

Hearing Date and Time: January 26, 2017 at 11:30 a.m.  
Objection Date and Time: January 19, 2017 at 4:00 p.m.

CULLEN AND DYKMAN LLP  
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Garden City, NY 11530  
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C. Nathan Dee, Esq.  
Elizabeth Usinger, Esq.  
Elizabeth M. Aboulaflia, Esq.

Attorneys for Trocom Construction Corp.

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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**NOTICE OF MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO SELL CERTAIN ASSETS BY PRIVATE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on January 26, 2017 at 11:30 a.m., Trocom Construction Corp., the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned counsel, will move (the “Motion”) before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”), located at 271-C Cadman Plaza East, Brooklyn, New York 11201, or as soon thereafter as counsel can be heard, for entry of an order, pursuant to section 363 of chapter 11 of title 11 of the United States Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, Rule 6004-1 of the Local Rules of the Bankruptcy Court for the Eastern District of New York and General Order 557 dated March 29, 2010, *Adoption of Sale Guidelines*, for entry of an order authorizing the Debtor to sell all of its right, title and

interest in and to a certain piece of equipment, free and clear of all liens, claims, encumbrances, and interests, with such liens to attach to the proceeds of the sale

**PLEASE TAKE FURTHER NOTICE** that, responses and objections, if any, to the Motion and the proposed order must be made in writing, conform to the Bankruptcy Rules and the Local Bankruptcy Rules and be filed with the Bankruptcy Court electronically in accordance with General Order 559 (a copy of which can be found at [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov), the official website for the United States Bankruptcy Court for the Eastern District of New York) by registered users of the Bankruptcy Court's case filing system and by all other parties in interest on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and shall be served upon: (i) counsel to the Debtor, Cullen and Dykman LLP, Attn: C. Nathan Dee, Esq. and Bonnie L. Pollack, Esq., 100 Quentin Roosevelt Blvd., Garden City, New York 11530; (ii) Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10004; and (iii) all parties who have filed a notice of appearance and request for service of documents, so as to be actually received by no later than 4:00 p.m. (prevailing Eastern Time) on January 19, 2017 (the "Objection Deadline").

Dated: Garden City, New York  
January 5, 2017

CULLEN AND DYKMAN LLP

By:     /s/ Elizabeth M. Aboulafia      
C. Nathan Dee, Esq.  
Elizabeth Usinger, Esq.  
Elizabeth M. Aboulafia, Esq.  
100 Quentin Roosevelt Boulevard  
Garden City, NY 11530  
(516) 357-3700

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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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**MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO SELL CERTAIN ASSETS BY PRIVATE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND GRANTING RELATED RELIEF**

Trocom Construction Corp., the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned counsel Cullen and Dykman LLP, hereby submits this motion (the “Motion”), pursuant to section 363 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1 of the Local Rules of the Bankruptcy Court 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”), for entry of an order, substantially in the form annexed hereto as Exhibit “A”, authorizing the Debtor to sell all of its right, title and interest in and to a piece of equipment known as a Caterpillar 1997 Track Excavator 345 Model BL, VIN 4SS00646, 24” Triple Grouser Pads, 12’ Dipper, 34” Bucket with Teeth (the

“Equipment”) to MFM Contracting Corp. (the “Purchaser”) for the sum of forty three thousand (\$43,000) dollars (the “Purchase Price”), free and clear of all liens, claims, encumbrances, and interests (“Liens”), with such Liens to attach to the proceeds of the sale. In support of this Motion, the Debtor respectfully states as follows:

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

By this Motion, the Debtor requests that the Court authorize the Debtor to sell the Equipment to the Purchaser as set forth herein because the Debtor believes pursuant to discussions with its current auctioneer that the Purchase Price being offered for the Equipment is greater than or equal to the value that would be achieved through the auction sale of the Equipment. The Debtor submits that, given the Debtor no longer requires the use of the Equipment to complete its ongoing Construction Projects, and the Debtor’s marketing efforts to date, the time and expense associated with conducting a public sale process for a single piece of equipment would outweigh the potential benefit to the estate. Accordingly, because the Debtor has identified a ready, willing and able purchaser prepared to offer fair and reasonable value in exchange for the Equipment, the Debtor submits that it should be permitted to proceed with the private sale on the terms set forth herein.<sup>2</sup> The proposed sale of the Equipment to the Purchaser will enable the Debtor to eliminate the expense associated with maintaining assets that the Debtor does not require to complete its open Construction Projects while bringing additional funds into the estate to enable the Debtor to proceed towards confirmation of the Plan.

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<sup>1</sup> Capitalized terms used but not otherwise defined in this Preliminary Statement shall have the meanings ascribed to them in the sections of the Motion that follow.

<sup>2</sup> Among other things, the proposed Purchaser for the Equipment is also the replacement contractor for the Debtor on that certain construction project (the “QED Project”) the contract for which was rejected pursuant to an Order of the Court dated November 17, 2016 [Dkt. No. 372]. Accordingly, because the Equipment was being solely used for the QED Project and was also being stored at the site of the project, its sale to the Purchaser will eliminate any additional transportation costs in connection with the transfer of the Equipment.

## **INTRODUCTION**

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”).

2. The Debtor has remained in possession of its property and continues in the operation and management of its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. 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.

4. Simultaneously with the filing of its petition, the Debtor filed the Affidavit of Joseph Trovato (the “Trovato Affidavit”) pursuant to Local Bankruptcy Rule 1007-4. A more detailed factual background of the Debtor’s business and operations, as well as the events leading to the filing of this chapter 11 case, is more fully set forth in the Trovato Affidavit, the contents of which are incorporated herein by reference.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

6. The statutory predicates for the relief sought herein is section 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004 and Local Rule 6004-1.

## **BACKGROUND**

### **A. History of the Debtor and the Chapter 11 Case**

7. The Debtor is engaged in the business of heavy construction. Its primary customer is the City of New York (the “City”) through its various agencies including, primarily, the Department of Design and Construction, the Economic Development Corporation and the Department of Parks and Recreation. Pursuant to its contracts with those agencies, the Debtor performs construction work involving the replacement of water mains, sewers, retaining walls and refurbishment of parks, among other things on construction projects throughout the New York Metropolitan area (the “Construction Projects”).

8. The Debtor owns or has an interest in certain heavy construction equipment, including the Equipment, which it has used in connection with the Construction Projects.

9. 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.

10. 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.

11. Other than M&T, the Debtor reasonably believes that no entity has an interest in the Equipment.

12. 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 was originally scheduled for October 19, 2016 and has been adjourned to enable the Debtor, M&T and Liberty to address certain unresolved matters.

13. Pursuant to the Plan, the Debtor will continue in business for the limited purpose of completing its open Construction Projects with the City and will not seek to obtain new projects. Accordingly, any equipment not required to complete the Debtor's open Construction Projects is no longer necessary to the Debtor's business operations.

14. Given that the Equipment is not required to complete any of the Debtor's open Construction Projects, the Debtor has agreed to sell the Equipment to the Purchaser for the Purchase Price. A copy of the proposed bill of sale (the "Bill of Sale") documenting the proposed sale transaction is annexed hereto as Exhibit "B".

**B. Marketing and Sale Process**

15. The Debtor marketed the Equipment for sale over a period of approximately three (3) months during which time the Debtor actively sought out prospective purchasers for the Equipment and other assets of the Debtor. After consulting with its current auctioneer regarding the proposed Purchase Price for the Equipment, the Debtor has determined that the proposed Purchase Price represents a fair and reasonable offer for the Equipment comparable to what the Debtor would receive at a public sale. As a result of this marketing process, the Debtor determined that the Purchaser was interested in purchasing the Equipment.

16. The Debtor has been engaged in negotiations with the Purchaser for the sale of the Equipment over the course of the past several weeks. As a result of these negotiations, the Debtor and the Purchaser have agreed to the terms and conditions regarding the sale of the Equipment for the Purchase Price as set forth herein and in the Bill of Sale.

**C. The Proposed Sale**

17. The Equipment is not currently being used by the Debtor, nor does the Debtor intend to use the Equipment to complete its open Construction Projects. The Debtor believes that the Purchase Price offered by the Purchaser represents fair value for the Equipment and that the Debtor would not receive greater value through a public auction or other alternate liquidation process when considering the condition of the Equipment, the outcome of the Debtor's marketing efforts to date and the time and expense associated with a public sale process. The Debtor believes that the terms of the proposed sale to the Purchaser for the Purchase Price represents a fair and reasonable liquidation value under the circumstances without any commission and with limited expense.

18. The Purchaser is a general contracting corporation located in Mamaroneck, New York. One of the Purchaser's principals is Felix Petrillo. The Purchaser is not an insider of the Debtor.

19. The proposed sale is not subject to any financing or due diligence contingency. The Purchaser is expected to pay the Purchase Price in cash and is prepared to close immediately upon approval of the sale by the Court.

20. The Debtor and the Purchaser have entered into the proposed transaction without collusion, in good faith, and from arms' length bargaining positions. The Debtor submits that the Purchaser is a good faith purchaser for value pursuant to section 363(m) of the Bankruptcy Code and neither party has engaged in any conduct that would cause or permit the transaction to be avoided under section 363(n) of the Bankruptcy Code.



21. The Debtor proposes that the Equipment 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 equipment.

22. The Debtor believes that the sale of the Equipment to the Purchaser as set forth herein and in the Bill of Sale is in the best interests of the Debtor’s estate and its creditors.

**D. Sale Free and Clear of Liens**

23. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor requests authority to sell the Equipment free and clear of Liens including without limitation Liens held by any of the Secured Parties. Any and all Liens shall attach to the proceeds of the sale, subject to subsequent determination regarding the validity, priority, and extent of such Liens.

**RELIEF REQUESTED**

24. By this Motion, the Debtor respectfully requests that this Court enter an order, substantially in the form annexed hereto as Exhibit A, authorizing the Debtor to sell the Equipment to the Purchaser for the Purchase Price in accordance with the terms set forth herein and in the Bill of Sale annexed hereto as Exhibit B. The Debtor further requests that this Court approve the notice of the sale (the “Sale Notice”), the form of which is annexed hereto as Exhibit “C”.

**BASIS FOR RELIEF REQUESTED**

**A. The Sale of the Equipment is a Reasonable Exercise of the Debtor’s Business Judgment and Should be Approved**

25. 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)).

26. The sale of the Equipment to the Purchaser is permissible under applicable law because 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.”

27. The Debtor has substantial business justification for the proposed sale of the Equipment by private sale outside of the ordinary course of business based on the age and condition of the Equipment and the results of the Debtor’s marketing efforts to date. After careful consideration and analysis, the Debtor’s management has determined in its sound business judgment that selling the Equipment by is in the best interests of the Debtor’s estate and necessary to wind down its affairs as it completes work on the Construction Projects. Based on

input from project managers and the Debtor's financial advisors, the Debtor's management submits that the Equipment is unnecessary and burdensome to the estate given that the Debtor is winding down its construction operations and does not need the Equipment to complete the open Construction Projects. The Debtor has determined that the proposed sale of the Equipment will allow the Debtor to reduce its operating expenses because, among other reasons, the Debtor will no longer be obligated to provide insurance for the Equipment or to continue providing ongoing maintenance and storage for the Equipment. Therefore, the sale of the Equipment is in the best interests of the estate and will help to maximize the funds available for distribution under the Plan.

28. Furthermore, in the Debtor's business judgment the proposed Purchase Price for the Equipment represents a fair and reasonable liquidation value which the Debtor believes is greater than or equal to the value that would be received for the Equipment at a public auction.

29. For the foregoing reasons, the Debtor submits that there is ample sound business justification for conducting the sale of the Equipment on the terms set forth herein and in the Bill of Sale, the proposed sale is fair and equitable, proposed in good faith and should therefore be approved.

30. Pursuant to Bankruptcy Rules 6004(a) and (c) and 2002(a)(2) and (c)(1), Local Rule 6004-1(b) and the Sale Guidelines, the Debtor will provide the Sale Notice annexed hereto as Exhibit C 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, (e) the Purchaser, and (f) all parties having requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002. The Debtor proposes to serve the Sale Notice on the foregoing parties contemporaneously with the filing of

this Motion. 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 sale as set forth in the Sale Notice is adequate and sufficient notice under the circumstances.

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

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

32. 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).

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

34. 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 sale via the Sale 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 Motion, the sale of the Equipment free and clear of all Liens satisfies section 363(f)(2) of the Bankruptcy Code.

35. Moreover, the Debtor also asserts that its proposed sale of the Equipment 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 proceeds of the sale with the same validity, extent and priority as had attached to the Equipment immediately prior to the sale.

#### **NOTICE**

36. Notice of this Motion has been provided by 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 Equipment, (d) all parties having requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002, and (e)

the Purchaser. Additionally, the Debtor will serve the Sale Notice via first class mail as set forth above. The Debtor submits that, under the circumstances, no other or further notice is required.

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

### **CONCLUSION**

38. For the reasons set forth herein, the Debtor submits that approval of the proposed sale of the Equipment to the Purchaser on the terms and conditions set forth herein and in the Bill of Sale is warranted under the circumstances to enable the Debtor to sell the Equipment and maximize the funds available for distribution to creditors under the Plan. The Debtor believes that approval of the Motion is in the best interests of the Debtor, the estate, creditors and parties in interest, and that consummation of the sale as described in the Motion and the accompanying exhibits will create the best opportunity to maximize the value of the Equipment for the benefit of the estate.

**WHEREFORE**, the Debtor requests that the Court grant the Motion and enter an order, substantially in the form annexed hereto as Exhibit A, (a) authorizing the private sale of the Equipment to the Purchaser in accordance with the terms of the Bill of Sale; and (b) granting such other and further relief as may be just and proper under the circumstances.

Dated: Garden City, New York  
January 5, 2017

CULLEN AND DYKMAN LLP

By: s/ Elizabeth Aboulafia  
C. Nathan Dee, Esq.  
Elizabeth Aboulafia, Esq.  
100 Quentin Roosevelt Boulevard  
Garden City, NY 11530  
(516) 357-3700

Counsel to Trocom Construction Corp.

**EXHIBIT "A"**

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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**ORDER AUTHORIZING THE DEBTOR TO SELL  
CERTAIN ASSETS BY PRIVATE SALE FREE AND CLEAR OF  
ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

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 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1 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”), authorizing the Debtor to sell all of its right, title and interest in and to a certain piece of equipment known as a Caterpillar 1997 Track Excavator 345 Model BL, VIN 4SS00646, 24” Triple Grouser Pads, 12’ Dipper, 34” Bucket with Teeth (the “Equipment”) to MFM Contracting Corp. (the “Purchaser”) for the sum of forty three thousand (\$43,000) dollars (the “Purchase Price”), free and clear of all liens, claims, encumbrances, and interests (“Liens”), with such Liens to attach to the net proceeds of the sale; 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. §§

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



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 sell the Equipment to the Purchaser for the Purchase Price of forty-three thousand (\$43,000) dollars in accordance with the terms and conditions set forth in the Motion and the Bill of Sale.
3. The Debtor is authorized to execute and deliver the Bill of Sale and any other documents, or take any other action, necessary to sell, convey, and transfer the right, title and interest of the Debtor in and to the Equipment to the Purchaser.
4. The sale has been proposed and entered into by the Debtor and the Purchaser without collusion, from arms' length bargaining positions, and in good faith, and the Purchaser is a good faith purchaser of the Equipment within the meaning of section 363(m) of the Bankruptcy Code.
5. Neither the Debtor nor the Purchaser engaged in any conduct that would cause or permit the transaction to be avoided under grounds set forth in section 363(n) of the Bankruptcy Code.

6. The Liens against the Equipment shall attach to the proceeds of the sale, and upon consummation of the sale of the Equipment as set forth herein, the Equipment shall be deemed sold to the Purchaser free and clear of the Liens.

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

**EXHIBIT "B"**



Department of  
Motor Vehicles

## VEHICLE BILL OF SALE

dmv.ny.gov

Clearly print or type all information, except signatures.

I, Trocom Construction Corp.,  
(Seller)

in consideration of \$ 43,000.00, do hereby sell, transfer and convey to

MFM Contracting Corp.,  
(Buyer)

the following vehicle:

### DESCRIPTION OF VEHICLE

Year 1997	Make Caterpillar	Model 345BL Excavator
Vehicle or Hull Identification Number		
		4 S S 0 0 6 4 6

### TERMS AND CONDITIONS (if applicable)

Trocom Construction Corp. agrees to sell all of its right, title and interest in and to the piece of equipment known as Caterpillar 1997 Track Excavator 345 Model BL, 24" Triple Grouser Pads, 12' Dipper, 34" Bucket with Teeth to MFM Contracting Corp. for \$43,000.00 payable in cash upon approval of the proposed sale by the U.S. Bankruptcy Court for the Eastern District of New York. The above-described equipment shall be sold free and clear of all liens, claims, encumbrances and interests. The sale shall be on an "as is" "where is" basis without any warranty offered or implied.

### SELLER

Name Trocom Construction Corp.	
Address (optional) 46-27 54th Road, Maspeth, New York 11378	
Signature ▶	Date

### BUYER

Name MFM Contracting Corp.	
Address (optional) 335 Center Avenue, Mamaroneck, New York 10543	
Signature ▶	Date

**EXHIBIT "C"**

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 PROPOSED PRIVATE SALE OF EQUIPMENT,  
SOLICITATION OF HIGHER OFFERS, DEADLINE FOR  
SUBMITTING OBJECTIONS AND HIGHER OFFERS AND HEARING DATE**

**TO ALL CREDITORS AND PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE THAT**, pursuant to sections 363(b) and (f) of the Bankruptcy Code, FED. R. BANKR. P. 2002 and 6004 and Local Bankruptcy Rule 6004-1, and the *Motion for Entry of an Order Authorizing the Debtor to Sell Certain Equipment by Private Sale Free and Clear of Liens* (the “Sale Motion”) filed by Trocom Construction Corp., the above-referenced debtor and debtor-in-possession (the “Debtor”), with the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”) on January 5, 2017, the Debtor intends to sell at a private sale the Debtor’s right, title and interest in certain property of the estate.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtor is seeking authority to sell a Caterpillar 1997 Track Excavator 345 Model BL, VIN 4SS00646, 24” Triple Grouser Pads, 12’ Dipper, 34” Bucket with Teeth (the “Equipment”) to MFM Contracting Corp. (the “Purchaser”) for the sum of forty three thousand (\$43,000) dollars (the “Purchase Price”), free and clear of all liens, claims, encumbrances, and interests (“Liens”), with such Liens to attach to the net proceeds of the sale.<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the closing of the sale shall occur immediately upon entry of a final Order by the Bankruptcy Court approving the sale of the Equipment.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to Section 363(f) of the Bankruptcy Code, the Equipment will be sold free and clear of all Liens, including without limitation all consensual liens and security interests and all liens or claims arising by operation of

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<sup>1</sup> The description of the sale contained in this notice is not intended to be a substitute for the description contained within the Bill of Sale which contains important additional terms and conditions. In the case of any conflict between this Notice and the Bill of Sale, the terms of the Bill of Sale shall govern. Parties who submit counteroffers will be subject to the terms of the Bill of Sale.

law. Any and all such Liens and other interests shall attach to the proceeds of the sale to the same extent and priority as existed prior to the sale.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtor has requested that the Bankruptcy Court determine, at the Hearing (defined below), that the successful bidder for the Equipment be deemed to be a “good faith” purchaser providing to the Debtor consideration for the Equipment that constitutes payment of “value” pursuant to section 363(m) of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Sale Motion, the Debtor hereby solicits higher offers for the Equipment, which offers must be made by January 19, 2017.

**PLEASE TAKE FURTHER NOTICE THAT** any party that wishes to inspect the Equipment should contact the undersigned counsel to the Debtor to schedule a place, date and time to conduct an inspection of the Equipment.

**PLEASE TAKE FURTHER NOTICE THAT** any higher offer must be an offer to purchase the Equipment for cash only and be accompanied by a cash deposit of ten (10%) percent of the proposed purchase price in the form of a certified or bank check made payable to Cullen and Dykman LLP, as attorneys, which deposit shall be forfeited to the estate if the proposed purchaser fails to complete the sale by the date ordered by the Court. Higher offers must be on the same terms and conditions provided in the Sale Motion and related Bill of Sale, other than the purchase price. To the extent a party submitting a higher offer fails to close on the sale of the Equipment through no fault of the Debtor, the Debtor may sell the Equipment to the party submitting the second highest offer without further Court approval.

**PLEASE TAKE FURTHER NOTICE THAT** objections to the Sale Motion and/or higher offers for the sale of the Equipment, if any, must be stated in writing and filed with the Clerk, United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, New York 11201, and served upon (i) Debtor’s counsel, Cullen and Dykman LLP, 100 Quentin Roosevelt Boulevard, Garden City, New York 11530, Attention: C. Nathan Dee, Esq. and (ii) the Office of the United States Trustee, United States Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, no later than **January 19, 2017 at 4:00 p.m.** (the “Objection Deadline”). Any objection must state with particularity the grounds for the objection and why the sale of the Equipment should not be authorized. Any objection to the Sale Motion shall be governed by FED. R. BANKR. P. 9014. Absent a timely objection or higher offer, the Bankruptcy Court may enter Order binding upon all parties approving the sale of the Equipment to the Purchaser.

**PLEASE TAKE FURTHER NOTICE THAT** that a hearing on the Sale Motion (the “Hearing”), any objections thereto, and any bids to purchase the Equipment is scheduled to take place **January 26, 2017 at 11:30 a.m.** before the Honorable Nancy H. Lord, United States Bankruptcy Judge, United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, New York 11201. Any party that files an objection or submits a higher offer for the Equipment is expected to be present at the Hearing, failing which the objection shall be overruled or the higher offer stricken. If more than one higher offer is submitted for the Equipment, then further bidding among the parties will be permitted by one or more rounds of open bidding at the Hearing. If no

objection to the Sale Motion is timely filed, the Bankruptcy Court, in its discretion, may approve the Sale Motion and the sale of the Equipment to the party submitting the highest offer.

Any questions concerning the Sale Motion should be addressed to the undersigned counsel to the Debtor. The Sale Motion (including the Bill of Sale) is on file at the Clerk's Office of the United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, NY 11021 and is available for inspection during regular business hours; copies may also be obtained, upon request, from the undersigned counsel to the Debtor.

For further information respecting the proposed sale, please contact counsel to the Debtor.

Dated: Garden City, New York  
January \_\_, 2017

CULLEN AND DYKMAN LLP  
Attorneys for the Debtor

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