee is Fair.....	17
C. The Proposed Bidding Procedures at an Auction Are Fair.....	21
1. Equal Disclosure Regarding Bids .....	21
2. Initial Bidding Increment Is Fair.....	21
3. Same Incremental Bids at Auction .....	22
4. Consultation with CIT and Committee Regarding Auction .....	22
5. Court Will Confirm Successful Bidder.....	22
IV. THIS COURT SHOULD APPROVE THE MANNER OF THE NOTICE PROPOSED TO BE PROVIDED IN CONNECTION WITH THE SALE MOTION HEARING	23
V. CONCLUSION.....	25

**TABLE OF AUTHORITIES**

**CASES**

Canatxx Gas Storage Ltd. V. Silverhawk Capital Partners, LLC  
 2008 WL 1999234, At \*7 (S.D. Tex. May 8, 2008)..... 19

Cottle V. Storer Comm’ns, Inc.  
 849 F.2d 570 (11th Cir. 1988) ..... 19

CRTF Corp. V. Federated Dep’t Stores  
 683 F.Supp. 422 (S.D.N.Y. 1988)..... 19

In Re Genco Shipping & Trading Ltd.  
 509 B.R. 455, 465 Fn 6 (Bankr. S.D.N.Y. 2014)..... 18

In Re Integrated Res., Inc.  
 135 B.R. 746, 750 (Bankr. S.D.N.Y.), Aff’d, 147 B.R. 650 (S.D.N.Y. 1992)..... 18

In Re Integrated Res., Inc.,  
 147 B.R. 650, 657, 660, 662 (Bankr. S.D.N.Y. 1992)..... 19

**Statutes**

11 U.S.C. Section 363(m)..... 15

**Other Authorities**

Mark F. Hebbeln,  
The Economic Case For Judicial Deference To Break-Up Fee Agreements In Bankruptcy,  
 13 Bankr. Dev. J. 475, 502-505 (1997)..... 19

CARES Act Section 4027 ..... 7

**Rules**

Local Bankruptcy Rule 6004-1(b) ..... 16

Local Bankruptcy Rule 9013-1(d)(2)..... 23

1                   **TO THE HONORABLE SCOTT H. YUN, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE AND OTHER PARTIES-**  
3 **IN-INTEREST:**

4           Debtor Silver Creek Industries, Inc. (“Debtor”), the debtor and debtor-in-possession in the  
5 above-captioned Chapter 11 case (“Debtor”), hereby submits this Motion for Order Approving:

6 (1) Sale and Bidding Procedures in Connection with the Sale of Substantially All of the Assets of  
7 the Debtor Free and Clear of Liens and Interests; (2) Proposed Break-Up Fee; and (3) Manner of  
8 Notice to Be Provided to Creditors and Parties-in-Interest in Connection with Sale Motion (“Sale  
9 Procedures Motion”).

10           By this Sale Procedures Motion, the Debtor requests that this Court enter an order granting  
11 to the Debtor, in part, the following relief:

12                   1.       Approving the sale and bidding procedures, set forth in that Sale Procedures  
13 Memorandum attached as Exhibit “2” to the Declaration of James McGeever filed  
14 concurrently herewith (“McGeever Declaration”), that the Debtor hereby proposes in  
15 connection with the conducting of an auction with respect to a proposed sale of  
16 substantially all of the assets and properties of the Debtor;

17                   2.       Approving the Break-Up Fee proposed hereby; and

18                   3.       Approving the manner of the notice to be provided to creditors and parties-  
19 in-interest in connection with a hearing on a motion for an order authorizing the sale and  
20 assignment of substantially all of the assets and properties of the Debtor (“Sale Motion”).

21           Subject to the approval of this Court, the Debtor and Silver Creek Modular, LLC, a  
22 California limited liability company, a wholly-owned subsidiary of Webb Investments Co., LLC,  
23 (“Stalking Horse Bidder”), have entered into a term sheet (“Term Sheet”)<sup>1</sup>, pursuant to which the  
24 Debtor has agreed to sell to the Stalking Horse Bidder, and the Stalking Horse Bidder has agreed  
25 to purchase from the Debtor, the Marketed Assets.<sup>2</sup> The Debtor has determined that the best means  
26

27 <sup>1</sup> A true and complete of the Term Sheet is attached as Exhibit “1” to the McGeever Declaration. The Debtor and the  
28 Stalking Horse Bidder are negotiating the terms of an Asset Purchase Agreement (“APA”) and anticipate that the APA  
will be submitted to the Court at or before the time of the hearing on this Sale Procedures Motion.

<sup>2</sup> Unless otherwise defined herein, the definitions of the capitalized terms contained herein are as set forth in the Sale  
Procedures Memorandum (“Exhibit “2”) to the McGeever Declaration.

1 to obtain the most favorable recovery for creditors in this case is for the Debtor to conduct an  
2 auction of the Marketed Assets, subject to open bidding. The Debtor then will seek, at the Sale  
3 Motion Hearing, the Court's approval of the Successful Bidder for the Marketed Assets, so that a  
4 Closing of the Transaction may occur by not later than June 2, 2023. By this Sale Procedures  
5 Motion, the Debtor requests that the Court approve the sale and bidding procedures proposed by  
6 the Debtor, as described herein and in the Sale Procedures Memorandum, in connection with the  
7 sale process and the conducting of the Auction.

8 In support of this Sale Procedures Motion, the Debtor respectfully represents as follows:

9 First, the sale and bidding procedures hereby proposed by the Debtor are fair, and  
10 provide for a "level playing field" for prospective bidders with respect to the Transaction  
11 contemplated herein.

12 Second, the proposed Break-Up Fee that may become payable to the Stalking  
13 Horse Bidder under an APA is fair.

14 Third, the manner of the notice that the Debtor proposes hereby to provide to  
15 creditors and parties-in-interest in connection with the Sale Motion Hearing is designed  
16 reasonably to enhance interest in the acquisition of the Marketed Assets and is sufficient  
17 under the circumstances of this case.

18 This Sale Procedures Motion is made and based upon the allegations and representations  
19 set forth hereinabove, the Memorandum of Points and Authorities attached hereto, the McGeever  
20 Declaration filed concurrently herewith, the pleadings, papers, and other documents on file in this  
21 Chapter 11 case, and upon any supplemental evidence, both oral and documentary, that the Debtor  
22 may submit to this Court at or before the time of the hearing on this Sale Procedures Motion.

23 **WHEREFORE**, the Debtor respectfully requests that this Court enter an order:

- 24 1. Approving the proposed sale and bidding procedures set forth in the Sale  
25 Procedures Memorandum (Exhibit "2" to the McGeever Declaration);
- 26 2. Approving the proposed Break-Up Fee that may become payable to the  
27 Stalking Horse Bidder, as set forth in the Sale Procedures Memorandum and the Term  
28 Sheet;

1           3.       Approving as adequate under the circumstances of this case (i) the  
2           marketing of the Debtor’s assets, and (ii) the manner of the notice to be provided to the  
3           Debtor’s creditors and parties-in-interest in this case in connection with the Sale Motion  
4           Hearing, as described hereinbelow; and

5           4.       Granting to the Debtor such other and further relief as this Court deems just  
6           and proper under the circumstances of this case.

7           DATED: May 1, 2023

**WINTHROP GOLUBOW HOLLANDER, LLP**

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By:           /s/ Robert E. Opera            
      Robert E. Opera  
      Peter W. Lianides  
      (Proposed) General Insolvency Counsel for  
      Debtor and Debtor-in-Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The Debtor has determined that, in order to maximize the value of the Debtor’s estate, the  
5 Debtor should seek to effectuate a prompt, going concern sale of its business and the assets used  
6 therein, subject to a competitive bidding and sale process.

7 The Debtor has determined, subject to the approval of the Court, to sell and to assign to the  
8 Stalking Horse Bidder substantially all of the Debtor’s assets and properties pursuant to the terms  
9 and conditions of the Term Sheet (as modified, amended and supplemented by a definitive APA to  
10 be executed by the Debtor and the Stalking Horse Bidder), subject to an Auction process. The  
11 Debtor believes strongly that the proposed Transaction is in the best interests of the Debtor’s  
12 creditors, in part, because it is expected that, upon the Closing of the proposed Transaction, sale  
13 proceeds will be generated from the Transaction which will enable the Debtor to make significant  
14 distributions to unsecured creditors in this case.

15 The Debtor requests that the Court approve the sale and bidding procedures described  
16 herein in order to facilitate the sale process and potentially an Auction of the Marketed Assets, for  
17 the benefit of the Debtor’s creditors. The Debtor believes that the proposed sale and bidding  
18 procedures are fair, will lead to an orderly sale process, and will ensure a level playing field for all  
19 prospective purchasers.

20 **II.**

21 **STATEMENT OF FACTS**

22 **A. General Description of the Debtor.**

23 The Debtor is a California limited liability company. The Debtor’s principal place of  
24 business is located in Perris, California.

25 The Debtor was founded in 2005 with the goal of redefining modular construction of  
26 buildings. In August 2020, BVA Construction, LLC (“BVA LLC”) and BVA Construction, Inc.  
27 (“BVA Inc.”) acquired 100% of the membership interests in the Debtor and two non-debtor  
28 affiliates of the Debtor, Silver Creek Industries RS, LLC (“SCRS”) and Silver Creek Leasing,



1 LLC (“SCL”). BVA LLC owns 100% of the membership interests in BVA Inc. BVA Inc. owns  
2 100% of the membership interests in the Debtor, 100% of the membership interests in SCRS and  
3 100% of the membership interests in SCL. The managing member of the Debtor is James  
4 McGeever.<sup>3</sup>

5 BVA LLC is a holding company, with no material assets other than its interest in BVA Inc.  
6 BVA Inc. is a holding company, with no material assets other than its interests in the Debtor,  
7 SCRS and SCL.<sup>4</sup>

8 SCRS is a California limited liability company. SCRS’s sole business operations have been  
9 to provide transportation services to the Debtor. SCL is a California limited liability company.  
10 SCL’s sole business operations have been to lease machinery and equipment to the Debtor. The  
11 Debtor owes approximately \$2.0 million to SCRS and approximately \$5.3 to SCL.

12 As of December 31, 2022, the Debtor had about 370 employees. As a result of staffing cuts  
13 undertaken by the Debtor and certain employee defections, however, the Debtor had about 219  
14 employees as of the Petition Date.

15 **B. Financial Performance of the Debtor.**<sup>5</sup>

16 The Debtor’s revenues for the past several years are as follows:

- 17 1. 2019 -- \$99,567,240.
- 18 2. 2020 -- \$122,512,982.
- 19 3. 2021 -- \$132,487,840.
- 20 4. 2022 -- \$97,944,409.
- 21 5. January 1, 2023 – March 31, 2023 (est.) – \$20,992,101.

22 Historically, the Debtor’s operations have been profitable. The Debtor generated almost  
23 \$22.0 million in net income in 2019 and almost \$18.0 million in net income in 2020. However, the  
24

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25  
26 <sup>3</sup> None of such affiliated entities has filed for bankruptcy relief.

27 <sup>4</sup> It is uncertain at this time whether BVA LLC or BVA Inc is entitled to any tax refund or other governmental  
28 payment.

<sup>5</sup> Information contained herein regarding the financial affairs of the Debtor for the years 2019 through 2021 are  
derived from the audited financial statements for the Debtor. The financial information for the Debtor for 2022 and  
for 2023 derives from unaudited, internally-prepared financial statements. The financial information provided for  
2023 are preliminary and not final.

1 Debtor's operations became unprofitable in 2021. The Debtor had almost \$11.0 million in  
2 operating losses in 2021 and losses of approximately \$31.0 million in 2022. The Debtor's  
3 operations have been unprofitable in 2023.

4 The Debtor's assets consist primarily of the following: cash; accounts receivable;  
5 inventory; leased machinery and equipment; a real property lease which is believed to be  
6 substantially below market; and potential refunds and governmental credits. Furthermore, the  
7 Debtor has numerous customer orders which are believed to have considerable value in a going  
8 concern scenario.

9 **C. Secured Claims Asserted Against the Debtor.**

10 The following secured claims have been asserted against the Debtor.

11 **1. CIT's Secured Claims.** On or about October 19, 2020, the Debtor, SCRS  
12 and SCL, as "Borrowers," and CIT Bank N.A. executed that Credit Agreement (Main  
13 Street Priority Loan Facility), pursuant to which CIT advanced to the Borrowers a term  
14 loan in the original principal amount of \$45.0 million ("Loan").<sup>6</sup> The Borrowers'  
15 obligations under the Loan have allegedly been guaranteed by BVA LLC and BVA Inc  
16 ("Holding Companies").

17 The Loan was evidenced by a Term Loan Note ("Note"), dated as of October 19,  
18 2020. CIT asserts that the Loan has been secured by a Pledge and Security Agreement  
19 ("Security Agreement") and by an Intellectual Property Security Agreement ("IP Security  
20 Agreement"), and that CIT perfected its security interests by, among other things, the filing  
21 of UCC-1 financing statements ("Financing Statements") (the Credit Agreement, the Note,  
22 the Security Agreement, the IP Security Agreement, the Financing Statements, and any and  
23 all amendments, modifications or supplements thereto, are referred to herein, collectively,  
24 as the "Loan Documents").

---

25  
26  
27 <sup>6</sup> The Loan was made by CIT Bank, N.A., as a Lender, and as the Administrative Agent for MS Facilities LLC, in  
28 accordance with the terms and conditions of the Main Street Lending Program established by the Board of Governors  
of the United States Federal Reserve System pursuant to Section 4027 of the CARES Act. First-Citizens Bank & Trust  
Company is the Successor by Merger to CIT Bank, N.A. ("CIT").

1 CIT asserts that, as of the date of the filing of the Debtor’s Chapter 11 petition  
2 (“Petition Date”), the Debtor and the other Borrowers owed to CIT an amount in excess of  
3 \$48.0 million. CIT asserts that the Loan is secured by substantially all of the assets of the  
4 Debtor (excluding bankruptcy avoidance actions), substantially all of the assets of  
5 Borrowers SCRS and SCL and substantially all of the assets of the Holding Companies,  
6 and that CIT’s security interests have been duly perfected by, in part, the Financing  
7 Statements.<sup>7</sup> The Debtor believes that, as of the Petition Date, CIT’s asserted collateral for  
8 the Loan had a value substantially less than the amount of CIT’s claim.

9 **2. No Other Valid Secured Claims.** The Debtor has conducted lien searches  
10 in order to determine the secured claims asserted against the Debtor. Based upon such lien  
11 searches and the Debtor’s knowledge of its financial affairs, the Debtor believes that, apart  
12 from CIT’s secured claim, which the Debtor reserves the right to dispute, there are no  
13 valid, duly perfected and unavoidable secured claims. This matter is addressed in further  
14 detail in the Debtor’s Emergency Motion for Order Authorizing Use of Any Cash  
15 Collateral of Secured Claimants (Docket No. 8).<sup>8</sup>

16 **D. Debtor’s Financial Difficulties.**

17 In 2021, the Debtor started having financial difficulties. The causes of the Debtor’s  
18 financial difficulties include the following.

19 **1. COVID-19 Pandemic/Change in Business Mix.** The Debtor historically  
20 has generated a substantial amount of revenue from manufacturing modular buildings for  
21 schools and commercial projects. As a result of the COVID-19 pandemic, however, orders  
22 for school projects and commercial projects slowed, resulting in a significant loss of  
23 revenue from such projects. In order to try to maintain revenue, the Debtor took on a larger  
24

25 \_\_\_\_\_  
26 <sup>7</sup> The Debtor asserts that CIT has no security interest in the Debtor’s real property lease for its premises. The Debtor  
27 believes that such lease is a substantially below market lease and has great value. Furthermore, the Debtor is  
28 evaluating whether CIT has any interest in a tax refund (an Employee Retention Tax Credit) which potentially has  
substantial value, and reserves all rights, claims and interests with respect thereto.

<sup>8</sup> Claims have been asserted against surety bonds issued by the Debtor’s pre-petition surety, Hartford Fire Insurance  
Company and affiliates thereof (“Hartford”). The Debtor disputes such claims and believes that such claims are  
substantially overstated. The Debtor intends to attempt to resolve such claims, and is hopeful that Hartford will have  
no significant equitable lien or other claim against the Debtor.

1 number of residential projects. The following chart shows the change in business mix  
2 during this time period.

3 **Business Mix By Revenue (approx.)**

	<u>2020</u>	<u>2021</u>	<u>2022</u>
Schools	59%	70%	46%
Commercial	37%	7%	9%
Residential	4%	23%	45%

7  
8 The residential projects generally were lower profitability jobs than the school and  
9 commercial projects, resulting in a reduction in profitability of the Debtor's business.

10 **2. Losses on Residential Projects.** In 2021 and 2022, the Debtor suffered  
11 substantial losses on certain residential projects. Factors that led to losses on residential  
12 projects include:

13 a. Increase in Cost of Materials. Residential projects generally are bid  
14 on a fixed price basis. After the execution of certain residential project contracts,  
15 there was a significant increase in materials costs, including wood and finish  
16 materials, leading to losses on such projects.

17 b. Increase in Cost of Labor/Labor Shortages. Labor wage rates  
18 increased significantly during such period. Furthermore, as a result of COVID-19  
19 restrictions, there was a shortage of workers leading, in part, to delays in  
20 completion of projects.

21 c. Supply Chain Shortages. During such period, there was significant  
22 delay in obtaining materials needed for residential projects. These shortages in  
23 materials supply led to delays in completing projects, inefficiencies, additional  
24 labor costs to complete projects and the imposition of penalties on the Debtor.

25 d. Inefficiencies in Execution of Residential Projects. The Debtor had  
26 substantially more experience building school and commercial projects than  
27 residential projects (e.g., revenue from residential projects constituted only about  
28 4% of the Debtor's total revenue in 2020). The Debtor's relative inexperience

1 building residential projects led to inefficiencies in executing such projects and  
2 resulting losses associated therewith.

3 The Debtor's school projects and commercial projects, in the aggregate, continued  
4 to be profitable during 2021 and 2022, but the Debtor's residential projects were  
5 unprofitable during 2021 and 2022. The losses on the Debtor's residential projects caused  
6 strain on the Debtor's cash flow, resulting in the Debtor's having difficulty meeting its  
7 accruing obligations. The Debtor determined in 2022 not to build new residential projects  
8 given the problems associated with the execution of such projects.

9 **3. Surety Bond Issues.** The Debtor's school projects and many other projects  
10 require the Debtor to provide performance and payment surety bonds. Given the  
11 deterioration in the Debtor's financial affairs, in or about December 2022, the Debtor's  
12 surety bond provider, Hartford, gave notice to the Debtor that Hartford no longer would  
13 provide to the Debtor new surety bonds for the Debtor's projects. Without surety bond  
14 support, the Debtor cannot operate its business in the ordinary course. Despite the Debtor's  
15 efforts, the Debtor has been unable to obtain a new surety bond provider.

16 **4. Burdensome Secured Debt.** CIT asserts against the Debtor a secured claim  
17 in an amount in excess of \$48.0 million. As a result of the deterioration in the Debtor's  
18 financial affairs, the Debtor is concerned that it will not be able to service timely the  
19 amount of such debt.

20 The Debtor acted diligently to address its financial difficulties. The Debtor undertook  
21 significant reductions in its workforce, ceased taking on new residential construction jobs, and  
22 reduced other operating expenses in order to attempt to return to profitability. While the Debtor  
23 believes that its efforts to return to profitability ultimately would be successful, the Debtor's debt  
24 burdens, cash flow issues and bonding issues remain serious concerns for the Debtor.

25 **E. CIT's Asserted Claims.**

26 CIT asserts that, as of February 10, 2023, the Debtor was in default under the Loan  
27 Agreements. CIT asserts, among other things, that the Debtor failed to comply with certain  
28

1 financial covenants contained in the Loan Agreements, and that the Debtor failed to pay to CIT an  
2 interest payment that was owed to CIT in January 2023.

3 CIT has expressed to the Debtor concerns about the deterioration in the Debtor's financial  
4 condition and has questioned the viability of the Debtor's business. The Debtor and CIT have  
5 engaged in ongoing discussions regarding the Debtor's financial affairs and the Debtor's ability to  
6 pay CIT's claim. Based upon such discussions and in light of the Debtor's financial difficulties,  
7 the Debtor determined to pursue, in Chapter 11, an auction of substantially all of its assets in order  
8 to attempt to maximize the value of the assets for the benefit of the Debtor's creditors.

9 **F. Need for Expedited Sale Proceedings.**

10 Based upon the challenges facing the Debtor, the Debtor has determined that the best  
11 means for the Debtor to preserve value in the Debtor's assets and to produce as favorable a  
12 recovery for the Debtor's creditors as may be possible under the circumstances of this case is for  
13 the Debtor to attempt to sell the Debtor's business as a going concern. Toward that end, the Debtor  
14 has entered into the Term Sheet with the Stalking Horse Bidder setting forth the material terms of  
15 a proposed sale of the Debtor's business to the Stalking Horse Bidder, subject to an Auction  
16 process.

17 The Debtor must pursue in this case a prompt sale process with a closing of a sale to occur  
18 during the week of May 29, 2023. By reason of the Debtor's financial difficulties, the Debtor no  
19 longer can obtain new surety bond support and therefore is precluded from performing work on  
20 most of its scheduled new projects and from bidding on new projects. The Debtor is experiencing  
21 employee defections and the Debtor is at risk of losing business to competitors. The Debtor's  
22 Cash Collateral Budget, a true and complete copy which is attached as Exhibit "3" to the  
23 McGeever Declaration, indicates that the Debtor will be able to operate its business until the week  
24 of May 29, 2023, but that the Debtor thereafter will lack cash sufficient to continue its operations.  
25 Consequently, in order to avoid a deterioration in the Debtor's assets and enterprise value resulting  
26 from such financial difficulties, the Debtor has no alternative but to act promptly to implement and  
27 close a sale transaction. The Stalking Horse Bidder has required by its Term Sheet that the Debtor  
28 close the proposed Transaction by **June 2, 2023.**

1 The Debtor proposes the following timeline for the sale process in this case:

- 2 1. Service of Notice of Sale Motion Hearing -- May 10, 2023
- 3 2. Auction of Debtor's Assets (if viable) -- May 30, 2023
- 4 3. Sale Motion Hearing -- May 31, 2023 or June 1, 2023
- 5 4. Closing of Transaction -- June 2, 2023

6 The Debtor acknowledges that this timeline is fairly accelerated but, given the Debtor's  
7 cash flow concerns and impending business deterioration, by necessity there needs to be a prompt  
8 sale process in this case if the Debtor is going to be able to fulfill its goal of maximizing the  
9 recovery by creditors in this case.

10 **G. Marketing of Debtor's Assets.**

11 The Debtor has not retained an investment banker or business broker. The Debtor did not  
12 engage pre-petition in any lengthy, formal marketing process. Nevertheless, as set forth by the  
13 McGeever Declaration, when the Debtor was unable to obtain new surety bond support and was  
14 unable to resolve CIT's very large claims, the Debtor did commence marketing the Debtor's  
15 business. As set forth in the McGeever Declaration, the Debtor reached out to about nine  
16 competitors of the Debtor in order to gauge their interest in exploring a potential transaction with  
17 the Debtor. The Debtor received expressions of interest from three potential purchasers of  
18 substantially all, or a portion, of the Debtor's assets. The Debtor engaged in serious discussions  
19 with two potential purchasers of substantially all of the Debtor's assets, the Stalking Horse Bidder  
20 and Whitley Manufacturing Co., Inc. ("Whitley"). These potential purchasers both executed  
21 confidentiality agreements with the Debtor, conducted extensive diligence investigations in  
22 furtherance of a possible transaction with the Debtor, and submitted term sheets for a possible  
23 transaction. After very active negotiations conducted over a number of weeks with these potential  
24 purchasers, which resulted in significant improvements in the provisions of the potential  
25 purchasers' respective term sheets, the Debtor determined to accept, subject to the approval of the  
26 Court, the offer reflected in the Stalking Horse Bidder's Term Sheet, subject to overbidding  
27 pursuant to Auction proceedings as set forth in the Sale Procedures Memorandum. The Debtor is  
28 hopeful that a vibrant Auction of the Debtor's assets will ensue.

1 In addition to the Debtor’s pre-petition marketing of the Debtor’s business, the Debtor  
2 hereby proposes to continue to market the Debtor’s business, by advertising the sale of the  
3 Debtor’s business and by soliciting bids from other competitors of the Debtor, as described more  
4 fully hereinbelow.

5 **H. Material Provisions of the Term Sheet.**<sup>9</sup>

6 Material terms of the Term Sheet include the following:

- 7 **1. Sale and Assignment of Assets and Properties of the Debtor.** The Debtor and  
8 two non-debtor affiliates of the Debtor, SCRS and SCL (the Debtor, SCRS and  
9 SCL are referred to herein, collectively, as the “Sellers”), will sell and assign to the  
10 Stalking Horse Bidder, and the Stalking Horse Bidder will purchase from the  
11 Sellers, free and clear of liens and interests, all of the assets and properties of the  
12 Sellers, except only for the Excluded Assets identified expressly in the Term Sheet.  
13 The assets and properties of the Debtor will be sold to the Stalking Horse Bidder  
14 free and clear of all liens and interests pursuant to Section 363(f) of the Bankruptcy  
15 Code.
- 16 **2. Excluded Assets.** The Sellers will not sell to the Stalking Horse Bidder, but will  
17 retain, among other assets and properties of the Sellers: refunds (including tax  
18 refunds), rebates, credits (including any Employee Retention Tax Credit) and  
19 deposits; litigation claims and recoveries and insurance claims and recoveries,  
20 except as such litigation claims and recoveries and insurance claims and recoveries  
21 relate directly to the Purchased Assets; all preference, fraudulent transfer and other  
22 bankruptcy avoidance claims under Chapter 5 of the Bankruptcy Code, except as  
23 may be limited by the Term Sheet; and cash and cash equivalents of the Sellers.  
24 The Debtor’s affiliates, SCRS and SCL, will sell and assign to the Stalking Horse  
25 Bidder all of their assets which are used by the Debtor in its business.

26  
27 <sup>9</sup> This section is intended to be merely a summary of certain material provisions of the Debtor’s Term Sheet with the  
28 Stalking Horse Bidder. In the event of any inconsistency between this summary and the provisions of the Term Sheet,  
the provisions of the Term Sheet will control. The Debtor notes that the Term Sheet is a non-binding document and  
that the parties are in the process of preparing the definitive APA. Upon the execution of the APA, the terms of the  
APA will supersede the Term Sheet and will control.



1           **3. Assumed Liabilities.** The Stalking Horse Bidder will not assume or be liable for  
2 any of the liabilities of the Sellers, except only for the Assumed Liabilities  
3 expressly assumed by the Stalking Horse Bidder pursuant to the Term Sheet. In  
4 accordance with the provisions of the Term Sheet, the Stalking Horse Bidder will  
5 assume certain liabilities of the Debtor including: certain liabilities relating to  
6 vacation days, sick days and other paid time-off of employees of the Debtor who  
7 are hired by the Stalking Horse Bidder; certain warranty obligations of the Debtor;  
8 and the obligation to pay certain Cure Amounts under executory contracts and  
9 leases that may be assigned to the Stalking Horse Bidder pursuant to the Term  
10 Sheet.

11           **4. Purchase Price.** The Purchase Price to be paid by the Stalking Horse Bidder will  
12 be as follows:

13           a.     Cash. A \$13,000,000 cash payment, payable by a \$750,000 purchase  
14 deposit and a \$12,250,000 cash payment at the Closing of the Transaction;

15           b.     Payment of Construction Law Claims. The Stalking Horse Bidder agrees to  
16 pay, at the Closing, \$2.5 million, to be allocated exclusively to pay subcontractors,  
17 material suppliers and other claimants who have bond claims, stop notice claims,  
18 lien claims and similar claims (referred to as “Construction Law Claims” in the  
19 Debtor’s Emergency Motion for Order Authorizing Debtor to Pay in the Ordinary  
20 Course Pre-Petition Claims of Claimants Having Bond Rights, Lien Rights and  
21 Comparable Construction Law Rights [Docket No. 11]); and

22           c.     Assumption of Assumed Liabilities. The Stalking Horse Bidder will  
23 assume the Assumed Liabilities in accordance with the terms and conditions set  
24 forth in the Term Sheet.

25           **5. Closing of the Transaction.** The Transaction must close by **June 2, 2023.**

26           **6. Break-Up Fee.** The Stalking Horse Bidder will be entitled to a Break-Up Fee in  
27 the amount of \$425,000 if the APA is terminated because the Debtor has entered  
28

1 into an alternative transaction with another bidder and such alternative transaction  
2 closes.

3 7. **Good Faith Finding.** The Debtor will attempt to obtain from the Court a finding  
4 that the Stalking Horse Bidder is a good faith purchaser under Section 363(m) of  
5 the Bankruptcy Code.

6 8. **No Financing Contingency.** The Stalking Horse Bidder acknowledges and agrees  
7 that its obligation to consummate the Transaction is not subject to any financing  
8 condition.

9 9. **No Diligence Condition.** The Stalking Horse Bidder acknowledges and agrees that  
10 its obligation to consummate the Transaction is not subject to any diligence  
11 condition.

12 10. **Debtor's Right to Solicit Other Bids.** The Debtor may solicit other bids for the  
13 assets and properties of the Debtor without any restriction on such solicitation.

14 **I. Auction/Sale Motion Hearing.**

15 The Debtor requests that the Court authorize the Debtor to conduct an Auction of the  
16 Marketed Assets on May 30, 2023, at the office of the Debtor's proposed general insolvency  
17 counsel, and that the Court schedule a Sale Motion Hearing for May 31, 2023 or June 1, 2023. In  
18 accordance with the requirements of the Term Sheet, the Closing of the Transaction must occur by  
19 June 2, 2023.

20 **J. The Proposed Sale and Bidding Procedures.**

21 In order to create a fair, orderly and competitive process for the bidding on the  
22 Marketed Assets, the Debtor proposes hereby that the Court approve sale and bidding procedures  
23 with respect to the contemplated sale of the Marketed Assets in substantially the form reflected in  
24 the Sale Procedures Memorandum attached as Exhibit "2" to the McGeever Declaration. The  
25 Debtor believes that the proposed sale and bidding procedures are fair, and provide for a level  
26 playing field to all prospective bidders.

27  
28

1 III.

2 **GOOD CAUSE EXISTS TO APPROVE THE DEBTOR'S**  
3 **PROPOSED SALE AND BIDDING PROCEDURES**

4 The sale and bidding procedures that the Debtor proposes to govern the Auction process in  
5 this case are set forth in the Sale Procedures Memorandum (Exhibit "2" to the McGeever  
6 Declaration).

7 The Debtor believes that the description of the proposed sale and bidding procedures and  
8 the basis for the proposed Break-Up Fee set forth hereinbelow (and to be stated in a notice of a  
9 hearing on the Sale Procedures Motion to be served by the Debtor) complies with the requirements  
10 of Rule 6004-1(b) of the Local Bankruptcy Rules.

11 The Debtor believes that the proposed sale and bidding procedures are reasonable, provide  
12 "transparency" in the sale process in this case, and will facilitate an orderly and fair sale process in  
13 this case. As set forth in the McGeever Declaration, the Debtor believes that the proposed sale  
14 and bidding procedures are reasonable and treat all parties fairly. Under normal circumstances,  
15 sales of businesses are fraught with complexity. In the context of bankruptcy, such sales become  
16 even more challenging, due, in part, to a debtor's duty to maximize the value of estate assets and  
17 the obligation to encourage competitive bidding in order to achieve the highest and best price for  
18 the sale of the debtor's assets. It is clear that few potential buyers of a debtor's business would be  
19 willing to enter into a purchase agreement in the context of a debtor's bankruptcy case without  
20 assurance that the bidding process will treat all parties fairly.

21 In this case, for among others the reasons set forth below, the Debtor believes that the  
22 proposed sale and bidding procedures are fair and should be approved by this Court.

23 **A. The Proposed Sale Procedures Are Fair.**

24 The Debtor's proposed sale procedures are fair and do not unduly favor any prospective  
25 bidders in the bidding process. The fairness of the sale procedures is evidenced by the following:

- 26 **1. Same Diligence Rights.** All prospective bidders have been afforded an  
27 opportunity to review and may continue to review financial reporting associated with the  
28 Debtor's business, the Marketed Assets and all agreements associated with the Marketed

1 Assets. All prospective bidders have had and will continue to have the same and equal  
2 access to the Debtor's books and records, the Debtor's employees and the Debtor's  
3 premises with respect to the Marketed Assets for the purpose of conducting a due diligence  
4 investigation with respect to a Transaction. All prospective bidders must complete their  
5 due diligence by the same time (i.e., by the Bid Deadline).<sup>10</sup>

6 **2. Fair Procedures for Qualifying Bidders.** The proposed procedures for  
7 qualifying prospective bidders are fair, and the requirements imposed upon prospective  
8 bidders to become Qualified Bidders are reasonable.

9 **3. Same Disclosure Regarding Bids.** All Qualified Bidders will receive a  
10 copy of the APA of the Stalking Horse Bidder and have the same opportunity to obtain  
11 from the Debtor copies of all other bids.

12 **4. Consultation with CIT and Committee Regarding Bids.** The Sale  
13 Procedures Memorandum provides that the Debtor will consult with CIT and any Official  
14 Committee of Unsecured Creditor ("Committee") that will be appointed in the Debtor's  
15 case regarding bids received by the Debtor and the qualification of bidders to participate in  
16 an Auction.

17 **5. Open Auction Proceeding.** The proposed sale procedures provide for an  
18 "open auction" process by and among all Qualified Bidders, thereby providing to all  
19 bidders an equal opportunity to present competitive offers. The Auction will be conducted  
20 with an opportunity for all Qualified Bidders, CIT, any Committee and any and all other  
21 parties-in-interest to be present at the Auction, thereby ensuring the fairness of the Auction  
22 process.

23 **B. The Proposed Break-Up Fee is Fair.**

24 The "Stalking Horse Bidder" will be entitled to a \$425,000 Break-Up Fee if the Stalking  
25 Horse Bidder's APA is terminated because the Debtor has entered into an alternative transaction  
26 with another bidder and such alternative transaction closes. The Stalking Horse Bidder will be  
27

28 <sup>10</sup> The Debtor notes that the Term Sheet provides for no diligence condition to a Closing of a Transaction with the Stalking Horse Bidder.

1 entitled to no other expense reimbursement or fee. The Debtor believes that the proposed Break-  
2 Up Fee is fair.

3 In addressing break-up fees in bankruptcy proceedings, the court in the case, In re  
4 Integrated Res., Inc., 135 B.R. 746 (Bankr. S.D.N.Y.), aff'd, 147 B.R. 650 (S.D.N.Y. 1992), stated  
5 as follows:

6 In order to encourage the making of bids, debtors entice potential purchasers by  
7 utilizing various incentives, such as break-up fees, topping fees and expense  
8 reimbursement agreements. A “break-up fee” is a fee paid to a potential acquiror of a  
9 business, or certain assets, by the seller, in the event that the transaction contemplated  
10 fails to be consummated and certain criteria in the purchase agreement are met. The  
11 condition most commonly giving rise to the payment of a break-up fee is the seller's  
acceptance of a later bid. Break-up fees may take the form of paying the out-of-pocket  
expenses incurred in arranging the deal, including due diligence expenses, or break-up  
fees may be wholly independent of the transaction costs. For example, a break-up fee  
may include compensation for a bidder's lost opportunity costs.

12 In re Integrated Res., Inc., 135 B.R. 746, 750 (Bankr. S.D.N.Y.), aff'd, 147 B.R. 650 (S.D.N.Y.  
13 1992).

14 See also, In re Genco Shipping & Trading Ltd., 509 B.R. 455, 465 fn 6 (Bankr. S.D.N.Y.  
15 2014) (“A ‘stalking horse bidder’ refers to a preliminary bidder whose offer can be ‘shopped  
16 around’ to attract higher bids. Break-up fees can be used to overcome bidders' reluctance ‘to make  
17 the first bid for fear that it will be shopped around and ‘topped’ by an entity relying on the initial  
18 offeror's due diligence.’”).

19 Courts recognize that a provision for a break-up fee can serve several beneficial purposes  
20 for a debtor. A break-up fee encourages bidding in a bankruptcy sale context by providing  
21 protection to a prospective purchaser that makes an offer that is then “shopped around” to attract  
22 higher offers, and by providing compensation to a prospective purchaser if another bidder relies  
23 on the prospective purchaser’s due diligence and other work to make a higher offer. A break-up  
24 fee also may aid a debtor as follows: a break-up fee may serve to discourage a bidding strategy  
25 designed to hold back competitive bids until late in the sale process and may aid the debtor to  
26 negotiate an initial bid that is the bidder's highest bid; a break-up fee may establish a high floor  
27 early in the bidding process; and a break-up fee may enhance the bidding process by creating  
28

1 momentum toward closing a sale. Canatxx Gas Storage Ltd. v. Silverhawk Capital Partners, LLC,  
2 2008 WL 1999234, at \*7 (S.D. Tex. May 8, 2008).

3 Break-up fee arrangements outside bankruptcy are presumptively valid under the business  
4 judgment rule. See, In re Integrated Res., Inc., 147 B.R. 650 (Bankr. S.D.N.Y. 1992) (citing  
5 Cottle v. Storer Comm’ns, Inc., 849 F.2d 570 (11th Cir. 1988)) (\$29 million termination fee  
6 protected by business judgment rule); CRTF Corp. v. Federated Dep’t Stores, 683 F.Supp. 422  
7 (S.D.N.Y. 1988) (break-up fees not illegal where they enhance rather than hamper bidding). See  
8 also, Mark F. Hebbeln, The Economic Case For Judicial Deference To Break-Up Fee Agreements  
9 In Bankruptcy, 13 Bankr. Dev. J. 475, 502-505 (1997) (unless the court determines that a break-  
10 up fee arrangement is tainted with self-dealing, fraud, or bad faith, courts should accord  
11 “substantial deference” to the fiduciary duty of the debtor’s board members who approved the  
12 terms of the break-up fee).

13 The court in the Integrated Resources case, supra, found that courts addressing the break-  
14 up fee issue routinely have asked the following questions:

- 15 • Is the relationship of the parties who negotiated the break-up fee tainted by self-  
16 dealing or manipulation such that the business judgment rule should not be applied? A  
17 court will uphold a decision by the board of directors of a debtor if the decision was  
18 safeguarded by the scrutiny of disinterested directors or other means. In re Integrated  
19 Res., Inc., supra, at 657.
- 20 • Does the break-up fee materially hamper bidding? In assessing the effect of a break-  
21 up fee, a court should determine whether the amount of the break-up fee is so  
22 substantial that it has a “chilling” effect. In re Integrated Res., Inc., supra, at 660.
- 23 • Is the amount of the break-up fee unreasonable relative to the proposed purchase  
24 price? A break-up fee should constitute a fair and reasonable percentage of the  
25 proposed purchase price, and should be reasonably related to the risk, effort and  
26 expenses of the prospective purchaser. In re Integrated Res., Inc., supra, at 662 (the  
27 court heard expert testimony that “the average break-up fee in the industry is 3.3  
28 percent [of the Purchase Price]”).

1 In this case, the Debtor believes, and hereby respectfully represents to the Court, that the  
2 proposed Break-Up Fee is fair and should be approved by the Court.

3 First, the proposed Break-Up Fee has been approved by the Debtor in the exercise of its  
4 business judgement. The Stalking Horse Bidder is not an insider of the Debtor. The negotiations  
5 with the Stalking Horse Bidder were conducted on an arms-length basis. Other bidders were given  
6 a fair opportunity to bid, and to make their best purchase offer. The bidding process was  
7 conducted in an open, fair and transparent manner. There was no collusion, or any undisclosed or  
8 inappropriate agreement with the Stalking Horse Bidder. The amount of the Break-Up Fee was  
9 heavily negotiated over a period of several weeks and the Stalking Horse Bidder made significant  
10 concessions to reach agreement with the Debtor regarding the amount of the Break-Up Fee.  
11 Therefore, there is no “taint” to the agreement by the Debtor to provide the Break-Up Fee to the  
12 Stalking Horse Bidder.

13 Second, the proposed Break-Up Fee should not materially chill any competitive bidding at  
14 an Auction. Requiring an overbidder to pay a \$425,000 Break-Up Fee on a Transaction with a  
15 Purchase Price in an amount of approximately \$15,750,000 should not impose a material burden  
16 on the overbidder.

17 Third, the amount of the proposed Break-Up Fee is reasonable compared with the amount  
18 of the Purchase Price to be paid by the Stalking Horse Bidder. The proposed \$425,000 Break-Up  
19 Fee represents only about 2.7% of the Purchase Price. Furthermore, based upon the  
20 representations made to the Debtor by the Stalking Horse Bidder, the amount of the proposed  
21 Break-Up Fee has a reasonable relationship to the expenses incurred by the Stalking Horse Bidder  
22 in connection with the Transaction. The Stalking Horse bidder has expended substantial time in  
23 connection with conducting diligence regarding the Transaction, and negotiating the terms of the  
24 Term Sheet (and its APA) with the Debtor. The Debtor believes that the proposed Break-Up Fee is  
25 not unreasonable given the efforts made by and the expenses incurred by the Stalking Horse  
26 Bidder.

1            Fourth, the proposed Break-Up Fee has been reduced significantly from the initial demand  
2 made by the Stalking Horse Bidder as a result of hard-fought negotiations between the Debtor and  
3 the Stalking Horse Bidder.

4            The Debtor's agreement to allow the proposed Break-Up Fee is likely to enhance the  
5 ultimate sale price for the Debtor's assets and properties. The Stalking Horse Bidder required that  
6 the Debtor agree to allow the Break-Up Fee as a condition to its being the Stalking Horse Bidder  
7 and proceeding with the sale process in this case. Absent the Debtor's agreement to allow the  
8 Break-Up Fee, therefore, the Debtor would not have been able to obtain the bid from the Stalking  
9 Horse Bidder and the prospects for a vibrant Auction in this case would have been impaired  
10 greatly.

11            Based upon the foregoing, the Debtor believes, and hereby respectfully represents to the  
12 Court, that authorizing the possible payment of a Break-Up Fee to the Stalking Horse Bidder is  
13 fair and reasonable under the circumstances of this case.<sup>11</sup>

14            **C.    The Proposed Bidding Procedures at an Auction Are Fair.**

15            Similarly, the Debtor's proposed procedures for the conducting of the Auction and for the  
16 Closing of the Transaction are fair, and provide for a level playing field for all prospective bidders.  
17 The fairness of such procedures is evidenced by the following.

18            **1.    Equal Disclosure Regarding Bids.** Subject to the approval of the Court,  
19 the Debtor will conduct the Auction in an open manner, and provide an opportunity for all  
20 Qualified Bidders to engage in competitive bidding. All Qualified Bidders will know each  
21 bid made at the Auction, and will have a reasonable opportunity to evaluate the bids. The  
22 Debtor will provide full and equal disclosure to all Qualified Bidders relative to the  
23 Debtor's position regarding bids made at the Auction. Each Qualified Bidder will have the  
24 right, but not the obligation, to improve its bid at the Auction. The Auction will be  
25 conducted, therefore, in an open and transparent manner.

26            **2.    Initial Bidding Increment Is Fair.** The initial overbidding increment with  
27 respect to the Transaction is \$100,000. The Stalking Horse Bidder's bid has a value of  
28

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<sup>11</sup> Pursuant to the Sale Procedures Memorandum, no overbidder will be entitled to payment of a Break-Up Fee.



1 about \$15,700,000 (the initial overbid, then, is only about .4% of the Stalking Horse  
2 Bidder's bid). The proposed initial bidding increment should not impair materially any  
3 competitive bidding.

4 **3. Same Incremental Bids at Auction.** At the Auction, after any initial  
5 overbid is made, subsequent overbids must be in minimum \$25,000 increments on terms  
6 the same for all Qualified Bidders.

7 **4. Consultation with CIT and Committee Regarding Auction.** The Sale  
8 Procedures Memorandum provides that the Debtor will consult with CIT and any  
9 Committee regarding matters of importance at the Auction, including the selection of the  
10 Successful Bidder.

11 **5. Court Will Confirm Successful Bidder.** After the conclusion of any  
12 Auction, the Debtor will announce the bid that it proposes to accept as the Successful Bid.  
13 The Debtor will request, at the Sale Motion Hearing, that this Court confirm such bid as  
14 the Successful Bid. This Court will determine, at the Sale Motion Hearing, the bid that is  
15 the most favorable bid for the Debtor's creditors and any other bidder or party-in-interest  
16 will have an opportunity to be heard in such regard. This Court, therefore, will confirm in  
17 open Court the Successful Bid with respect to the Marketed Assets.

18 The Debtor notes that CIT has been involved actively, and will continue to be involved  
19 actively, in all aspects of the sale process in this case. If a Committee is appointed in this case,  
20 counsel for the Committee will be entitled to participate actively in the sale process. CIT's (and  
21 potentially any Committee's) active involvement in the sale process will help to ensure that the  
22 sale process will be conducted fairly and in a manner designed to maximize the recovery by  
23 creditors in this case.

24 Based upon the foregoing, the Debtor respectfully submits that the proposed sale and  
25 bidding procedures, as set forth in the Sale Procedures Memorandum, are reasonable.

26 In order to provide 21 days' notice of the proposed May 31, 2023 or June 1, 2023 Sale  
27 Motion Hearing in this case, notice of the Sale Motion Hearing and the proposed sale and bidding  
28 procedures must be served by the Debtor by May 10, 2023 or May 11, 2023. The Debtor requests,

1 therefore, that this Court approve the Break-Up Fee and the other sale and bidding procedures  
2 reflected in the Sale Procedures Memorandum by **May 9, 2023**, so that the Debtor has time  
3 sufficient to serve notice of the Sale Motion Hearing and the sale and bidding procedures  
4 associated therewith, as set forth in the Sale Procedures Memorandum.

5 **IV.**

6 **THIS COURT SHOULD APPROVE THE MANNER OF THE NOTICE**  
7 **PROPOSED TO BE PROVIDED IN CONNECTION WITH THE**  
8 **SALE MOTION HEARING**

9 In light of the Debtor's cash flow concerns, the Debtor must close a Transaction by June 2,  
10 2023 or the Debtor may run out of cash sufficient to operate its business and thereby risk a loss of  
11 a sale of its business as a going concern. Reflecting such concerns, the Stalking Horse Bidder's  
12 Term Sheet provides that the Closing of the Transaction must occur by June 2, 2023. The Debtor  
13 proposes, therefore, that the Court schedule the Sale Motion Hearing for May 31, 2023 or June 1,  
14 2023. Conducting the Sale Motion Hearing on May 31, 2023 or June 2, 2023 will allow notice of  
15 the Sale Motion Hearing, which will include notice of sale and bidding procedures approved by  
16 the Court, to be served in accordance with the 21 days' notice requirement of Rule 9013-1(d)(2) of  
17 the Local Bankruptcy Rules. Accordingly, the Debtor proposes to give to creditors and parties-in-  
18 interest, and any prospective bidders for the Marketed Assets, the required, regular notice of the  
19 Sale Motion Hearing.

20 As set forth in the McGeever Declaration, prior to the Petition Date, the Debtor marketed  
21 the Debtor's assets and properties. The Debtor received nine expressions of interest for the  
22 purchase of substantially all of, or a portion of the Debtor's assets and properties, including two  
23 term sheets (the Stalking Horse Bidder's Term Sheet and a term sheet from Whitley). There have  
24 been substantial, hard-fought negotiations between the Debtor and the two primary bidders. The  
25 two primary bidders have conducted on-site visits to the Debtor's facilities and have performed  
26 extensive diligence investigations regarding the Debtor's financial affairs. The Debtor believes  
27 that the bids of the two primary bidders are viable bids and is hopeful that a vibrant Auction will  
28 be conducted in this case.

1 As set forth in the McGeever Declaration, the Debtor believes that, as a result of the  
2 Debtor's marketing efforts to date, the Debtor has created significant interest in a potential  
3 purchase and sale transaction with respect to the Debtor's assets and properties.

4 In furtherance of the Debtor's marketing efforts, the Debtor proposes to advertise (if  
5 feasible) the sale of the Debtor's assets in the following publications:

- 6 • Los Angeles Times; and
- 7 • Wall Street Journal

8 In addition, the Debtor proposed to solicit bids from competitors of the Debtor, a list of  
9 which is attached as Exhibit "4" to the McGeever Declaration.

10 The Debtor believes that, given the marketing conducted to date by the Debtor and the  
11 limited resources available to the Debtor, such additional marketing should be deemed to be  
12 sufficient.<sup>12</sup>

13 The Debtor will serve on creditors and parties-in-interest notice of the Sale Motion  
14 Hearing ("Sale Motion Hearing Notice"). The Sale Motion Hearing Notice will set forth clearly  
15 the sale and bidding procedures proposed herein, the date and time of the Auction and the Sale  
16 Motion Hearing, the date by which any objections to the Sale Motion must be filed, and all other  
17 material information relevant to the sale process.

18 The Debtor will serve the Sale Motion Hearing Notice on the following entities: (i) all  
19 creditors of the Debtor's estate and parties-in-interest in this case; (ii) all entities who have  
20 requested special notice in this case; and (iii) all entities that have expressed interest, or that the  
21 Debtor believes may have legitimate interest, in acquiring the Marketed Assets, (including the  
22 competitors of the Debtor listed in Exhibit "4" to the McGeever Declaration). The Debtor believes

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23  
24 <sup>12</sup> The Debtor believes that CIT's interest in this case is substantially undersecured. CIT asserts against the Debtor a  
25 claim in excess of \$48.0 million. The two formal bids received by the Debtor provide for a \$13.0 million purchase  
26 price (the Stalking Horse Bidder's Term Sheet provides for an additional \$2.5 million payment allocated exclusively  
27 to pay Construction Law Claims, plus the assumption of certain Assumed Liabilities by the Stalking Horse Bidder). It  
28 is extremely likely that, even if a very extensive and protracted marketing process were pursued by the Debtor -- the  
Debtor lacks the time and funds to pursue such a process -- a purchase price sufficient to pay in full CIT's claim still  
would not be obtained. Nevertheless, the Debtor does propose to pursue a limited marketing process, consistent with  
its need for an accelerated sale proceeding and the limited resources available to the Debtor.  
The primary source for recovery by the Debtor's unsecured creditors in this case likely will be proceeds obtained by  
the Debtor from an assignment of the Debtor's substantially below-market, unencumbered real property lease to a  
strategic purchaser of the Debtor's business.

1 that the notice proposed by the Debtor will help to ensure that the sale of the Marketed Assets will  
2 receive as much exposure as possible under the circumstances.

3 The Debtor will serve a copy of the Sale Motion on the following entities: (i) the Office of  
4 the United States Trustee; (ii) any Committee; (iii) CIT; (iv) those parties whose unexpired leases  
5 or executory contracts are proposed to be assumed and assigned, or rejected, in connection with the  
6 Transaction; (v) the creditors who will receive notice electronically by the Court (NEF); and (vi)  
7 the Stalking Horse Bidder and all other entities that have submitted a bid for assets of the Debtor.  
8 All creditors and parties-in-interest will receive a copy of the Sale Motion Hearing Notice.

9 The Debtor respectfully submits that the proposed notice to be provided to creditors and  
10 parties-in-interest (including, without limitation, the entities most likely to submit bids for the  
11 purchase of the Marketed Assets) is well designed to attract interest in the acquisition of the  
12 Marketed Assets, and thereby to maximize the value of the Marketed Assets, and is sufficient  
13 under the circumstances of this case. The Debtor respectfully requests, therefore, that this Court  
14 approve as adequate under the circumstances of this case the marketing of the Debtor's assets and  
15 the manner of giving notice of the Sale Motion Hearing, as set forth herein.

16 **V.**

17 **CONCLUSION**

18 Based upon the foregoing, the Debtor hereby respectfully requests that this Court  
19 (i) approve the sale and bidding procedures that the Debtor proposes hereby, as reflected in the  
20 Sale Procedures Memorandum; (ii) approve the proposed Break-Up Fee payable to the Stalking  
21 Horse Bidder if overbid; (iii) approve as sufficient the marketing of the Debtor's assets and the  
22 manner of giving notice to the Debtor's creditors and parties-in-interest of the Sale Motion  
23 Hearing, as described herein; and (iv) grant to the Debtor such other and further relief as this Court  
24 deems just and appropriate under the circumstances of this case.

25 DATED: May 1, 2023

**WINTHROP GOLUBOW HOLLANDER, LLP**

26 By: /s/ Robert E. Opera

27 Robert E. Opera

Peter W. Lianides

28 (Proposed) General Insolvency Counsel for  
Debtor and Debtor-in-Possession

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 1301 Dove Street, Suite 500, Newport Beach, CA 92660.

A true and correct copy of the foregoing document entitled: **DEBTOR’S MOTION FOR ORDER APPROVING: (1) SALE AND BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS AND INTERESTS; (2) PROPOSED BREAK-UP FEE; AND (3) MANNER OF NOTICE TO BE PROVIDED TO CREDITORS AND PARTIES-IN-INTEREST IN CONNECTION WITH SALE MOTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **May 1, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Theodore A Cohen** tcohen@sheppardmullin.com, mtzeng@sheppardmullin.com
- **Abram Feuerstein** abram.s.feuerstein@usdoj.gov
- **Everett L Green** everett.l.green@usdoj.gov
- **Lance N Jurich** ljurich@loeb.com, karnote@loeb.com;ladoCKET@loeb.com;ljurich@ecf.courtdrive.com
- **Robert E Opera** ropera@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com
- **Cameron C Ridley** Cameron.Ridley@usdoj.gov
- **Edward Rubacha** er@jhkmlaw.com, docket@jhc.law;am@jhc.law
- **United States Trustee (RS)** ustpregion16.rs.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:** On     , **2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**3. SERVED BY PERSONAL DELIVERY (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **May 1, 2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**The Honorable Judge Scott H. Yun**  
**United States Bankruptcy Court**  
**Central District of California**  
**3420 Twelfth Street, Suite 345 / Courtroom 302**  
**Riverside, CA 92501-3819**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 1, 2023	Silvia Villegas	/s/ Silvia Villegas
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>