

**Proposed Hearing Date and Time: October 6, 2016 at 2:00 p.m.**  
**Proposed Objection Date and Time: October 5, 2016 at 4:00 p.m.**

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
TROCOM CONSTRUCTION CORP.,	:	Case No. 15-42145 (NHL)
	:	
Debtor.	:	
	:	
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**MOTION FOR ENTRY OF AN ORDER: (I) SCHEDULING A HEARING ON SHORTENED NOTICE; (II) AUTHORIZING AND APPROVING PUBLIC SALE OF THE DEBTOR’S PERSONAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES AND OTHER INTERESTS AT THE PUBLIC AUCTIONS; (III) APPROVING THE SALE PROCEDURES AND AUCTION NOTICE FOR THE PUBLIC SALE OF THE PERSONAL PROPERTY; AND (IV) GRANTING RELATED RELIEF**

Trocom Construction Corp., the above-captioned debtor and debtor-in-possession (the “Debtor”), hereby moves (the “Motion”) for entry of an order, pursuant to sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1, 9006-1, 9014-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “Local Rules”), and General Order 557 dated March 29, 2010, *Adoption of Sale Guidelines* (the “Sale Guidelines”), (i) scheduling a hearing on shortened notice; (ii) authorizing and approving one or more public auctions (the “Public Auctions”), from time to time, of the Debtor’s personal

property including certain vehicles and heavy construction equipment formerly used in the operation of the Debtor's business (the "Assets"); (iii) approving the sale terms and conditions of sale (the "Sale Procedures") substantially in the form annexed as Exhibit "A" for the Public Auction of the Assets, "as is" and "where is" free and clear of all liens, claims, encumbrances, and interests ("Liens"), with such Liens to attach to the net proceeds of the sale; (iv) approving the form and manner of notice of the Public Auctions (the "Auction Notice"), the form of which is annexed hereto as Exhibit "B"; and (v) granting the Debtor such further relief as the Court deems just and proper. In further support of the Motion, the Debtor respectfully states as follows:

**PRELIMINARY STATEMENT**<sup>1</sup>

The Debtor submits that the Court should authorize the Debtor to conduct the sale of the Debtor's Assets at Public Auctions and approve the related Sale Procedures and Auction Notice proposed herein because the proposed sale process is designed to enhance the value of the Debtor's estate and maximize the funds available for distribution to creditors under the Plan.

Moreover, the Debtor submits that expedited consideration of the Motion is warranted under the circumstances to enable the Debtor to participate in a widely publicized two-day heavy construction equipment auction which is already scheduled to be conducted by the Auctioneer on October 28-29, 2016. As set forth further in the Affirmation, the Debtor's Auctioneer anticipates that approximately 1200 onsite and online interested bidders will participate in the Public Auction scheduled for October 28 and 29, 2016 at the Auctioneer's headquarters which will include heavy construction equipment from at least two other companies.

Given that the Debtor's proposed Plan specifically provides for the completion and/or re-letting of the Debtor's remaining Construction Projects in the near term, the Debtor no longer

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<sup>1</sup> Capitalized terms used in this Preliminary Statement and not defined therein shall have the meanings set forth in the sections of this Motion that follow.

requires the Assets subject to the proposed Public Auction to complete all of its Construction Projects. Therefore, the Debtor's sale of the Assets at the proposed Public Auctions on a rolling basis as each Construction Project is completed and/or relet is appropriate and warranted under the circumstances.

Accordingly, as set forth more fully herein, the Debtor believes that the approval of the sale of Assets at Public Auctions on the terms and conditions set forth in this Motion is in the best interest of the Debtor's estate and should be approved.

### **FACTUAL BACKGROUND**

1. On May 7, 2015 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"). The Debtor continues to operate its business and manage its affairs as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed by the Office of the United States Trustee for the Eastern District of New York in this chapter 11 case.

2. The Debtor is in the heavy construction business. Its primary customer is the City of New York through its various agencies. At the time of the filing, the Debtor was providing services on eighteen (18) construction projects throughout the New York Metropolitan area. During the pendency of the bankruptcy case, the Debtor has completed all but five (5) of those projects (the "Construction Projects").

3. The Debtor owns or has an interest in certain Assets including vehicles and heavy construction equipment, a listing of which will be annexed to the Auction Notice.

4. M&T Bank ("M&T") has a first-priority lien against all the Debtor's assets that secures a pre-petition line of credit. Two entities that are related to the Debtor, 460 Kingsland

Avenue Real Estate LLC (“460”) and Reveal Kingsland LLC (“Reveal”), also have liens against all the Debtor’s assets that are subordinate to M&T’s first-priority lien.

5. On August 4, 2015, the Court entered an order (the “DIP Order” at Dkt. No. 106) approving debtor-in-possession financing from Liberty Mutual Insurance Company (“Liberty”). Pursuant to the DIP Order, Liberty has a lien against all the Debtor’s assets that is (a) junior to M&T’s lien interest, and (b) senior to the lien interests of Reveal and 460.

6. Nissan Motor Acceptance Corporation (“Nissan”), JPMorgan Chase Bank, N.A. (“Chase”), M&T, and Hyundai Capital America D/B/A KIA Motors Finance (“Kia”) have secured interests in certain Vehicles. General Electric Capital Corporation (“GE” and, with M&T, 460, Reveal, Liberty, Nissan, Chase, and Kia, the “Secured Parties”) has a secured interest in a certain of the Assets.

7. Other than the Secured Parties, the Debtor reasonably believes that no entity has an interest in the Assets.

8. On July 1, 2016, as amended on August 15, 2016 and August 29, 2016, the Debtor filed a chapter 11 plan of liquidation (the “Plan” at Dkt. No. 308). Hearing on confirmation of the Plan is currently scheduled for October 19, 2016.

9. Pursuant to the Plan, the Debtor will continue in business for the limited purpose of completing the wind-down of its affairs which includes transitioning the Ongoing Construction Projects from the Debtor, either by assignment, termination of the underlying contract or reletting of the project.

10. The Plan also provides for the sale of the Assets at Public Auctions to supplement the funds available for distribution under the Plan. The Debtor is winding down its construction operations and, therefore, no longer has use for the Assets.

11. The Debtor believes in its sound business judgment that an expedited sale of the Assets at a Public Auction scheduled to be conducted by the Auctioneer<sup>2</sup> on October 28, 2016 – October 29, 2016 is in the best interest of its estate and will provide the best opportunity to realize significant value from the Assets because this highly marketed heavy equipment auction is expected to attract many bidders.

12. To realize the maximum value of the Assets, the Debtor proposes that the Assets be sold, subject to the Court's approval, free and clear of all Liens, with such Liens to attach to the proceeds of the sales of the Assets with the same validity, extent and priority as had attached to the Assets immediately prior to the sales. Accordingly, by this Motion the Debtor seeks authority to conduct the Public Auctions of the Assets pursuant to the Bankruptcy Court-supervised sale process as proposed herein.

### **JURISDICTION**

13. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The statutory predicates for the relief sought herein are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006 and 9014, and Local Rules 6004-1 and 9014-1.

### **RELIEF REQUESTED AND AUTHORITY THEREFOR**

15. By this Motion, the Debtor respectfully requests entry of an order, substantially in the form annexed hereto as Exhibit "C", authorizing the Debtor to proceed with the proposed

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<sup>2</sup> By separate application to be filed contemporaneously herewith, the Debtor will seek authority to retain Petrowsky Auctioneers, Inc. ("PAI" or the "Auctioneer") as liquidation consultants and auctioneers to assist the Debtor with the Public Auctions. PAI has extensive experience in conducting public auctions of vehicles and heavy construction Assets for chapter 11 debtors.

Public Auctions and approving the Sale Procedures and Auction Notice to facilitate the sale of the Assets in accordance with the Bankruptcy Rules, Local Rules and Sale Guidelines.

16. The Debtor will be winding down its operations and the Assets are not required for any reorganization of the Debtor. Accordingly, the sale of the Assets unquestionably represents a reasonable exercise of the Debtor's sound business judgment. The Debtor submits that the proposed Public Auctions and Sale Procedures will maximize the value of the Assets for the Debtor's estate and its creditors.

**A. The Public Auction of the Assets is a Reasonable Exercise of the Debtor's Business Judgment and Should be Approved**

17. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor-in-possession "may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . ." 11 U.S.C. § 363(b)(1). Courts in the Second Circuit apply a business judgment standard when resolving sale motions under section 363(b)(1) and consider whether the movant has provided a "good business reason" for the proposed transaction. See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); see also Official Comm. Unsecured Creditors v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 145 (2d Cir. 1992); In re MF Glob. Inc., 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015); In re Dial-A-Mattress Operating Corp., No. 1-09-41966-DEM, 2009 WL 1851059, at \*5 (Bankr. E.D.N.Y. June 24, 2009); Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.), 430 B.R. 65, 83 (S.D.N.Y. 2010) ("The overriding consideration for approval of a section 363 sale is whether a 'good business reason' has been articulated"). A debtor usually satisfies the standard if its management "act[s] on an informed basis, in good faith and in the honest belief that the action is in the best interest of the company." In re Dial-A-Mattress Operating Corp., 2009 WL 1851059, at \*5; see also In re Ashley River Consulting, LLC, No. 14-13406 (MG), 2015 WL 4186130, at

\*7 (Bankr. S.D.N.Y. July 10, 2015) (“Courts should not generally interfere with business decisions absent a showing of bad faith, self-interest, or gross negligence.” (citation and internal quotation marks omitted)).

18. In addition, section 105(a) of the Bankruptcy Code grants the Court the authority to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This provision is “the basis for a broad exercise of power [by the Court] in the administration of a bankruptcy case. 2 COLLIER ON BANKRUPTCY ¶ 105.01 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed.).

19. The Public Auction of the Assets is permissible as Bankruptcy Rule 6004(f)(1) provides in relevant part that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” In practice, the preferred method is to conduct a public sale because the public sale will most often result in a greater number of potential bidders in the shortest amount of time.

20. The Debtor has substantial business justification for the proposed sale of the Assets at Public Auctions. After careful consideration and analysis, the Debtor’s management has determined in its sound business judgment that selling the Assets pursuant to the Public Auctions is in the best interests of the Debtor’s estate and necessary to wind down its affairs. Based on input from project managers and the Debtor’s financial advisors, the Debtor’s management submits that the Assets are unnecessary and burdensome to the estate given that the Debtor is winding down its construction operations.

21. The Debtor submits that the proposed sale process is reasonable, necessary and appropriate and will enable the Debtor to receive the maximum value for the Assets. Specifically, the Debtor submits that selling the Assets at the Public Auction the Auctioneer is

scheduled to conduct on October 28-29, 2016 will maximize the value of the Assets given the size and publicity associated with this auction.

22. The Auctioneer has already scheduled and begun advertising a major two-day heavy equipment and truck auction at which it will be auctioning equipment owned by two other companies. If the Debtor participates in this Public Auction, the Assets would be featured on the Auctioneer's website and in a 30,000-count picture brochure mailing. In addition, the Debtor would be specifically identified in the advertisements that the Auctioneer has placed with five (5) trade publications and the Public Auction would be announced in a display ad placed in the Sunday editions of the New York Times, Boston Globe, Providence Journal and three (3) local Connecticut newspapers. The Auctioneer and its parent company Ritchie Bros. will also send multiple email blasts to their combined customer lists worldwide with updates leading up to the Public Auction.

23. The Debtor submits that the advertising campaign associated with the Public Auctions satisfies the requirements of Local Rule 6004-1(h).

24. Therefore, by conducting one or more Public Auctions as set forth herein, the Debtor will achieve the highest and best value for the Assets while lowering the administrative costs of storing and maintaining the Assets as well as maintaining adequate insurance and registration status of the Assets.

25. Pursuant to Bankruptcy Rules 6004(a) and (c) and 2002(a)(2), the Debtor will provide the Auction Notice, the form of which is annexed hereto as Exhibit B, to: (a) all known creditors of the Debtor, (b) the United States Trustee for the Eastern District of New York, (c) the Secured Parties, (d) any entities known or reasonably believed to have expressed an interest in acquiring the assets, and (e) all parties having requested notice in this chapter 11 case pursuant



to Bankruptcy Rule 2002. As such, all of the key constituencies in this case and any party whose rights may be affected by a sale will receive adequate notice, and the Debtor requests that the Bankruptcy Court find that notice of the Public Auctions as set forth in the Auction Notice is adequate and sufficient notice under the circumstances.

26. The Assets shall be sold on an “as is” “where is” basis without any representations of any kind whatsoever, including as to merchantability or fitness for a particular purpose, and without warranty or agreement as to the condition of such Assets.

27. Moreover, the streamlined Sale Procedures provide for the orderly liquidation of the Assets without significant cost to the estate. The Debtor anticipates that it may conduct several Public Auctions of the Assets, including sales of certain Assets that may have *de minimus* value. As such, the Sale Procedures provide that all sales are final upon acceptance of bids by the Debtor in its business judgment and not subject to further Bankruptcy Court approval. The Debtor submits that provision is necessary to prevent the cost and delay associated with seeking Bankruptcy Court approval of each sale of Assets which could significantly diminish the economic benefits of the transaction and reduce the overall recovery to the estate. Moreover, courts in the Second Circuit have noted that, “[i]n the context of auctions, courts defer to a debtor’s business judgment when selecting the highest and best bid. In re Grubb & Ellis Co., No. 12-10685 MG, 2012 WL 1036071, at \*4 (Bankr. S.D.N.Y. Mar. 27, 2012), aff’d, 523 B.R. 423 (S.D.N.Y. 2014); In re Borders Grp., Inc., 453 B.R. 477, 482–83 (Bankr. S.D.N.Y. 2011).

28. Additionally, pursuant to section 554 of the Bankruptcy Code, if the Auctioneer is unable to sell certain of the Assets at the Public Auctions because such Assets are of little or no value to the Debtor’s estate, the Debtor also seeks approval from the Court to abandon such Assets at the conclusion of the sale process.

29. Therefore, the Debtor has ample sound business justification for conducting Public Auctions of its Assets, and the proposed Public Auctions and Sale Procedures are fair and equitable, proposed in good faith and should therefore be approved.

**B. The Sale Procedures Should be Approved**

30. As part of this Motion, the Debtor seeks approval of the Sale Procedures annexed hereto as Exhibit A that shall be applicable to the solicitation of bids and the sale of the Assets at *all* Public Auctions. The salient provisions of the Sale Terms are as follows:<sup>3</sup>

- (a) The Auctioneer shall offer the Assets, together with any additional items delivered by the Debtor to the auction site for sale, in whole or in part, at unreserved public auction on or around \_\_\_\_\_, 2016 at 275 Route 32, North Franklin, CT 06254.
- (b) The Assets are being sold on an “AS IS” and “WHERE IS” basis without any warranties whatsoever as to quality, condition or description. The only guarantee is as to title.
- (c) Complete payment or a minimum requirement of a twenty (20%) percent deposit of the successful bidder’s bid amount shall be payable to the Auctioneer, by cash, certified check or wire transfer on the day of the Public Auction.
- (d) The balance of the purchase price shall be paid by the successful bidder within four (4) days following the Public Auction and, in any event, prior to removal or delivery of any Assets.
- (e) In the event the highest bidder fails to close on its purchase within four (4) days of the Public Auction, the Debtor may, at its option, sell to the second highest bidder without further order of Court and any deposit made by the highest bidder shall be forfeited to the Debtor’s estate.
- (f) The Auctioneer shall collect the full proceeds from the sale of the Assets and the Auctioneer shall withhold for its benefit all amounts payable to the Auctioneer, including commission and any advances, and shall thereafter make payment of the remaining proceeds to the Debtor within seven (7) days after the Public Auction in accordance with the terms of the Bankruptcy Court order approving the sale.

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<sup>3</sup> The summary set forth in this Motion is not intended to be a substitute for the terms of the Sale Procedures, which contain additional terms and provisions. To the extent of any conflict between the terms of this Motion, any order entered granting this Motion and the terms of the Sale Procedures, the terms of the Sale Procedures shall control.

31. The Debtor submits that the Sale Procedures are reasonably designed to ensure that the Debtor's estate receives the maximum benefit available from the sale of the Assets and therefore that the approval of the Sale Procedures for use at multiple Public Auctions of the Assets is warranted under the circumstances and consistent with the Sale Guidelines applied by this Bankruptcy Court.

32. Moreover, in accordance with Local Rule 6004-1(f), within twenty one (21) days of the conclusion of the Public Auctions, the Auctioneer shall file a report with the Bankruptcy Court and transmit a copy of the report to the Office of the United States Trustee.

**C. The Sale of Assets Free and Clear of Liens With Liens to Attach to Sale Proceeds Should be Approved**

33. The Debtor seeks to sell the Assets free and clear of all Liens pursuant to section 363(f) of the Bankruptcy Code, with such Liens to attach to the net sale proceeds, because doing so will optimize the value of the Assets.

34. Section 363(f) of the Bankruptcy Code provides that a debtor-in-possession may sell property . . . free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in a bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). The statute enumerates a disjunctive test, and therefore satisfaction of any one of the five factors is sufficient to obtain court approval of a sale “free and clear.” See id.; BAC Home Loans Servicing LP v. Grassi, No. 08-21085-JBH, 2011 WL 6096509, at \*5 (B.A.P. 1st Cir. Nov. 21, 2011); In re Metroplex on the Atl., LLC, 545 B.R. 786, 792 (Bankr. E.D.N.Y.

2016); D'Antonio v. Bella Visa Associates, LLC (In re Bella Vista Associates, LLC), No. 07-18134 JHW, 2007 WL 4555891, at \*4 (Bankr. D.N.J. Dec. 18, 2007).

35. Here, the Debtor will request M&T's consent to the sale of the Assets free and clear of all Liens, with such Liens to attach to the net proceeds of the Public Auctions with the same validity, extent and priority as had attached to the Assets immediately prior to the sales.

36. The Secured Parties (as reflected in the Debtor's schedules and based on the proofs of claim filed to date against the Debtor's estate) will be provided with notice of the Public Auctions via the Auction Notice and notice of hearing on this Motion. Thus, any such entity will have an opportunity to object to the relief requested in this Motion and shall be deemed to have consented if they fail to timely serve and file an objection to the Motion. See Futuresource LLC v. Reuters, Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002); In re Borders Grp., Inc., 453 B.R. at 484 ("Under section 363(f)(2), a lienholder who receives notice of a sale but does not object within the prescribed time period is deemed to consent to the proposed sale . . . ."). Thus, to the extent any Secured Parties fail to object to the Public Auctions, the sale of the Assets free and clear of all Liens satisfies section 363(f)(2) of the Bankruptcy Code.

37. Moreover, the Debtor also asserts that its proposed sale(s) of the Assets also satisfies section 363(f)(5) of the Bankruptcy Code because any interest of the Secured Parties will be adequately protected by either being paid in full after the Debtor's receipt of the sale proceeds or by having such interests attach to the net proceeds of the Public Auction with the same validity, extent and priority as had attached to the Assets immediately prior to the sale(s).

**D. Request for Waiver of Bankruptcy Rule 6004(h) Stay**

38. Bankruptcy Rule 6004(h) provides that an order authorizing the sale of property of the estate "is stayed until the expiration of 14 days after entry of the order, unless the court

orders otherwise.” FED. R. BANKR. PROC. 6004(h). The Debtor requests that the fourteen (14) day stay of the effectiveness of this Motion be waived to enable the Debtor to begin the Public Auctions promptly, given that the Auctioneer has proposed to conduct the first of the Public Auctions, which is anticipated to yield significant proceeds, on October 28-29, 2016. Moreover, a waiver of the stay will relieve the Debtor’s estate of the additional financial burden associated with the preservation of the Assets prior to the Public Auctions, thus reducing the expenditure of additional estate funds.

39. Accordingly, based upon the facts and circumstances set forth herein, and so there is no delay in implementing the relief sought and to facilitate the efficient liquidation of the Assets, the Debtor submits that ample cause exists to justify a waiver of the stay.

**E. Request for Hearing on Shortened Notice**

40. As set forth above, given the Debtor’s belief that participating in the widely marketed two-day heavy construction equipment auction that the Auctioneer is scheduled to conduct on October 28-29, 2016 will maximize the value received for the sale of the Assets at the Public Auctions, the Debtor submits that it is imperative that the Bankruptcy Court considering hearing on the Motion on shortened notice. As set forth in the Local Rule 9077-1 Affirmation, a copy of which is annexed hereto as Exhibit “D”, if an order approving the Motion is not entered on shortened notice, the Debtor will miss the opportunity to sell the Assets at the October 28-29, 2016 Public Auction, which auction sale the Debtor believes would yield significant returns to the estate. Accordingly, in order to maximize the value of the estate for the benefit of creditors, the Debtor submits that expedited consideration is warranted.

41. The “notice” required by section 363(b)(1) of the Bankruptcy Code is “such notice as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). Courts are

authorized to shorten the twenty-one (21) day notice period generally applicable to asset sales, or direct another method of giving notice, upon a showing of “cause.” FED. R. BANKR. P. 2002(a)(2).

42. Due process requires that any notice is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Due process is satisfied if parties in interest are given “an opportunity to present their objections.” Id. at 339. Moreover, Bankruptcy Rule 9006(c) provides that the Bankruptcy Court may reduce the prescribed period for notice of this Motion.

43. The Debtor has determined that an expedited hearing will assist the Debtor and the estate in selling the Assets for the highest and best offer. In view of the foregoing, the Debtor submits that there is sufficient cause for the consideration of the Motion on shortened notice under the circumstances and requests that the Court enter the order submitted simultaneously herewith providing for hearing on the Motion on October 6, 2016.

#### **NOTICE**

44. Notice of this Motion has been provided by electronic or overnight mail to (a) the United States Trustee for the Eastern District of New York, (b) the Secured Parties, (c) any entities known or reasonably believed to have expressed an interest in acquiring the assets, and (d) all parties having requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002. Additionally, the Debtor will provide notice of a hearing on this Motion to all known creditors via first class mail. The Debtor submits that, under the circumstances, no other or further notice is required.

45. No previous Motion for the relief sought herein has been made to this or any other

Court.

**CONCLUSION**

46. For the reasons set forth herein, the Debtor submits that approval of the proposed Public Auctions and related Auction Notice and Sale Procedures is warranted under the circumstances to enable the Debtor to sell the Assets and maximize the funds available for distribution to creditors under the Plan without incurring the attendant cost and delay associated with obtaining separate approval from this Bankruptcy Court of each Asset sale, regardless of the value of the Assets sold.

**WHEREFORE**, the Debtor respectfully requests that the Court (i) enter an order scheduling hearing on the Motion on shortened notice, (ii) enter an order granting the Motion and approving the sale of the Assets by Public Auctions, and (iii) granting such other and further relief as may be just and proper.

Dated: Garden City, New York  
September 29, 2016

CULLEN AND DYKMAN LLP  
Attorneys for the Debtor

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**Exhibit A**



**In re Trocom Construction Corp. (Bankr. E.D.N.Y. 15-42145)**

**PUBLIC AUCTION SALE PROCEDURES**

The following Sale Procedures shall be applicable to the solicitation of bids and the sale of the Assets at *all* Public Auctions conducted by the Auctioneer:

- (a) The Auctioneer shall offer the Assets, together with any additional items delivered by the Debtor to the auction site for sale, in whole or in part, at unreserved public auction on or around \_\_\_\_\_, 2016 at 275 Route 32, North Franklin, CT 06254.
- (b) The Assets are being sold on an “AS IS” and “WHERE IS” basis without any warranties whatsoever as to quality, condition or description. The only guarantee is as to title.
- (c) The Auctioneer shall provide listing catalogs of the lots offered for sale to potential buyers at the Public Auction.
- (d) The Auctioneer shall divide the Assets into such lots as it may in its absolute discretion deem desirable for sale at the Public Auction.
- (e) Complete payment or a minimum requirement of a twenty (20%) percent deposit of the successful bidder’s bid amount shall be payable to the Auctioneer, by cash, certified check or wire transfer on the day of the Public Auction.
- (f) The balance of the purchase price shall be paid by the successful bidder within four (4) days following the Public Auction and, in any event, prior to removal or delivery of any Assets.
- (g) In the event the highest bidder fails to close on its purchase within four (4) days of the Public Auction, the Debtor may, at its sole option, sell to the second highest bidder without further order of the Court and any deposit made by the highest bidder shall be forfeited to the Debtor’s estate.
- (h) All items purchased are required to be removed by the buyer at its own cost, risk and expense. Neither the Auctioneer nor the Debtor shall have any liability connected with the removal and transportation of the items purchased and any and all future uses of the items purchased.
- (i) The Auctioneer shall collect the full proceeds from the sale of the Assets and the Auctioneer shall withhold for its benefit all amounts payable to the Auctioneer, including commission and any advances, and shall thereafter make payment of the remaining proceeds to the Debtor within seven (7) days after the Public Auction in accordance with the terms of the Bankruptcy Court order approving the sale.

- (j) The Auctioneer shall collect and remit State and local sales tax arising upon the sale of the Assets at the Public Auction.
- (k) Cash and cash equivalent transactions over \$10,000 will be documented with Form 8300.
- (l) In the event that the buyer fails to consummate the sale for any reason whatsoever, including the failure to comply with the payment or removal provisions above, the Auctioneer will designate the items concerned as “non-sold” items and reserves the right to resell such items without any notice whatsoever to the buyer concerned.
- (m) All sales of the Assets shall be final, upon acceptance of bids by the Debtor in its business judgment, and not subject to further approval of the Bankruptcy Court.
- (n) Pursuant to Section 363(f) of the Bankruptcy Code, the Assets shall be sold free and clear of all Liens, with such Liens to attach to the proceeds of the Public Auctions with the same validity, extent and priority as had attached to the Assets immediately prior to the sales.
- (o) The Debtor shall establish such other terms and conditions of sale at the Public Auctions as is deemed necessary to the orderly and efficient sale of the Assets and any such additional conditions shall be announced by the Auctioneer prior to the commencement of the Public Auctions.
- (p) All disputes related to the Sale Procedures, Public Auctions and sale of the Debtor’s Assets shall be adjudicated solely by the Bankruptcy Court. The submission of a bid shall constitute the bidder’s express consent to the exclusive jurisdiction of the Bankruptcy Court for all matters related to the foregoing.

**Exhibit B**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re: : Chapter 11
  
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TROCOM CONSTRUCTION CORP., : Case No. 15-42145(NHL)
  
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Debtor. :
  
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**NOTICE OF PUBLIC AUCTION SALE OF CERTAIN VEHICLES AND EQUIPMENT**

**PLEASE TAKE NOTICE THAT** upon the motion (the “Motion”) of Trocom Construction Corp., the above-referenced debtor and debtor-in-possession (the “Debtor”), dated September 29, 2016, the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”) has issued an order dated October \_\_, 2016 (the “Sale Procedures Order”) [Docket No. \_\_\_\_]: (i) authorizing and approving one or more public auctions (the “Public Auctions”), from time to time, of the Debtor’s personal property including certain vehicles and heavy construction equipment formerly used in the operation of the Debtor’s business (the “Assets”); (ii) approving the sale terms and conditions of sale (the “Sale Procedures”) for the Public Auction of the Assets, “as is” and “where is” free and clear of all liens, claims, encumbrances, and interests, with such Liens to attach to the net proceeds of the sale; and (iii) approving the form and manner of notice of the Public Auctions. A copy of the Sale Procedures Order is annexed hereto as Exhibit 1.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Sale Procedures Order, the Debtors propose to sell certain Assets at Public Auctions, as set forth on Exhibit 2 hereto.

**PLEASE TAKE FURTHER NOTICE THAT** a Public Auction will be conducted at the Auctioneer’s auction site located at 275 Route 32, North Franklin, Connecticut 06254 on Friday October 28, 2016 and Saturday October 29, 2016 beginning at 8:30 a.m.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to Section 363(f) of the Bankruptcy Code, the Assets will be sold free and clear of all liens, claims, encumbrances and interests, including without limitation all consensual liens and security interests and all liens or claims arising by operation of law. Any and all such liens, claims, encumbrances, and other interests shall attach to the proceeds of the Public Auctions to the same extent and priority as existed prior to the Public Auctions.

**PLEASE TAKE FURTHER NOTICE THAT** that pursuant to the Motion and the Sale Procedures Order, the Court has approved the following Sale Procedures to govern the Public Auctions:

## **PUBLIC AUCTION SALE PROCEDURES**

The following Sale Procedures shall be applicable to the solicitation of bids and the sale of the Assets at *all* Public Auctions conducted by the Auctioneer:

- (a) The Auctioneer shall offer the Assets, together with any additional items delivered by the Debtor to the auction site for sale, in whole or in part, at unreserved public auction on or around \_\_\_\_\_, 2016 at 275 Route 32, North Franklin, CT 06254.
- (b) The Assets are being sold on an “AS IS” and “WHERE IS” basis without any warranties whatsoever as to quality, condition or description. The only guarantee is as to title.
- (c) The Auctioneer shall provide listing catalogs of the lots offered for sale to potential buyers at the Public Auction.
- (d) The Auctioneer shall divide the Assets into such lots as it may in its absolute discretion deem desirable for sale at the Public Auction.
- (e) Complete payment or a minimum requirement of a twenty (20%) percent deposit of the successful bidder’s bid amount shall be payable to the Auctioneer, by cash, certified check or wire transfer on the day of the Public Auction.
- (f) The balance of the purchase price shall be paid by the successful bidder within four (4) days following the Public Auction and, in any event, prior to removal or delivery of any Assets.
- (g) In the event the highest bidder fails to close on its purchase within four (4) days of the Public Auction, the Debtor may, at its sole option, sell to the second highest bidder without further order of the Court and any deposit made by the highest bidder shall be forfeited to the Debtor’s estate.
- (h) All items purchased are required to be removed by the buyer at its own cost, risk and expense. Neither the Auctioneer nor the Debtor shall have any liability connected with the removal and transportation of the items purchased and any and all future uses of the items purchased.
- (i) The Auctioneer shall collect the full proceeds from the sale of the Assets and the Auctioneer shall withhold for its benefit all amounts payable to the Auctioneer, including commission and any advances, and shall thereafter make payment of the remaining proceeds to the Debtor within seven (7) days after the Public Auction in accordance with the terms of the Bankruptcy Court order approving the sale.
- (j) The Auctioneer shall collect and remit State and local sales tax arising upon the sale of the Assets at the Public Auction.
- (k) Cash and cash equivalent transactions over \$10,000 will be documented with Form 8300.

- (l) In the event that the buyer fails to consummate the sale for any reason whatsoever, including the failure to comply with the payment or removal provisions above, the Auctioneer will designate the items concerned as “non-sold” items and reserves the right to resell such items without any notice whatsoever to the buyer concerned.
- (m) All sales of the Assets shall be final, upon acceptance of bids by the Debtor in its business judgment, and not subject to further approval of the Bankruptcy Court.
- (n) Pursuant to Section 363(f) of the Bankruptcy Code, the Assets shall be sold free and clear of all Liens, with such Liens to attach to the proceeds of the Public Auctions with the same validity, extent and priority as had attached to the Assets immediately prior to the sales.
- (o) The Debtor shall establish such other terms and conditions of sale at the Public Auctions as is deemed necessary to the orderly and efficient sale of the Assets and any such additional conditions shall be announced by the Auctioneer prior to the commencement of the Public Auctions.
- (p) All disputes related to the Sale Procedures, Public Auctions and sale of the Debtor’s Assets shall be adjudicated solely by the Bankruptcy Court. The submission of a bid shall constitute the bidder’s express consent to the exclusive jurisdiction of the Bankruptcy Court for all matters related to the foregoing.

For further information regarding the Public Auction of the Assets, please contact the undersigned Debtor’s counsel.

Dated: Garden City, New York  
October \_\_, 2016

CULLEN AND DYKMAN LLP  
Attorneys for the Debtor

By: \_\_\_\_\_  
C. Nathan Dee, Esq.  
Bonnie L. Pollack, Esq.  
Elizabeth M. Aboulafia  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
(516) 357-3700

**Exhibit 1**

**Exhibit 2**



Trocom Construction Corp.			EQUIPMENT	
Year	Equipment	Make	Model #	VIN #
1993	Hanix Rubbertrack Excavator	Hanix	550CS	B5501244
1997	Track Excavator 345BL	CAT	345BL	4SS00646
2003	Wheeled Excavator M322C	CAT	M322C	CATM322CPBDK00205
2005	Wheeled Excavator 210w	Daewoo	210W-5	S210W-VK1597
2012	Wheeled Excavator 140dx	Doosan	DX140	DHKCEWABEB5011133
2012	Wheeled Excavator 140dx	Doosan	DX140	DHKCEWABVC5011169
2011	Compact Track Loader	Bobcat	T770	A3P811670
2002	Backhoe Loader EX.446B	CAT	446B	5BL03013
2007	Backhoe Loader 446D	CAT	446D	CDBL00690
2007	Backhoe Loader 446D	CAT	446D	EDBL00695
2003	Wheeled Loader 950 G	CAT	950G	CAT0950GKAXX00190
2006	Air Compressor 210cfm	Kaeser	M57	
2012	Air Compressor 210cfm	Kaeser	M57-1603	
2006	Air Compressor 210cfm	Kaeser	M57-1493	
2004	Air Compressor 185cfm	Atlascopco	XAS96JD-T	
2003	Air Compressor 185cfm	Atlascopco	XAS96JD-T	
2007	Air Compressor 185cfm	Atlascopco	XAS96JD-U	
2004	Air Compressor 185cfm	Atlascopco	XAS96JD-U	
2008	Air Compressor 185cfm	Atlascopco	XAS96JD-U	
2005	LIGHT TOWER	ALLMAND	MC94P	1056PR001
2005	LIGHT TOWER	WANCO	WLTC4	
2005	LIGHT TOWER	WANCO	WLTC4	
2005	LIGHT TOWER	WANCO	WLTC4	
2005	LIGHT TOWER	WANCO	WLTC4	
2011	ARROW BOARD	ALLMAND	AB2220	0227AB10
2011	ARROW BOARD	ALLMAND	AB2220	
2011	ARROW BOARD	ALLMAND	AB2220	
2011	ARROW BOARD	ALLMAND	AB2220	
2002	ARROW BOARD	ALLMAND	220ALT	MLAL5438
1994	HI-LOW 15000LBS	CAT	V150	13V01464
1992	Hyster Forklift 1500lbs	Hyster	Hyster	C1876045054N

**Trocom Construction Corp. Vehicles**

Year	Make	Model	Plate #	VIN #
2014	Nissan	NV1500	25684ME	1N6BF0KL6EN101212
2012	Kia	SORENTO	FWJ6061	5XYKTC67CG276386
2011	Nissan	FRONTIER	CTC7179	1N6AD0EV4BC443263
2009	Dodge	Caliber	GKY3503	1B3HB28A39D199574
2007	Toyota	Prius	GKY3504	JTDKB20U677546644
2008	Chevrolet	EX.EXPRESS 2500	92584JW	1GCGG29C281132976
2007	Chevrolet	EXPRESS	DZG4772	1GCFG15X671167842
2007	Chevrolet	EX.EXPRESS 2500	27589JV	1GCGG29V271136901
2006	Chevrolet	EX.EXPRESS 1500	80681JY	1GCFG15T561112147
2005	Chevrolet	EX.EXPRESS 3500	80682JY	1GCHG35U151217425
2004	Chevrolet	EXPRESS/1500	40077JS	1GCFG15X141149387
2003	Chevrolet	EXPRESS	CGX6706	1GCEG15X531170303
2003	GMC	PICKUP	16624MG	1GTHK24133E170405
2002	Workhorse	STEPVAN	63701MC	5B4KP42Y823350739
2001	Workhorse	STEPVAN	20737MC	5B4KP42Y313327108
2003	FORD	F550	63703MC	1FDAF56F03EA63078
2002	FORD	F550	51598JU	1FDXF46S62EC71790
1995	FORD	F8000	62536MC	1FDXF80CX5VA71164
1991	Chevrolet	C7H/Kodiak	87758JX	1GBP7H1J5MJ106433
1990	INTER	DUMP	7483MB	1HTSAZRP1LH263536
1989	WEST/STAR	DUMP	91614KA	2WKPDCJF5KK923231
1992	EA/BE	TRAILER	AA79315	112HNV316NL038964

**OUT OF SERVICE**

1995	FORD	F8000	59153JY	1FDXF80E7SVA63721
1994	OSHKO	BOOM	59177JY	10T2D0EF0R1049230
1993	GMC	TOPKICK	46304JS	1GDL7H1J0PJ500562
1988	Chevrolet	PICKUP	74793MB	1GCDK14ZXJE178660
2006	Ford	E2500/Van	80684JY	1FTNE24W36HA99490

**Exhibit C**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
 :  
 In re: : Chapter 11  
 :  
 TROCOM CONSTRUCTION CORP., : Case No. 15-42145(NHL)  
 :  
 :  
 Debtor. :  
 :  
 -----X

**ORDER: (I) AUTHORIZING AND APPROVING PUBLIC SALE OF THE DEBTOR’S PERSONAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES AND OTHER INTERESTS AT THE PUBLIC AUCTIONS; (II) APPROVING THE SALE PROCEDURES AND AUCTION NOTICE FOR THE PUBLIC SALE OF THE PERSONAL PROPERTY; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of Trocom Construction Corp., the above-captioned debtor and debtor-in-possession (the “Debtor”), for entry of an order, pursuant to sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1, 9006-1, 9014-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “Local Rules”), and General Order 557 dated March 29, 2010, *Adoption of Sale Guidelines* (the “Sale Guidelines”), (i) scheduling a hearing on shortened notice; (ii) authorizing and approving one or more public auctions (the “Public Auctions”), from time to time, of the Debtor’s personal property including certain vehicles and heavy construction equipment formerly used in the operation of the Debtor’s business (the “Assets”); (iii) approving the sale terms and conditions of sale (the “Sale Procedures”) for the Public Auction of the Assets, “as is” and “where is” free and clear of all liens, claims, encumbrances, and interests (“Liens”), with such Liens to attach to the net proceeds of the sale; (iv) approving the form and manner of notice of the Public Auctions (the “Auction Notice”); and (v) granting the Debtor such further relief as the Court deems just and

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the Debtor has demonstrated good and sufficient business justification for approval of the Motion and authorization to take the actions set forth therein; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and Sale Guidelines, and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. The Debtor is authorized to schedule and conduct the Public Auctions of the Assets pursuant to the terms and procedures set forth herein and without further need for Court approval.
3. The form of Sale Procedures annexed to the Motion as Exhibit A are hereby approved
4. The form of Auction Notice annexed to the Motion as Exhibit B is hereby approved and shall be served on (a) all known creditors of the Debtor, (b) the United States Trustee for the Eastern District of New York, (c) the Secured Parties, (d) any entities known or reasonably believed to have expressed an interest in acquiring the assets, and (e) all parties having requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002.
5. The following Sale Procedures are approved and shall be applicable to the solicitation of bids and the sale of the Assets at *all* Public Auctions:
  - (a) The Auctioneer shall offer the Assets, together with any additional items delivered by the Debtor to the auction site for sale, in whole or in part, at unreserved public auction on or around \_\_\_\_\_, 2016 at 275 Route 32, North Franklin, CT 06254.

- (b) The Assets are being sold on an “AS IS” and “WHERE IS” basis without any warranties whatsoever as to quality, condition or description. The only guarantee is as to title.
- (c) The Auctioneer shall provide listing catalogs of the lots offered for sale to potential buyers at the Public Auction.
- (d) The Auctioneer shall divide the Assets into such lots as it may in its absolute discretion deem desirable for sale at the Public Auction.
- (e) Complete payment or a minimum requirement of a twenty (20%) percent deposit of the successful bidder’s bid amount shall be payable to the Auctioneer, by cash, certified check or wire transfer on the day of the Public Auction.
- (f) The balance of the purchase price shall be paid by the successful bidder within four (4) days following the Public Auction and, in any event, prior to removal or delivery of any Assets.
- (g) In the event the highest bidder fails to close on its purchase within four (4) days of the Public Auction, the Debtor may, at its sole option, sell to the second highest bidder without further order of the Court and any deposit made by the highest bidder shall be forfeited to the Debtor’s estate.
- (h) All items purchased are required to be removed by the buyer at its own cost, risk and expense. Neither the Auctioneer nor the Debtor shall have any liability connected with the removal and transportation of the items purchased and any and all future uses of the items purchased.
- (i) The Auctioneer shall collect the full proceeds from the sale of the Assets and the Auctioneer shall withhold for its benefit all amounts payable to the Auctioneer, including commission and any advances, and shall thereafter make payment of the remaining proceeds to the Debtor within seven (7) days after the Public Auction in accordance with the terms of the Bankruptcy Court order approving the sale.
- (j) The Auctioneer shall collect and remit State and local sales tax arising upon the sale of the Assets at the Public Auction.
- (k) Cash and cash equivalent transactions over \$10,000 will be documented with Form 8300.
- (l) In the event that the buyer fails to consummate the sale for any reason whatsoever, including the failure to comply with the payment or removal provisions above, the Auctioneer will designate the items concerned as “non-sold” items and reserves the right to resell such items without any notice whatsoever to the buyer concerned.
- (m) All sales of the Assets shall be final, upon acceptance of bids by the Debtor in its business judgment, and not subject to further approval of the Bankruptcy Court.

- (n) Pursuant to Section 363(f) of the Bankruptcy Code, the Assets shall be sold free and clear of all Liens, with such Liens to attach to the proceeds of the Public Auctions with the same validity, extent and priority as had attached to the Assets immediately prior to the sales.
- (o) The Debtor shall establish such other terms and conditions of sale at the Public Auctions as is deemed necessary to the orderly and efficient sale of the Assets and any such additional conditions shall be announced by the Auctioneer prior to the commencement of the Public Auctions.
- (p) All disputes related to the Sale Procedures, Public Auctions and sale of the Debtor's Assets shall be adjudicated solely by the Bankruptcy Court. The submission of a bid shall constitute the bidder's express consent to the exclusive jurisdiction of the Bankruptcy Court for all matters related to the foregoing.

6. The Court will not consider bids made after any Public Auction has been closed unless a motion to reopen the auction is made and granted.

7. If the Auctioneer is unable to sell certain of the Assets at the Public Auctions because such Assets are of little or no value to the Debtor's estate, the Debtor is authorized to abandon such Assets at the conclusion of the sale process without further order of the Court.

8. This Order shall be immediately effective and enforceable upon its entry, and the effectiveness of this Order shall not be stayed pursuant to Bankruptcy Rule 6004(h) or otherwise.

9. This Court shall retain jurisdiction to hear and determine all matters related to this Order and the implementation hereof.

**Exhibit D**



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Garden City, NY 11530  
(516) 357-3700  
C. Nathan Dee, Esq.  
Bonnie L. Pollack, Esq.  
Elizabeth Aboulafia, Esq.

Counsel for Trocom Construction Corp.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X	
In re:	: Chapter 11
	: :
TROCOM CONSTRUCTION CORP.,	: Case No. 15-42145(NHL)
	: :
Debtor.	: :
	: :
-----X	

**LOCAL RULE 9077-1 AFFIRMATION**

C. Nathan Dee, under the penalties of perjury, affirms as follows:

1. I am a partner in the firm of Cullen and Dykman LLP, counsel to the Trocom Construction Corp., the debtor and debtor-in-possession herein (the “Debtor”). As such, I am fully familiar with the facts and circumstances set forth herein.

2. I submit this affirmation of exigent circumstances in support of Debtor’s request for a hearing on shortened notice on the *Motion for Entry of an Order (I) Scheduling a Hearing on Shortened Notice; (II) Authorizing and Approving a Public Sale of the Debtor’s Personal Property Free and Clear of all Liens, Claims, Interests and Encumbrances and Other Interests at the Public Auctions; (III) Approving the Sale Procedures and Auction Notice for the Public Sale of the Personal Property; and (IV) Granting Related Relief* (the “Motion”).<sup>1</sup>

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

3. The Debtor is proceeding by requesting shortened notice on the Motion because the Debtor seeks to seize an opportunity to participate in a major, two-day, widely publicized heavy equipment Public Auction that the Auctioneer is already scheduled to conduct on October 28-29, 2016 (the "October Auction"). At the October Auction, the Auctioneer will be conducting a public auction sale of heavy construction equipment and vehicles owned by two other companies.

4. The Debtor and its estate will be at risk of immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis because the Debtor will miss the opportunity of participating in the October Auction. The Debtor firmly believes that the immediate sale of the Assets at the October Auction will bring competitive bidding and result in the highest and best offer for the benefit of the estate.

5. If the Motion is considered on shortened notice and approved, the Debtor will have an opportunity to provide all interested parties with ample notice of the October Auction and the Sale Procedures that will apply to the sale of the Assets at all Public Auctions. Accordingly, the Debtor does not believe that there is a corresponding risk of harm to the creditors and other parties in interest if the request to shorten notice is granted because they will receive notice of all pertinent information in the Auction Notice.

6. If the Debtor participates in October Auction, the Assets would be featured on the Auctioneer's website and in a 30,000-count picture brochure mailing. In addition, the Debtor would be specifically identified in the advertisements that the Auctioneer has placed with five (5) trade publications and the October Auction will be announced in a display ad placed in the Sunday editions of the New York Times, Boston Globe, Providence Journal and three (3) local Connecticut newspapers. The Auctioneer and its parent company Ritchie Bros. will also send

multiple email blasts to their combined customer lists worldwide with updates leading up to the October Auction.

7. Given the size and publicity of the October Auction, the Debtor anticipates that there will be approximately 1200 (onsite and online) interested bidders and a robust sale process that is likely to yield higher sale prices than that which could be achieved at a stand-alone Public Auction. At this stage in the chapter 11 case with confirmation of the Plan scheduled for October 19, 2016, the Debtor submits that it is critical that the Debtor be able to participate in the October Auction, which it strongly avers will yield greater sale proceeds than a typical auction, in order to bring funds into the estate to make required distributions under the Plan. In addition, given that the Plan and related disclosure statement contemplate the Public Auctions proposed in the Motion, creditors in this chapter 11 case have been on notice of the proposed disposition of the Assets for some time without objection.

8. Moreover, by auctioning the Assets on an expedited basis the Debtor will lower the administrative costs of storing and maintaining the Assets as well as maintaining adequate insurance and registration status of the Assets.

9. The Debtor therefore believes that expedited consideration of the Motion is warranted under the circumstances because if the Debtor is unable to obtain approval of the Motion and therefore unable to participate in the October Auction, it would miss an opportunity to sell the Assets at a major, well-advertised auction that is likely to attract a large number of bidders with interest in the Assets available for sale. If the Motion is considered on an expedited basis, on the other hand, the Debtor will be able to participate in the October Auction and there will be no prejudice to the creditors and other parties in interest because they will have ample notice of the October Auction through the Auction Notice.

10. The Debtor proposes to serve the Motion as set forth in the proposed Order Scheduling Hearing and submits that such service is sufficient and adequate under the circumstances. Accordingly, it is respectfully requested that the Court enter the order submitted simultaneously herewith scheduling hearing on the Motion on shortened notice to be heard on October 6, 2016.

11. No prior request for the relief sought herein has been made to this or any other Court.

Dated: Garden City, New York  
September 29, 2016

CULLEN AND DYKMAN LLP  
Counsel to Trocom Construction Corp.

By: /s/ C. Nathan Dee  
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Bonnie L. Pollack, Esq.  
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