

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation
James P. Hill, SBN 90478
Christopher V. Hawkins, SBN 222961
550 West "C" Street, Suite 1500
San Diego, California 92101
Telephone: (619) 233-4100
Fax Number: (619) 231-4372

Counsel for Debtor,
Sullivan International Group, Inc.

GOLDSTEIN & MCCLINTOCK LLLP
Thomas R. Fawkes (*pro hac vice*)
Brian J. Jackiw (*pro hac vice*)
208 S. LaSalle Street, Suite 1750
Chicago, Illinois 60604
Telephone: (312) 337-7700
Facsimile: (312) 277-2305

BALLARD SPAHR LLP
Christopher Celentino, SBN 131688
Dawn A. Messick, SBN 236941
655 West Broadway, Suite 1600
San Diego, California 92101-8494
Telephone: (619) 487-0797
Facsimile: (619) 969-9269

Counsel to the Official Committee of
Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re
SULLIVAN INTERNATIONAL
GROUP, INC.,

Debtor.

CASE NO. 15-02281-LT11

Chapter 11

**JOINT MOTION OF THE DEBTOR AND
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR:**

**(I) AN ORDER (A) ESTABLISHING
BIDDING PROCEDURES RELATING
TO THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR'S ASSETS; (B)
ESTABLISHING PROCEDURES
RELATING TO THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, INCLUDING
NOTICE OF PROPOSED CURE
AMOUNTS; (C) APPROVING FORM
AND MANNER OF NOTICE OF ALL**

1) **PROCEDURES, SCHEDULES, AND**
2) **AGREEMENTS; (D) SCHEDULING A**
3) **HEARING TO CONSIDER THE**
4) **PROPOSED SALE; AND (E)**
5) **GRANTING CERTAIN RELATED**
6) **RELIEF; AND**

7) **(II) AN ORDER (A) APPROVING THE**
8) **SALE OF SUBSTANTIALLY ALL OF**
9) **THE DEBTOR'S ASSETS AND (B)**
10) **AUTHORIZING THE ASSUMPTION**
11) **AND ASSIGNMENT OF CERTAIN**
12) **EXECUTORY CONTRACTS AND**
13) **UNEXPIRED LEASES IN**
14) **CONNECTION WITH THE SALE;**

15) **MEMORANDUM OF POINTS AND**
16) **AUTHORITIES**

17) **Initial Hearing Date:** July 31, 2015

18) Time: To be announced by Court

19) **Sale Hearing Date:** August 10, 2015

20) Time: 2:30 p.m.

21) Ctrm: Dept. 3, Room 129

22) United States Bankruptcy Court

23) 325 West "F" Street

24) San Diego, CA 92101-6991

25) Judge: Hon. Laura S. Taylor

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1 Sullivan International Group, Inc. (the “Debtor”) and the Official Committee of
2 Unsecured Creditors hereby move this Court (the “Motion”), pursuant to sections
3 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”),
4 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure
5 (the “Bankruptcy Rules”), for entry of (a) an order, substantially in the form annexed
6 hereto as Exhibit A (the “Bidding Procedures Order”), (i) authorizing and approving
7 certain proposed bidding and sale procedures, substantially in the form annexed hereto
8 as Exhibit B (the “Bidding Procedures”) in connection with the proposed sale (the
9 “Sale”) of substantially all of the Debtor’s assets, certain proposed assumption and
10 assignment procedures in connection with the Sale, and certain notice procedures,
11 substantially in the form annexed hereto as Exhibit C (the “Sale Notice”), (ii)
12 scheduling a hearing (the “Sale Hearing”) to consider final approval of the Sale, and
13 (iii) granting related relief; and (b) following the Sale Hearing, an order (the “Sale
14 Order”) (i) approving the Sale to the Successful Bidders or Back-Up Bidders¹,
15 (ii) authorizing the assumption and assignment of certain executory contracts and
16 unexpired leases (collectively, the “Assumed Contracts”), and (iii) granting related
17 relief. In support of the Motion, the Debtor relies upon and incorporates by reference
18 the Declaration of Bruce Quattrone filed concurrently herewith (“Quattrone
19 Declaration”). In further support of this Motion, the Debtor respectfully represents as
20 follows:

21
22
23
24 ///

25 ///

26 ///

27 _____

28 ¹ All terms not defined herein shall have the meaning given them in the Bidding Procedures.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I.**

4 **BACKGROUND**

5 **A. The Debtor's Business and Financial Distress**

6 A description of the Debtor's business is set forth at paragraphs 4 through 12 of
7 the Quattrone Declaration.

8 On April 6, 2015, the Debtor filed its petition for relief under Chapter 11. The
9 Debtor is operating its business as a debtor in possession under Sections 1107 and
10 1108. On April 30, 2015, the U.S. Trustee appointed the Committee. See Docket Nos.
11 63 and 76. No trustee or examiner has been appointed.

12 **B. The Debtor's Assets**

13 The Debtor is offering for sale substantially all of its Assets. The Debtor's
14 Assets generally consist of (i) prime contracts with both governmental and private
15 customers for which the Debtor serves as a prime contractor; (ii) subcontracts under
16 which the Debtor is providing services to prime contractors that are parties to
17 contracts with both governmental and private customers; (iii) interests in joint
18 ventures that are party to contracts with both governmental and private customers; and
19 (iv) assets related to the Debtor's contracting business, including accounts receivable
20 and unbilled work in process. *See* the Quattrone Declaration, ¶ 13.

21
22 **II.**

23 **THE DEBTOR'S SALE EFFORTS**

24 In December 2014, the Debtor retained the services of 3C Advisors &
25 Associates, Inc. ("3C"), a financial advisory firm, to provide a variety of financial and
26 management consulting services for the Debtor in light of the Debtor's financial
27 distress. Thereafter, 3C worked with the Debtor to, among other things, find a suitable
28 purchaser for its core business operating assets, contacting more than 75 of potential

1 purchasers with the relevant experience and qualifications, more than 40 of which
2 signed non-disclosure agreements to access information in the data room maintained
3 by SIG to expose its business and assets to potential purchasers. *See* the Quattrone
4 Declaration, ¶14.

5 On or about July 7, 2015, the Debtor and the Committee reached agreement that
6 the Committee's Court-approved financial advisors (Crowe Horwath) would take over
7 from 3C in leading the efforts to locate purchasers for the Debtor's assets. Since that
8 time, the professionals for the Debtor and the Committee has worked nearly round-
9 the-clock working to identify buyers and structure bidding procedures. *See* the
10 Quattrone Declaration, ¶15.

11 12 III.

13 **BIDDING PROCEDURES**

14 The Debtor proposes to solicit bids for the assets utilizing the Bidding
15 Procedures attached as Exhibit B hereto. The Bidding Procedures describe, among
16 other things, the assets available for sale, the manner in which bidders and bids
17 become "qualified," the coordination of diligence efforts among Qualified Bidders
18 and the Debtor, the receipt and negotiation of bids received the conduct of any
19 Auction, and the selection and approval of the Successful Bidders and the selection of
20 Back-Up Bids.

21 The Bidding Procedures also provide for the assumption and assignment of the
22 Debtor's contracts, including cure procedures, pursuant to Bankruptcy Code section
23 365.

24 For greater detail, see the Bidding Procedures attached as Exhibit B hereto.

25 The Bidding Procedures were developed consistent with the Debtor's
26 competing needs to promote participation and active bidding, and the risk of business
27 disruption associated with a prolonged stay in Chapter 11. The Bidding Procedures
28 reflect the Debtor's objective of conducting the Auction in a controlled, fair, and open

1 manner, while enabling the Debtor to select that highest or otherwise best offers for
2 the assets. *See* the Quattrone Declaration, ¶16.

3 **IV.**

4 **PROCEDURES FOR SALE NOTICE, THE AUCTION,**
5 **AND THE SALE HEARING**

6 The Debtor also requests approval of the Sale Notice to facilitate the sale
7 process and enable the Debtor to provide interested parties with adequate and
8 sufficient notice of the proposed Auction and the Sale Hearing. The Debtor proposes
9 to serve the Bidding Procedures Order as soon as practicable after entry (the “Mailing
10 Date”), a copy of the Sale Notice and the Bidding Procedures Order by first-class
11 mail, postage prepaid upon (a) the Office of the United States Trustee; (b) counsel to
12 the Committee; (c) all counterparties to Contracts to be assumed and assigned; (d) all
13 entities with recorded claims, liens, interests, or encumbrances against the Debtor’s
14 right, title, and interest in the assets and any other entities reasonably known to have
15 asserted any such claim, liens, interests, or encumbrances; (e) all entities reasonably
16 known to have expressed a bona fide interest in acquiring some or substantially all of
17 the Debtor’s assets during the six (6) months preceding the date hereof; (f) the Internal
18 Revenue Service; (g) the Securities Exchange Commission; (h) and all known
19 creditors of the Debtor.

20 The Debtor shall also post the Sale Notice and the Bidding Procedures Order on
21 the website of the Debtor’s claims and noticing agent, available at:
22 <https://www.donlinrecano.com/Clients/sig/Index>.

23 For greater detail, see the Bidding Procedures attached as Exhibit B hereto.

24
25 **V.**

26 **RELIEF REQUESTED**

27 The Debtor seeks entry of (a) the Bidding Procedures Order (i) authorizing and
28 approving the Bidding Procedures in connection with the Sale of the assets, the

1 Assumption and Assignment Procedures (defined below) in connection with the Sale,
2 and the Sale Notice, (ii) scheduling the Sale Hearing to consider final approval of the
3 Sale, and (iii) granting related relief; and (b) following the Sale Hearing, the Sale
4 Order (i) approving the Sale to the Successful Bidders (or, if the Successful Bidders
5 fail to consummate the Sale, to Back-Up Bidders), (ii) authorizing the assumption and
6 assignment of the Assumed Contracts, and (iii) granting related relief.

7
8 **VI.**

9 **BASIS FOR RELIEF REQUESTED**

10 **A. The Bidding Procedures Are Appropriate and in the Best Interests of the**
11 **Debtor, the Estate, and Creditors.**

12 **1. The Bidding Procedures Are Reasonable, Appropriate and Will**
13 **Maximize Value.**

14 The paramount goal in any proposed sale of property of the estate is to
15 maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382
16 F.3d 325, 339 (3d Cir. 2004) (debtor in possession “had a fiduciary duty to protect and
17 maximize the estate’s assets”); *Official Comm. of Unsecured Creditors of*
18 *Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B.*
19 *Corp. v. Food Barn Stores, Inc. (In re Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th
20 Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the
21 value of the estate at hand”).

22 To that end, courts uniformly recognize that procedures to enhance competitive
23 bidding are consistent with the goal of maximizing the value received by the estate
24 and therefore are appropriate in the context of bankruptcy transactions. *See In re*
25 *O’Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Official*
26 *Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res.*
27 *Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures “encourage bidding and
28 . . . maximize the value of the debtor’s assets”).

1 The Debtor believes that the Bidding Procedures will increase the likelihood
2 that the Debtor will receive the greatest possible consideration for the assets because
3 such procedures will ensure a competitive and fair bidding process. The Debtor also
4 believes that the Bidding Procedures will promote active bidding from seriously
5 interested parties and will generate the highest or otherwise best offer reasonably
6 available for the assets. The Bidding Procedures will allow the Debtor to conduct the
7 Auction—if at least two Qualified Bid is received—in a controlled, fair and open
8 manner that will encourage participation by financially capable bidders that
9 demonstrate the ability to close the Sale. The Debtor believes that the Bidding
10 Procedures will encourage bidding, are consistent with other procedures previously
11 approved by courts in this and other districts, and are appropriate under the relevant
12 standards governing auction proceedings and bidding incentives in bankruptcy
13 proceedings. *See* the Quattrone Declaration, ¶17; *see also In re O’Brien Env’tl.*
14 *Energy, Inc.*, 181 F.3d at 537; *see also In re Dura Auto. Sys., Inc.*, No. 06-11202
15 (Bankr. D. Del. July 24, 2007); *In re New Century TRS Holdings, Inc.*, No. 07-10416
16 (Bankr. D. Del. Apr. 20, 2007); *In re Three A’s Holdings, L.L.C.*, No. 06-10886
17 (Bankr. D. Del. Sept. 7, 2006).

18 Similar bidding procedures have been previously approved by bankruptcy
19 courts in this District. *See, e.g., In re Vertis Holdings, Inc.*, Case No. 12-12821 (CSS)
20 (Bankr. D. Del. Nov. 2, 2012 (D.I. 206)); *In re Northstar Aerospace (USA) Inc.*, Case
21 No. 12-11817 (MFW) (Bankr. D. Del. June 27, 2012) (D.I. 119); *In re Traffic Control*
22 *& Safety Corp.*, Case No. 12- 11287 (KJC) (Bankr. D. Del. May 14, 2012) (D.I. 128);
23 *In re Real Mex Rests. Inc.*, Case No. 11- 13122 (BLS) (Bankr. D. Del. Nov. 9, 2011)
24 (D.I. 393); *In re Nortel Networks, Inc.*, Case No. 09- 10138 (KG) (Bankr. D. Del. June
25 30, 2009) (D.I. 1012); *In re Tweeter Home Etm’t Group, Inc.*, Case No. 07-10787
26 (PJW) (Bankr. D. Del. June 27, 2007) (D.I. 211).

27 Additionally, the Debtor is required to complete the auction and sale process on
28 the timetable set forth in the Bidding Procedures, which timetable is integral to the

1 sale process, has been required by the Debtor's senior secured lender, Bridge Bank,
2 N.A. ("Bridge Bank") as an express condition to the Debtor's authority to use cash
3 collateral during the sale process, and, the Debtor submits, is fair and reasonable in
4 light of the circumstances of this Chapter 11 Case. *See* the Quattrone Declaration, ¶18.

5 Accordingly, the Debtor submits that the Bidding Procedures are reasonable
6 and appropriate. The Debtor also submits that the Bidding Procedures demonstrate an
7 exercise of the Debtor's sound business judgment, in consultation with the Committee
8 and Bridge Bank, as such procedures are designed to maximize the value to be
9 received by the Debtor's estate for the assets. *See* the Quattrone Declaration, ¶19.

10 **2. The Notice Procedures Are Reasonable and Appropriate**

11 Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify
12 creditors of the Sale, including a disclosure of the time and place of any auction, the
13 terms and conditions of the Sale, and the deadline for filing any objections thereto.

14 The Debtor submits that the notice procedures described above fully comply
15 with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and
16 adequate notice of the Bidding Procedures, the Auction, and the Sale Hearing to the
17 Debtor's creditors and all other interested parties that are entitled to notice, as well as
18 those parties that have expressed a bona fide interest in acquiring the assets.

19 Accordingly, the Debtor respectfully requests that the Court approve the notice
20 procedures set forth herein, including the form and manner of service of the Sale
21 Notice, and that no other or further notice of the Bidding Procedures, the Auction, and
22 the Sale Hearing is necessary or required.

23 **3. The Assumption and Assignment Procedures Are Reasonable and**
24 **Appropriate.**

25 As part of the relief requested herein, the Debtor also seeks authority under
26 Sections 105(a) and 365 of the Bankruptcy Code to assume and assign all executory
27 contracts, unexpired leases, joint venture agreements, and other assets, including but
28 not limited to those identified on Exhibit A to the Cure Notice which is being filed

1 concurrently herewith. The Bidding Procedures attached as Exhibit B hereto specify
2 the process (“Assumption and Assignment Procedures”) by which the Debtor will
3 serve the Assumption Notice, and the procedures and deadlines for counterparties to
4 the Assumed Contracts to file Contract Objections.

5 The Assumption and Assignment Procedures ensure that each counterparty will
6 have sufficient notice of such assumption and assignment, and an opportunity to
7 contest the cure amount, if any, for its Assumed Contract, as well as the ability of the
8 successful bidder to provide adequate assurance of future performance with respect to
9 such Assumed Contract.

10 Accordingly, the Debtor submits that the Assumption and Assignment
11 Procedures are fair and reasonable, and respectfully requests that the Court approve
12 such procedures. *See* the Quattrone Declaration, ¶ 20.

13 **B. Approval of the Sale is Appropriate and in the Best Interests of the**
14 **Debtor’s Estate.**

15 **1. The Sale is Authorized by Section 363 of the Bankruptcy Code as a**
16 **Sound Exercise of the Debtor’s Business Judgment.**

17 Section 363 of the Bankruptcy Code provides that a debtor, “after notice and a
18 hearing, may use, sell, or lease, other than in the ordinary course of business, property
19 of the estate[.]” 11 U.S.C. § 363(b). Although section 363 does not specify a standard
20 for determining when it is appropriate for a court to authorize the use, sale, or lease of
21 property of the estate, courts routinely authorize sales of a debtor’s assets if such sale
22 is based upon the sound business judgment of the debtor. *See Meyers v. Martin (In re*
23 *Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*,
24 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169,
25 175-76 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01- 00056 (PJW), 2001
26 WL 1820326, at *10 (Bankr. D. Del. Apr. 2. 2001).

27 Courts typically consider the following factors in determining whether a
28 proposed sale satisfies this standard: (a) whether a sound business justification exists

1 for the sale; (b) whether adequate and reasonable notice of the sale was given to
2 interested parties; (c) whether the sale will produce a fair and reasonable price for the
3 property; and (d) whether the parties have acted in good faith. *See In re Decora*
4 *Indus., Inc.*, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Delaware*
5 *& Hudson Ry. Co.*, 124 B.R. at 176); *In re United Healthcare Sys. Inc.*, No. 97-1159,
6 1997 WL 176574, at *4 & n.2 (D.N.J. Mar. 26, 1997).

7 A sound business purpose for the sale of a debtor's assets outside the ordinary
8 course of business may be found where such a sale is necessary to preserve the value
9 of assets for the estate, its creditors or interest holders. *See, e.g., In re Abbotts Dairies*
10 *of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir.
11 1983); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997)
12 (stating that the paramount goal in any proposed sale of property of the estate is to
13 maximize value).

14 Furthermore, “[w]here the debtor articulates a reasonable basis for its business
15 decisions (as distinct from a decision made arbitrarily or capriciously), courts will
16 generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-*
17 *Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville*
18 *Corp)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in
19 making a business decision the directors of a corporation acted on an informed basis,
20 in good faith and in the honest belief that the action was in the best interests of the
21 company.” *In re Integrated Res.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488
22 A.2d 858, 872 (Del. 1985)). Thus, if a debtor’s actions satisfy the business judgment
23 rule, then the transaction in question should be approved under section 363(b)(1) of
24 the Bankruptcy Code. Indeed, when applying the business judgment standard, courts
25 show great deference to a debtor’s business decisions. *See Pitt v. First Wellington*
26 *Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at *3
27 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be
28

1 accorded deference unless shown that the bankrupt's decision was taken in bad faith
2 or in gross abuse of the bankrupt's retained discretion.'').

3 The value of the assets will be tested through the auction and sale process
4 contemplated by the Bidding Procedures, as well as through the efforts of the
5 Committee and the Debtor to market the assets for sale prior to the filing of this Sale
6 Motion. Consequently, the fairness and reasonableness of the consideration for the
7 assets to be paid by the successful bidders ultimately will be demonstrated by
8 adequate "market exposure" and an open and fair auction and sale process – the best
9 means for establishing whether a fair and reasonable price is being paid. Thus, the
10 Debtor submits that the consideration paid by successful bidders will constitute the
11 highest or otherwise best offer for the transferred assets, and will provide a greater
12 recovery for the Debtor's estate than would be provided by any other available
13 alternative. As such, the Debtor's determination to sell the assets through an auction
14 and sale process, as provided for in the Bidding Procedures, is a valid and sound
15 exercise of the Debtor's business judgment. *See* the Quattrone Declaration, ¶21.

16 Accordingly, the Debtor respectfully requests that the Sale be approved.

17 **2. The Sale of the Assets Free and Clear of All Encumbrances (Except**
18 **for Permitted Encumbrances) is Authorized by Section 363(f) of the**
19 **Bankruptcy Code.**

20 In the interest of attracting the best bids for the assets, the Debtor
21 submits that the Sale should be free and clear of all liens, claims and encumbrances
22 (except for any specifically permitted encumbrances) in accordance with section
23 363(f) of the Bankruptcy Code, with any such liens, claims and encumbrances
24 attaching to the net proceeds of the Sale, as and to the extent applicable.
25 Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear
26 of liens, claims, interests, and encumbrances if:

27 (a) applicable non-bankruptcy law permits sale of such property free and clear
28 of such interests;

- 1 (b) such entity consents;
- 2 (c) such interest is a lien and the price at which such property is to be sold is
- 3 greater than the value of all liens on such property;
- 4 (d) such interest is in bona fide dispute; or
- 5 (e) such entity could be compelled, in a legal or equitable proceeding, to accept
- 6 a money satisfaction of such interest.

7 11 U.S.C. § 363(f).

8 Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code,
9 which provides that “[t]he Court may issue any order, process or judgment that is
10 necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11
11 U.S.C. § 105(a).

12 Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive,
13 satisfaction of any one of its five requirements will suffice to permit the sale of the
14 assets “free and clear” of all liens, claims and encumbrances (except for Permitted
15 Encumbrances). *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del.
16 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of
17 the five conditions are met, the debtor has the authority to conduct the sale free and
18 clear of all liens.”); *see also Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*,
19 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *In re Dundee Equity Corp.*, No. 89-10233
20 (FGC), 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) (same).

21 The Debtor submits that one or more of the conditions set forth in section
22 363(f) of the Bankruptcy Code will be satisfied with respect to the Sale. In particular,
23 the Debtor believe that at least section 363(f)(2) of the Bankruptcy Code will be
24 satisfied because each of the parties holding liens on the assets, if any, will consent, or
25 absent any objection to Sale, will be deemed to have consented to, the sale and
26 transfer of the assets. Any lienholder also will be adequately protected by having its
27 liens, if any, attach to the proceeds of the Sale, in the same order of priority, with the
28

1 same validity, force and effect that such creditor had prior to such sale, subject to any
2 claims and defenses that the Debtor and its estate may possess with respect thereto.

3 Accordingly, the Debtor respectfully requests that the assets be sold free and
4 clear of any liens, claims and encumbrances (except for permitted encumbrances)
5 pursuant to section 363(f) of the Bankruptcy Code.

6
7 **3. Bridge Bank Should be Authorized to Credit Bid on the Assets under**
8 **Section 363(k) of the Bankruptcy Code.**

9 Pursuant to section 363(k) of the Bankruptcy Code, unless the court for cause
10 orders otherwise, the holder of a claim secured by property that is the subject of the
11 sale “may bid at such sale, and, if the holder of such claim purchases such property,
12 such holder may offset such claim against the purchase price of such property.” 11
13 U.S.C. § 363(k). Even if a secured creditor is under-secured as determined in
14 accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such
15 secured creditor to bid the full face value of its claim and does not limit the credit bid
16 to the claim’s economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re*
17 *Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006) (stating that interpreting
18 section 363(k) of the Bankruptcy Code to cap credit bids at the economic value of the
19 underlying collateral “is theoretically nonsensical”).

20 Pursuant to section 363(k) of the Bankruptcy Code, the Bidding Procedures
21 provide that Bridge Bank may make one or more credit bids of some or all of their
22 allowed secured claims, provided, however, in the event Bridge Bank exercise its right
23 to credit bid, it nevertheless shall still be bound to honor and pay the “carve out” of up
24 to \$150,000 of sale proceeds as provide in the Court’s Order on (A) Emergency
25 Motion on High Desert Support Services, LLC Pursuant to Sections 362(D)(1),
26 365(D)(2) and 105(D)(2)(A) of the Bankruptcy Code for Entry of an Order Granting
27 High Desert Support Services, LLC Relief from the Automatic Stay or, Alternatively,
28 Directing the Debtor to Immediately Assume or Reject Its Executory Contract with

1 High Desert Support Services, LLC [Dkt. 227]; (B) Emergency Motion for an Order
2 (1) Authorizing Debtor's Use of Cash Collateral; and (2) Scheduling Continued
3 Hearing on Debtor's Use of Cash Collateral [Dkt. 235]; and (C) Emergency Motion
4 for Modification Of SulTRAC Joint Venture Agreement [Dkt. 242].]. In addition, the
5 Bidding Procedures provide that Bridge Bank shall be subject to the Bidding
6 Procedures, including without limitation the Auction Procedures set forth therein, in
7 the event that it decides to credit bid.

8
9 **C. Assumption and Assignment of the Assumed Contracts is Authorized by**
10 **Section 365 of the Bankruptcy Code.**

11 **1. The Debtor's Sound Business Judgment Supports the Assumption**
12 **and Assignment of the Assumed Contracts.**

13 Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in
14 possession to assume, subject to the court's approval, executory contracts or
15 unexpired leases of the debtor. Under section 365(a) of the Bankruptcy Code, a
16 debtor, "subject to the court's approval, may assume or reject any executory contract
17 or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the
18 Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease
19 or executory contract of a debtor, providing that: (b)(1) If there has been a default in an
20 executory contract or unexpired lease of the debtor, the trustee may not assume such
21 contract or lease unless, at the time of assumption of such contract or lease, the
22 trustee—(A) cures or provides adequate assurance that the trustee will promptly cure,
23 such default . . . ; (B) compensates, or provides adequate assurance that the trustee
24 will promptly compensate, a party other than the debtor to such contract or lease, for
25 any actual pecuniary loss to such party resulting from such default; and (C) provide
26 adequate assurance of future performance under such contract or lease. 11 U.S.C. §
27 365(b)(1).

1 The standard in determining whether an executory contract or unexpired lease
2 should be assumed is the “business judgment” test, which requires a debtor to
3 determine that the requested assumption or rejection would be beneficial to its estate.
4 *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir.
5 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing
6 business judgment test as “traditional”) (superseded in part by 11 U.S.C. § 1113).

7 Courts generally will not second-guess a debtor’s business judgment concerning
8 the assumption of an executory contract. *See In re Decora Indus., Inc.*, 2002 WL
9 32332749, at *8 (D. Del. May 20, 2002); *Official Comm. for Unsecured Creditors v.*
10 *Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005)
11 (“The standard for approving the assumption of an executory contract is the business
12 judgment rule.”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The
13 propriety of a decision to reject an executory contract is governed by the business
14 judgment standard.”).

15 To determine if the business judgment standard is met, the court is “required to
16 examine whether a reasonable business person would make a similar decision under
17 similar circumstances.” *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del.
18 2009). “This is not a difficult standard to satisfy and requires only a showing that
19 [assumption or] rejection will benefit the estate.” *Id.* (citations omitted). Specifically,
20 a court should find that the assumption or rejection is elected on “an informed basis, in
21 good faith, and with the honest belief that the assumption . . . [is] in the best interests
22 of [the debtor] and the estate.” *In re Network Access Solutions Corp.*, 330 B.R. 67, 75
23 (Bankr. D. Del. 2005). Under this standard, a court should approve a debtor’s business
24 decision unless that decision is the product of bad faith or a gross abuse of discretion.
25 *See In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003).

26 In the present case, the Debtor’s assumption and assignment of the Assumed
27 Contracts to the successful bidders meets the business judgment standard and satisfies
28 the requirements of section 365 of the Bankruptcy Code. The assumption and

1 assignment is necessary for the successful bidders to conduct business going forward,
2 and since no purchaser would take the assets without certain executory contracts and
3 unexpired leases, the assumption and assignment of such agreements is essential to
4 securing the highest or otherwise best offer for the assets. The good business
5 judgment of the Debtor in assuming and assigning the Assumed Contracts is
6 especially apparent in this case, since a substantial portion of the estate's value is
7 directly derived from the Debtor's executory contracts.

8 Consequently, the Debtor submits that the Assumption and Assignment
9 Procedures are fair and reasonable, and respectfully requests that the Court approve
10 such procedures and authorize the Debtor to assume and assign the Assumed
11 Contracts in the manner provided for herein.

12 **2. Adequate Assurance of Future Performance Will Be Demonstrated**
13 **With Respect to the Assumed Contracts.**

14 A debtor in possession may assign an executory contract or an unexpired lease
15 of the debtor if it assumes the agreement in accordance with section 365(a) of the
16 Bankruptcy Code, and provides adequate assurance of future performance by the
17 assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. §
18 365(c)(2).

19 The meaning of "adequate assurance of future performance" depends on the
20 facts and circumstances of each case, but should be given "practical, pragmatic
21 construction." *EBG Midtown South Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re*
22 *Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted),
23 *aff'd*, 993 F.2d 300 (2d Cir. 1993); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997
24 (Bankr. S.D. Fla. 1994); *In re Rachels Indus. Inc.*, 109 B.R. 797, 803 (Bankr. W.D.
25 Tenn. 1990); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R.
26 524, 538 (Bankr. D.N.J. 1988).

Accordingly, the Debtor submits that the assumption and assignment of the Assumed Contracts as set forth herein should be approved pursuant to section 365 of the Bankruptcy Code.

WAIVER OF BANKRUPTCY RULES 6004(h) AND 6006(d)

16

1 the Sale. Here, time is of the essence with respect to the Sale, as the Debtor lacks
2 sufficient funding to operate its business on a prolonged basis, and indeed, Bridge
3 Bank has required as a condition to use of cash collateral that the Sale(s) being
4 conducted hereunder close within four (4) days after the anticipated entry of the Sale
5 Order. In order to effectuate the Debtor's contemplated Chapter 11 strategy, and to
6 attract sufficient buyer interest, waiver of Bankruptcy Rules 6004(h) and 6006(d) are
7 necessary and appropriate under the circumstances. *See* the Quattrone Declaration,
8 ¶22. The Debtor therefore requests that the Sale Order be effective immediately by
9 providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and
10 6006(d) be waived.

11 **VIII.**

12 **SERVICE OF THIS MOTION**

13 The Debtor is providing notice of this Motion to: (i) the Office of the United
14 States Trustee; (ii) Counsel for the Committee; (iii) counsel for Bridge Bank; (iv) all
15 parties known by the Debtor to assert liens with respect to the assets; (vi) all parties
16 known by the Debtor to be party to any executory contract being assumed and
17 assigned; (vii) all entities reasonably known to have expressed a bona fide interest in
18 acquiring the assets during the six (6) months preceding the date hereof; (viii) the
19 Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) all
20 parties on the Court's ECF list; and (xi) all parties that have filed a notice of
21 appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In

22 ///

23 ///

24 ///

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1 light of the nature of the relief requested herein, the Debtor submits that no other or
2 further notice is necessary.

3
4 Dated: July 24, 2015

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

5
6
7 By: /s/ James P. Hill
James P. Hill
Christopher V. Hawkins
8 Counsel for Debtor,
9 Sullivan International Group, Inc.
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EXHIBIT TABLE

Exhibit	Description	Pages
A	Bidding Procedures Order	24-25
B	Bidding Procedures	26-36
C	Sale Notice	37-40

CSD 1001A [11/15/04]

Name, Address, Telephone No. & I.D. No.

SULLIVAN HILL LEWIN REZ & ENGEL, APLC

James P. Hill (SBN 90478) / Christopher V. Hawkins (SBN 222961)

550 West C Street, Suite 1500

San Diego, CA 92101

Telephone: (619) 233-4100

Counsel for Debtor, Sullivan International Group, Inc.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

SULLIVAN INTERNATIONAL GROUP, INC.,

Debtor.

BANKRUPTCY NO. 15-02281-LT11

Date of Hearing: July 31, 2015

Time of Hearing: 10:00 a.m.

Name of Judge: Hon. Laura S. Taylor

ORDER ON

JOINT MOTION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR (I) AN ORDER (A) ESTABLISHING BIDDING PROCEDURES RELATING TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS; (C) APPROVING FORM AND MANNER OF NOTICE OF ALL PROCEDURES, SCHEDULES, AND AGREEMENTS; (D) SCHEDULING A HEARING TO CONSIDER THE PROPOSED SALE; AND (E) GRANTING CERTAIN RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2)

through 2 with exhibits, if any, for a total of 2 pages, is granted. Motion/Application Docket Entry No. _____

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DATED:

Judge, United States Bankruptcy Court

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

SULLIVAN HILL LEWIN REZ & ENGEL, APLC
(Firm name)

By: /s/James P. Hill
Attorney for ☐ Movant ☐ Respondent

ORDER ON
DEBTOR:

JOINT MOTION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF

of 17

CASE NO: 15-02281-LT11

SULLIVAN INTERNATIONAL GROUP, INC..

Upon the joint motion (the "Motion") of Sullivan International Group, Inc. ("Debtor"), the debtor and debtor in possession herein, and the Official Committee of Unsecured Creditors ("Committee") for entry of (a) an order (the "Bidding Procedures Order") (i) authorizing and approving certain proposed bidding and Bidding Procedures, substantially in the form annexed hereto as Exhibit "A" (the "Bidding Procedures") in connection with the proposed sale (the "Sale") of substantially all of the Debtor's assets, certain proposed assumption and assignment procedures in connection with the Sale, and certain notice procedures, substantially in the form annexed hereto as Exhibit "B" (the "Sale Notice"), (ii) scheduling a hearing (the "Sale Hearing") to consider final approval of the Sale, and (iii) granting related relief; and (b) following the Sale Hearing, an order (the "Sale Order") (i) approving the Sale to the Successful Bidders or Back-Up Bidders, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Assumed Contracts"), and (iii) granting related relief; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other interested parties; and upon the record of the Bidding Procedures Hearing, if any, and the case, and after due deliberation thereon, and good cause therefore,

IT IS HEREBY ORDERED that:

- 1) The Bidding Procedures, as attached hereto, are approved and incorporated into this Order by reference, as though fully set forth herein. Accordingly, the failure to recite or reference any particular provision of the Bidding Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety. The Debtor and OCC are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.
- 2) The Sale Notice is approved.
- 3) Notwithstanding Federal Rules of Bankruptcy Procedure 6004(h), 6006(d), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
- 4) This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

IT IS SO ORDERED.

EXHIBIT A

In re Sullivan International Group, Inc.
Case No. 15-02281-LT11 (Bankr. S.D. Cal.)

BIDDING PROCEDURES

These Bidding Procedures serve as an exhibit to that certain *Joint Auction and Sale Notice* for the sale of substantially all of the personal property of Sullivan International Group, Inc. (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case pending in the United States Bankruptcy Court for the Southern District of California (the “Bankruptcy Court”). The transactions contemplated herein are subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

On July 24, 2015, the Debtor and the Official Committee of Unsecured Creditors appointed in the Debtor’s chapter 11 case (the “Committee”) filed their Joint Motion (A) Establishing Bidding Procedures Relating to the Sale of Substantially All of the Debtor’s Assets; (B) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (C) Approving Form and Manner of Notice of All Procedures, Schedules, and Agreements; (D) Scheduling a Hearing to Consider the Proposed Sale; and (E) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtor’s Assets and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale (the “Sale Motion”). On [DATE], the Bankruptcy Court entered an order approving the Bid Procedures set forth herein (the “Bidding Procedures Order”). The Bid Procedures Order sets August 10, 2015 as the date when the Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to authorize the Debtor to sell all or some of its assets (collectively, the “Assets”) to the successful bidders at an Auction that will be conducted in advance thereof.

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein), respectively, the coordination of diligence efforts among bidders, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder(s) and Back-Up Bidder(s) (as defined herein), and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”). The Debtor and the Committee are jointly conducting the Bidding Process, and intend to consult with the Debtor’s senior secured lender, Bridge Bank, N.A. (“Bridge Bank”) and the Debtor’s junior secured creditors, Neal Clements and William Ulmer (“Clements/Ulmer”) throughout the Bidding Process. In the event that any party-in-interest disagrees as to the interpretation or application of these Bidding Procedures, the Bankruptcy Court will have jurisdiction to hear and resolve such dispute.

Assets to Be Sold

The Debtor is offering for sale substantially all of its Assets. The Debtor’s Assets generally consist of (i) prime contracts with both governmental and private customers for which

the Debtor serves as a prime contractor ("Prime Contracts"); (ii) subcontracts under which the Debtor is providing services to prime contractors that are parties to contracts with both governmental and private customers ("Subcontracts"; and together with Prime Contracts, "Contracts"); (iii) interests in joint ventures that are party to contracts with both governmental and private customers ("JV Interests"); and (iv) assets related to the Debtor's contracting business, including accounts receivable and unbilled work in process ("Miscellaneous Assets"). Schedules of the contracts and other assets comprising the Assets are available to potential bidders upon request to the Debtor and the Committee, subject to the due diligence procedure discussed herein and entry into an acceptable non-disclosure and confidentiality agreement.

Qualified Bidders may submit a bid for (i) all of the Assets; or (ii) any portion of the Assets, including individual contracts, joint venture interests and subcontracts. The Debtor and the Committee reserve the right to enter into agreements for the sale of any of the Assets, individually or as part of a package, until the Bid Deadline (as defined below) which agreements, if any, shall be subject to higher or otherwise better bids at the Auction (as defined below). In addition, prior to the Auction, the Debtor and the Committee may select a stalking horse bidder with respect to any of the Assets until the Stalking Horse Deadline (as defined below) and agree to reasonable bidding protections (including a break-up fee, provided that such break-up fee not exceed three percent (3%) of the offered purchase price), subject to Bankruptcy Court approval. Finally, the Debtor and the Committee, with the advice and consent of Bridge Bank, reserve the right to pull certain Assets from the Auction to the extent that a preemptive bid is received for such Assets that is deemed high enough to be exempt from Auction. The Debtor shall retain all rights to the Assets that are not subject to a bid accepted by the Debtor and the Committee and approved by the Bankruptcy Court at the Sale Hearing (the "Unsold Assets").

"As Is, Where Is"

The sale of the Assets, or any portion thereof, will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, the Committee or the Debtor's estate, except, with respect to a Successful Bidder, to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Bankruptcy Court.

Free of Any and All Claims And Interests

Except to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder or ordered by the Bankruptcy Court, all of the Debtor's right, title and interest in and to the Assets to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests on and/or against the Assets (collectively, the "Claims and Interests"), such Claims and Interests to attach to the net proceeds of the sale of such Assets.

Due Diligence

The Debtor and the Committee will afford each potential Qualified Bidder due diligence access to the Assets. Due diligence access has included presentations by the Debtor and the Committee, access to an online data room with details concerning the Assets and the financial condition and performance of the Debtor, and such other matters which a potential Qualified Bidder has requested and as to which the Debtor and the Committee have agreed. The Debtor and the Committee will coordinate all reasonable requests for additional information and due diligence access from potential Qualified Bidders prior to the Bid Deadline. The Debtor and the Committee may, in their discretion, coordinate diligence efforts such that multiple potential Qualified Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at presentations.

Bid Requirements

In order to be declared a Qualified Bidder, and in order to participate in the Auction, each person (each a "Potential Bidder") must deliver to the Notice Parties (defined below) the following on or before the Bid Deadline:

- (i) either (a) in the case of Qualified Bidders bidding on JV Interests and/or Miscellaneous Assets, an executed asset purchase agreement (an "APA") for the Assets being bid upon in substantially the form attached hereto as Exhibit A, along with a blackline reflecting any revisions made to the APA or (b) in the case of Qualified Bidders bidding *only* on Contracts, an executed assumption and assignment agreement (an "Assignment Agreement") for the Assets being bid upon in substantially the form attached hereto as Exhibit B, along with a blackline reflecting any revisions made to the Assignment Agreement;
- (ii) a deposit equal to ten percent (10%) of the aggregate purchase price offered by the Potential Bidder (the "Deposit"), to be wired to the client trust account of Sullivan Hill Lewin Rez & Engel, APLC, the Debtor's restructuring counsel. Wiring instructions will be provided at the request of the Potential Bidder, which request shall be made to the Committee's and Debtor's financial advisor and sale agent, Michael Schwarzmunn of Crowe Horwath LLP (Michael.Schwarzmunn@crowehorwath.com; 818.325.8461; mobile phone 714.623.1854);
- (iii) documentary evidence (which may include financial statements, deposit account statements or executed correspondence from an authorized agent of the Potential Bidder's depository bank or lender) that the Potential Bidder has the ability and wherewithal to close a purchase of the Assets by the Outside Closing Date (as defined below);
- (iv) to the extent the Potential Bidder seeks assignment of any of the Debtor's executory contracts or leases (collectively, "Contracts"), sufficient information to permit the Debtor and the Committee to determine, in their discretion, the

proposed assignee's ability to comply with section 365 of the Bankruptcy Code, including providing adequate assurance of such assignee's ability to perform in the future with respect to any Contract proposed to be assumed and assigned;

- (v) a signed statement acknowledging that the sale is as-is, where-is, with no due diligence contingencies or financing contingencies of any kind;
- (vi) a signed statement acknowledging the prohibition against collusive bidding pursuant to section 365(n) of the Bankruptcy Code;
- (vii) an acknowledgment that the Potential Bidder is prepared to enter into and consummate the transaction by not later than **August 14, 2015** (the "Outside Closing Date"); and
- (viii) an acknowledgement that the Potential Bidder's bid is irrevocable until the later of: (1) the Auction date, if the Potential Bidder is not approved as a Successful Bidder or a Back-Up Bidder (as defined below), whether due to the Potential Bidder being not selected by the Debtor, the Potential Bidder not being approved by the Bankruptcy Court, or for any other reason whatsoever; and (2) the Outside Closing Date, if the Potential Bidder is selected as a Successful Bidder or Back-Up Bidder; in which case the Deposit will be refunded or applied to the purchase price, as applicable, unless otherwise forfeited as a result of a breach.

Cure Amounts Associated With Assumed and Assigned Contracts

On or before July 24, 2015, the Debtor will file with the Court and serve on each non-Debtor party to a Contract a notice of potential assumption and assignment (the "Cure Notice"). The Cure Notice shall state the cure amount that the Debtor believes is necessary to assume such Contract pursuant to section 365 of the Bankruptcy Code (the "Cure Amount") and notify each party that such party's Contract is subject to potential assumption and assignment to a Successful Bidder or Back-Up Bidder to be identified at the conclusion of the Auction. Each non-Debtor party to the Contracts shall have ten (10) days from the date of the Cure Notice to object to the assumption and assignment of the Contract and/or the Cure Amount and must state in its objection with specificity what Cure Amount is required (with appropriate documentation in support thereof). If no objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to the Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims as to such Contract against the Debtor, an assignee of the Contract, or the property of any of them. If an objection to the Cure Amount is timely filed and received and the parties are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code, if any, with respect to such objection will be determined at the Sale Hearing or at a subsequent hearing date to be determined by the Bankruptcy Court. Cure Amounts with respect to any Contract that is assumed and assigned to a purchaser shall be paid out of the proceeds of sale.

Bid Deadline

Bids shall be due on or before **August 5, 2015 at 4:00 p.m. Pacific Standard Time** (the “**Bid Deadline**”). Bid submissions shall be delivered so as to be received by the Bid Deadline to: (1) the Debtor, c/o James P. Hill, Sullivan Hill Lewin Rez & Engel, APLC, 550 West “C” Street, 15th Floor, San Diego, California 92101; hill@sullivanhill.com; (2) the Committee, c/o (a) Thomas R. Fawkes, Goldstein & McClintock LLP, 208 S. LaSalle St., Suite 1750, Chicago, Illinois 60604; tomf@restructuringshop.com; and (b) Michael D. Schwarzmans, Crowe Horwath LLP, 650 Town Center Drive, Suite 740, Costa Mesa, California 92626; Michael.Schwarzmans@crowehorwath.com; (3) Bridge Bank, c/o Jeffrey D. Cawdrey, Gordon & Rees LLP, 101 W. Broadway, Suite 2000, San Diego, California 92101; JCawdrey@gordonrees.com; and (4) Ulmer/Clements, c/o Gerald P. Kennedy, Procopio, Cory, Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San Diego, California 92101; gerald.kennedy@procopio.com (collectively, the “**Notice Parties**”); provided, however, that the Bid Deadline may be extended by agreement of the Debtor, the Committee and Bridge Bank, upon consultation with Ulmer/Clements. The Notice Parties prefer to accept Bids by e-mail, but will accept them by hand delivery or overnight delivery. If the Notice Parties do not receive any Qualified Bids by the Bid Deadline, the Debtor will report the same to the Court.

Determination of Qualified Bids

For a Bid to be deemed a “Qualified Bid,” it must comply with the requirements of and be accompanied by the additional information set forth in the section above titled “Bid Requirements,” as determined in the discretion of the Debtor and the Committee, upon consultation with Bridge Bank. The Debtor and the Committee, upon consultation with Bridge Bank, reserve the right to waive any and all such requirements and deem a Bid to be a Qualified Bid in the absence of some or all such requirements, provided that all three parties are in agreement. A “Qualified Bidder” is a Potential Bidder that submits a Qualified Bid and, in the reasonable discretion of the Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements, is determined to demonstrate the financial capability to consummate the purchase of the Assets that are the subject of its Qualified Bid.

Impact of Bid Rejection

If the Debtor and the Committee (upon consultation with Bridge Bank and Ulmer/Clements) determine that a Potential Bidder is not a Qualified Bidder, they shall return the Deposit to the Potential Bidder promptly upon such determination; provided, however, that the Debtor and the Committee, in their discretion, may work with a Potential Bidder to improve or modify its bid so as to make it Qualified. At the Auction, only Qualified Bidders who have submitted Qualified Bids for some or all of the Assets shall be ensured of being able to bid on the Assets.

Credit Bidding

Bridge Bank shall have the right, but not the obligation, to credit bid up to the full amount of its secured claim (including, without limitation, reasonable attorneys' fees and costs incurred through the Auction Date) (collectively, the "Bridge Secured Claim") and if it chooses to credit bid any part of the Bridge Secured Claim, it shall be deemed to have submitted a Qualified Bid. If Bridge Bank wishes to credit bid for any of the Assets, it shall notify the Debtor and the Committee of its intention to do so in writing by no later than the Bid Deadline. No other secured or allegedly secured creditor of the Debtor shall have the right to credit bid for any or all of the Assets.

Timing and Location of Auction

If the Debtor and the Committee receive two or more Qualified Bids, an Auction shall be conducted on **August 10, 2015 at 9:00 a.m.** (the "Auction Date"). The Auction will be held at the offices of Sullivan Hill Lewin Rez & Engel, APLC, 550 West "C" Street, 15th Floor, San Diego, California 92101. In the event of a change in time or place of the Auction, the Debtor and the Committee shall use their reasonable best efforts to notify all Qualified Bidders (as defined below) who have timely submitted Qualified Bids (as defined below) on or before the Bid Deadline; provided, however, that the Bid Deadline can be extended by order of the Bankruptcy Court or written agreement of the Debtor, the Committee, and Bridge Bank, upon consultation with Ulmer/Clements.

Auction Procedures

The Auction shall be conducted in accordance with commercially reasonable procedures to be established by the Debtor and the Committee in consultation with Bridge Bank and Ulmer/Clements, including, without limitation, relating to minimum bidding increments, the order in which certain Assets will be auctioned, and the manner by which the Auction will be conducted (whether through sealed bidding, open outcry or otherwise). Bridge Bank, if it timely submits a credit bid, shall be permitted to participate in the Auction, subject to the auction procedures established by the Debtor and the Committee. The following procedures, at a minimum, shall apply to the Auction:

- (a) Only the Debtor, the Committee, Bridge Bank, Ulmer/Clements and any Qualified Bidder who has timely submitted a Qualified Bid will (and their respective professionals) shall be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.
- (b) All Qualified Bidders who have submitted Qualified Bids may be entitled to be present for all subsequent bids with the understanding that the true identity of each bidder may be fully disclosed to all other bidders and that all material terms of each subsequent bid may be fully disclosed to all other bidders throughout the entire Auction.

- (c) Any Qualified Bidder, regardless of the Assets comprising its bid, may participate in the Auction for any other Assets, provided that it satisfies the Bid Requirements for any overbid (including, without limitation, establishing wherewithal to close a purchase of such Assets and the ability to provide adequate assurance of future performance for additional Contracts that it wishes to have assigned to it);
- (d) The Debtor and the Committee may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith.
- (e) Bidding at the Auction will begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids and continue in such minimum increments or other bid improvements as determined by the Debtor and the Committee in consultation with Bridge Bank. For the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Purchaser), the Debtor may give effect to, among other things, any Break-Up Fee that may be payable to a Stalking Horse Bidder, if one is designated. The Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements, shall have the discretion to value all proposed overbids, to assign an appropriate discount to any bids that are not “all cash” or contain deferred or non-cash consideration, and to make a determination as to whether such overbid is higher or otherwise better than the immediately preceding bid or otherwise Qualified.

Determination of Successful Bids and Back-Up Bids

Upon completion of the Auction, the Debtor and the Committee, in their discretion and in consultation with Bridge Bank and Ulmer/Clements, shall select the Bid or Bids that will maximize the value of the Assets and are in the best interest of the Debtor, its bankruptcy estate, and creditors (collectively, the “Successful Bid(s)”). The Debtor and the Committee, in consultation with Bridge Bank and Ulmer/Clements, may also designate one or more “Back-Up Bids” by one or more Back-Up Bidders if deemed necessary or desirable. If, for any reason, a Successful Bidder(s) fails to consummate the purchase of the Assets,

- (a) a Back-Up Bidder(s) shall be deemed to have submitted the highest and best bid; and
- (b) the Debtor shall be authorized to effect the sale of the relevant Assets to the Back-Up Bidder(s) as soon as is commercially reasonable without further order of the Bankruptcy Court. The Back-Up Bidder(s)’s deposit shall be held until the

closing of the transaction with the Successful Bidder(s).

Sale Hearing

Upon completion of the Auction, the Debtor and the Committee shall then submit the Successful Bid(s) and Back-Up Bid(s) for approval by the Bankruptcy Court at a final sale hearing (the "**Sale Hearing**") to be held on **August 10, 2015 at 2:30 p.m. Pacific Standard Time**, or as soon thereafter as reasonably practicable, and shall submit an order for entry by the Bankruptcy Court approving the sale (the "**Final Sale Order**"). Objections to the Sale(s) of the Assets must be filed with the Bankruptcy Court by no later than **5:00 p.m. (Pacific Standard time) on August 7, 2015**. Any replies to Sale objections shall be filed with the Bankruptcy Court prior to the commencement of the Sale Hearing.

Return, Application and Surrender of Deposits

The Deposit(s) for the Qualified Bidder(s) that submitted Successful Bid(s) shall be non-refundable, and shall be applied against the purchase price, unless (x) the Bankruptcy Court does not authorize a sale to the Successful Bidder(s) or (y) the sale to the Successful Bidder(s) does not timely close due to a breach or failure of the Debtor. The Deposit(s) for the Qualified Bidder(s) that submitted Back-Up Bid(s) shall be non-refundable, and shall be applied against the purchase price, unless (x) the Bankruptcy Court does not authorize a sale to the Back-Up Bidder(s) or (y) if a Back-Up Bidder is required to close due to a failure to close of a Successful Bidder, but does not timely close due to a breach or failure of the Debtor. Upon the failure to consummate the sale because of a breach or failure on the part of a Successful Bidder or Successful Bidders, or a Back-Up Bidder or Back-Up Bidders to the extent they are required to close a transaction (collectively, a "**Bidder Failure**"), any Deposit received from such Successful Bidder or Back-Up Bidder shall be retained by the Debtor as liquidated damages and shall under no circumstances be refunded to the Successful Bidder or Back-Up Bidder.

Closing of Sale(s)

Closing of the sale of the Assets to a Successful Bidder (or a Back-Up Bidder, to the extent that a Successful Bidder fails to close) shall occur by no later than the Outside Closing Date, provided that a Final Sale Order has been entered. The Outside Closing Date may be extended in the discretion of the Debtor and the Committee, with the consent of Bridge Bank, or upon Bankruptcy Court approval.

Reservations of Rights

The Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements: (i) may determine which Qualified Bid, if any, is the highest or otherwise best offer; (ii) may value a bid, or apply an appropriate discount to a bid, that is not an "all cash" bid; and (iii) may reject at any time any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtor and its estate and

creditors, and other parties in interest as determined by the Debtor and the Committee in their discretion.

Questions Regarding Bidding Procedures

Questions regarding the foregoing Bidding Procedures, the Sale and the Auction process should be directed to:

- The Committee's and Debtor's financial advisor and sale agent, Michael Schwarzmann, Crowe Horwath LLP (Michael.Schwarzmann@crowehorwath.com; 818.325.8461; mobile phone 714.623.1854)
- The Debtor's restructuring counsel, James P. Hill, Sullivan Hill Lewin Rez & Engel, APLC (hill@sullivanhill.com; 619.595.3226)
- The Committee's counsel, Thomas R. Fawkes, Goldstein & McClintock LLLP (tomf@restructuringshop.com; 312.219.6702)

EXHIBIT B

SULLIVAN HILL LEWIN REZ &
ENGEL
A Professional Law Corporation
James P. Hill, SBN 90478
Christopher V. Hawkins, SBN 222961
550 West "C" Street, Suite 1500
San Diego, California 92101
Telephone: (619) 233-4100
Fax Number: (619) 231-4372

Counsel for Debtor,
Sullivan International Group, Inc.

GOLDSTEIN & MCCLINTOCK LLLP
Thomas R. Fawkes (*pro hac vice*)
Brian J. Jackiw (*pro hac vice*)
208 S. LaSalle Street, Suite 1750
Chicago, Illinois 60604
Telephone: (312) 337-7700
Facsimile: (312) 277-2305

BALLARD SPAHR LLP
Christopher Celentino, SBN 131688
Dawn A. Messick, SBN 236941
655 West Broadway, Suite 1600
San Diego, California 92101-8494
Telephone: (619) 487-0797
Facsimile: (619) 969-9269

Counsel to the Official Committee of
Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re
SULLIVAN INTERNATIONAL
GROUP, INC.,

Debtor.

CASE NO. 15-02281-LT11

Chapter 11

**NOTICE OF SALE OF ASSETS, BIDDING
PROCEDURES, ASSUMPTION AND
ASSIGNMENT OF CONTRACTS, AND
SALE HEARING**

Initial Hearing Date: July 31, 2015

Time: To be announced by Court

Sale Hearing Date: August 10, 2015

Time: 2:30 p.m.

Ctrm: Dept. 3, Room 129
United States Bankruptcy Court
325 West "F" Street
San Diego, CA 92101-6991

Judge: Hon. Laura S. Taylor

1 PLEASE TAKE NOTICE THAT on July 24, 2015, Sullivan International
2 Group, Inc. (“Debtor”), the Chapter 11 debtor and debtor in possession and the
3 Official Committee of Unsecured Creditors filed their Joint Motion for (I) an Order
4 (A) Establishing Bidding Procedures Relating to the Sale of Substantially All of the
5 Debtor’s Assets;(B) Establishing Procedures Relating to the Assumption and
6 Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice
7 of Proposed Cure Amounts; Approving Form and Manner of Notice of All
8 Procedures, Schedules, and Agreements; Scheduling a Hearing to Consider the
9 Proposed Sale; and Granting Certain Related Relief; and (II) an Order (A) Approving
10 the Sale of Substantially All of the Debtor’s Assets; and (B) Authorizing the
11 Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in
12 Connection with the Sale (the “Motion”)with the United States Bankruptcy Court for
13 the Southern District of California (“Bankruptcy Court”).

14 By order dated July __, 2015, the Bankruptcy Court approved the “Bidding
15 Procedures” (as that term is defined in the Motion) governing the sale of substantially
16 all of the assets of the Debtor. A copy of the Bidding Procedures is attached as
17 Exhibit A hereto.

18 All interested parties are invited to make a bid in accordance with the terms of
19 the Bidding Procedures.

20 Bids shall be due on or before August 5, 2015 at 4:00 p.m. Pacific Standard
21 Time (the “Bid Deadline”). Bid submissions shall be delivered so as to be received by
22

1 the Bid Deadline to: (1) the Debtor, c/o James P. Hill, Sullivan Hill Lewin Rez &
2 Engel APLC, 550 West "C" Street, 15th Floor, San Diego, California 92101;
3 hill@sullivanhill.com; (2) the Committee, c/o (a) Thomas R. Fawkes, Goldstein &
4 McClintock LLP, 208 S. LaSalle St., Suite 1750, Chicago, Illinois 60604;
5 tomf@restructuringshop.com; and (b) Michael D. Schwarzmans, Crowe Horwath
6 LLP, 650 Town Center Drive, Suite 740, Costa Mesa, California 92626;
7 Michael.Schwarzmans@crowehorwath.com; (3) Bridge Bank, c/o Jeffrey D.
8 Cawdrey, Gordon & Rees LLP, 101 W. Broadway, Suite 2000, San Diego, California
9 92101; JCawdrey@gordonrees.com; and (4) Ulmer and Clements c/o Gerald P.
10 Kennedy, Procopio, Cory, Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San
11 Diego, California 92101; gerald.kennedy@procopio.com (collectively, the "Notice
12 Parties"); provided, however, that the Bid Deadline may be extended by agreement of
13 the Debtor, the Committee and Bridge Bank. The Notice Parties prefer to accept Bids
14 by e-mail, but will accept them by hand delivery or overnight delivery.

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19 If the Debtor and the Committee receive two or more Qualified Bids, an
20 Auction shall be conducted on August 10, 2015 at 9:00 a.m. (the "Auction Date").
21 The Auction will be held at the offices of Sullivan Hill Lewin Rez & Engel, APLC,
22 550 West "C" Street, 15th Floor, San Diego, California 92101. In the event of a
23 change in time or place of the Auction, the Debtor and the Committee shall use their
24 reasonable best efforts to notify all Qualified Bidders (as defined below) who have
25 timely submitted Qualified Bids (as defined below) on or before the Bid Deadline;
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27
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1 provided, however, that the Bid Deadline can be extended by order of the Bankruptcy
2 Court or written agreement of the Debtor, the Committee, and Bridge Bank.

3 Upon completion of the Auction, the Debtor and the Committee shall then
4 submit the Successful Bid(s) and Back-Up Bid(s) for approval by the Bankruptcy
5 Court at a final sale hearing (the "Sale Hearing") to be held on August 10, 2015 at
6 2:30 p.m. Pacific Standard Time, or as soon thereafter as reasonably practicable, and
7 shall submit an order for entry by the Bankruptcy Court approving the sale (the "Final
8 Sale Order"). Objections to the Sale(s) of the Assets must be filed with the
9 Bankruptcy Court by no later than 5:00 p.m. (Pacific Standard time) on August 7,
10 2015. Any replies to Sale objections shall be filed with the Bankruptcy Court prior to
11 the commencement of the Sale Hearing.
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16
17 Dated: July 24, 2015

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

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19
20 By: *James P. Hill*
James P. Hill
Christopher V. Hawkins
21 Counsel for Debtor,
22 Sullivan International Group, Inc.
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In re Sullivan International Group, Inc.
Case No. 15-02281-LT11 (Bankr. S.D. Cal.)

BIDDING PROCEDURES

These Bidding Procedures serve as an exhibit to that certain *Joint Auction and Sale Notice* for the sale of substantially all of the personal property of Sullivan International Group, Inc. (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case pending in the United States Bankruptcy Court for the Southern District of California (the “Bankruptcy Court”). The transactions contemplated herein are subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

On July 24, 2015, the Debtor and the Official Committee of Unsecured Creditors appointed in the Debtor’s chapter 11 case (the “Committee”) filed their Joint Motion (A) Establishing Bidding Procedures Relating to the Sale of Substantially All of the Debtor’s Assets; (B) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (C) Approving Form and Manner of Notice of All Procedures, Schedules, and Agreements; (D) Scheduling a Hearing to Consider the Proposed Sale; and (E) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtor’s Assets and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale (the “Sale Motion”). On [DATE], the Bankruptcy Court entered an order approving the Bid Procedures set forth herein (the “Bidding Procedures Order”). The Bid Procedures Order sets August 10, 2015 as the date when the Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to authorize the Debtor to sell all or some of its assets (collectively, the “Assets”) to the successful bidders at an Auction that will be conducted in advance thereof.

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein), respectively, the coordination of diligence efforts among bidders, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder(s) and Back-Up Bidder(s) (as defined herein), and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”). The Debtor and the Committee are jointly conducting the Bidding Process, and intend to consult with the Debtor’s senior secured lender, Bridge Bank, N.A. (“Bridge Bank”) and the Debtor’s junior secured creditors, Neal Clements and William Ulmer (“Clements/Ulmer”) throughout the Bidding Process. In the event that any party-in-interest disagrees as to the interpretation or application of these Bidding Procedures, the Bankruptcy Court will have jurisdiction to hear and resolve such dispute.

Assets to Be Sold

The Debtor is offering for sale substantially all of its Assets. The Debtor’s Assets generally consist of (i) prime contracts with both governmental and private customers for which

the Debtor serves as a prime contractor ("Prime Contracts"); (ii) subcontracts under which the Debtor is providing services to prime contractors that are parties to contracts with both governmental and private customers ("Subcontracts"; and together with Prime Contracts, "Contracts"); (iii) interests in joint ventures that are party to contracts with both governmental and private customers ("JV Interests"); and (iv) assets related to the Debtor's contracting business, including accounts receivable and unbilled work in process ("Miscellaneous Assets"). Schedules of the contracts and other assets comprising the Assets are available to potential bidders upon request to the Debtor and the Committee, subject to the due diligence procedure discussed herein and entry into an acceptable non-disclosure and confidentiality agreement.

Qualified Bidders may submit a bid for (i) all of the Assets; or (ii) any portion of the Assets, including individual contracts, joint venture interests and subcontracts. The Debtor and the Committee reserve the right to enter into agreements for the sale of any of the Assets, individually or as part of a package, until the Bid Deadline (as defined below) which agreements, if any, shall be subject to higher or otherwise better bids at the Auction (as defined below). In addition, prior to the Auction, the Debtor and the Committee may select a stalking horse bidder with respect to any of the Assets until the Stalking Horse Deadline (as defined below) and agree to reasonable bidding protections (including a break-up fee, provided that such break-up fee not exceed three percent (3%) of the offered purchase price), subject to Bankruptcy Court approval. Finally, the Debtor and the Committee, with the advice and consent of Bridge Bank, reserve the right to pull certain Assets from the Auction to the extent that a preemptive bid is received for such Assets that is deemed high enough to be exempt from Auction. The Debtor shall retain all rights to the Assets that are not subject to a bid accepted by the Debtor and the Committee and approved by the Bankruptcy Court at the Sale Hearing (the "Unsold Assets").

"As Is, Where Is"

The sale of the Assets, or any portion thereof, will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, the Committee or the Debtor's estate, except, with respect to a Successful Bidder, to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Bankruptcy Court.

Free of Any and All Claims And Interests

Except to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder or ordered by the Bankruptcy Court, all of the Debtor's right, title and interest in and to the Assets to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests on and/or against the Assets (collectively, the "Claims and Interests"), such Claims and Interests to attach to the net proceeds of the sale of such Assets.

Due Diligence

The Debtor and the Committee will afford each potential Qualified Bidder due diligence access to the Assets. Due diligence access has included presentations by the Debtor and the Committee, access to an online data room with details concerning the Assets and the financial condition and performance of the Debtor, and such other matters which a potential Qualified Bidder has requested and as to which the Debtor and the Committee have agreed. The Debtor and the Committee will coordinate all reasonable requests for additional information and due diligence access from potential Qualified Bidders prior to the Bid Deadline. The Debtor and the Committee may, in their discretion, coordinate diligence efforts such that multiple potential Qualified Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at presentations.

Bid Requirements

In order to be declared a Qualified Bidder, and in order to participate in the Auction, each person (each a "Potential Bidder") must deliver to the Notice Parties (defined below) the following on or before the Bid Deadline:

- (i) either (a) in the case of Qualified Bidders bidding on JV Interests and/or Miscellaneous Assets, an executed asset purchase agreement (an "APA") for the Assets being bid upon in substantially the form attached hereto as Exhibit A, along with a blackline reflecting any revisions made to the APA or (b) in the case of Qualified Bidders bidding *only* on Contracts, an executed assumption and assignment agreement (an "Assignment Agreement") for the Assets being bid upon in substantially the form attached hereto as Exhibit B, along with a blackline reflecting any revisions made to the Assignment Agreement;
- (ii) a deposit equal to ten percent (10%) of the aggregate purchase price offered by the Potential Bidder (the "Deposit"), to be wired to the client trust account of Sullivan Hill Lewin Rez & Engel, APLC, the Debtor's restructuring counsel. Wiring instructions will be provided at the request of the Potential Bidder, which request shall be made to the Committee's and Debtor's financial advisor and sale agent, Michael Schwarzmann of Crowe Horwath LLP (Michael.Schwarzmann@crowehorwath.com; 818.325.8461; mobile phone 714.623.1854);
- (iii) documentary evidence (which may include financial statements, deposit account statements or executed correspondence from an authorized agent of the Potential Bidder's depository bank or lender) that the Potential Bidder has the ability and wherewithal to close a purchase of the Assets by the Outside Closing Date (as defined below);
- (iv) to the extent the Potential Bidder seeks assignment of any of the Debtor's executory contracts or leases (collectively, "Contracts"), sufficient information to permit the Debtor and the Committee to determine, in their discretion, the

proposed assignee's ability to comply with section 365 of the Bankruptcy Code, including providing adequate assurance of such assignee's ability to perform in the future with respect to any Contract proposed to be assumed and assigned;

- (v) a signed statement acknowledging that the sale is as-is, where-is, with no due diligence contingencies or financing contingencies of any kind;
- (vi) a signed statement acknowledging the prohibition against collusive bidding pursuant to section 365(n) of the Bankruptcy Code;
- (vii) an acknowledgment that the Potential Bidder is prepared to enter into and consummate the transaction by not later than **August 14, 2015** (the "Outside Closing Date"); and
- (viii) an acknowledgement that the Potential Bidder's bid is irrevocable until the later of: (1) the Auction date, if the Potential Bidder is not approved as a Successful Bidder or a Back-Up Bidder (as defined below), whether due to the Potential Bidder being not selected by the Debtor, the Potential Bidder not being approved by the Bankruptcy Court, or for any other reason whatsoever; and (2) the Outside Closing Date, if the Potential Bidder is selected as a Successful Bidder or Back-Up Bidder; in which case the Deposit will be refunded or applied to the purchase price, as applicable, unless otherwise forfeited as a result of a breach.

Cure Amounts Associated With Assumed and Assigned Contracts

On or before July 24, 2015, the Debtor will file with the Court and serve on each non-Debtor party to a Contract a notice of potential assumption and assignment (the "Cure Notice"). The Cure Notice shall state the cure amount that the Debtor believes is necessary to assume such Contract pursuant to section 365 of the Bankruptcy Code (the "Cure Amount") and notify each party that such party's Contract is subject to potential assumption and assignment to a Successful Bidder or Back-Up Bidder to be identified at the conclusion of the Auction. Each non-Debtor party to the Contracts shall have ten (10) days from the date of the Cure Notice to object to the assumption and assignment of the Contract and/or the Cure Amount and must state in its objection with specificity what Cure Amount is required (with appropriate documentation in support thereof). If no objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to the Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims as to such Contract against the Debtor, an assignee of the Contract, or the property of any of them. If an objection to the Cure Amount is timely filed and received and the parties are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code, if any, with respect to such objection will be determined at the Sale Hearing or at a subsequent hearing date to be determined by the Bankruptcy Court. Cure Amounts with respect to any Contract that is assumed and assigned to a purchaser shall be paid out of the proceeds of sale.

Bid Deadline

Bids shall be due on or before **August 5, 2015 at 4:00 p.m. Pacific Standard Time** (the “**Bid Deadline**”). Bid submissions shall be delivered so as to be received by the Bid Deadline to: (1) the Debtor, c/o James P. Hill, Sullivan Hill Lewin Rez & Engel, APLC, 550 West “C” Street, 15th Floor, San Diego, California 92101; hill@sullivanhill.com; (2) the Committee, c/o (a) Thomas R. Fawkes, Goldstein & McClintock LLP, 208 S. LaSalle St., Suite 1750, Chicago, Illinois 60604; tomf@restructuringshop.com; and (b) Michael D. Schwarzmans, Crowe Horwath LLP, 650 Town Center Drive, Suite 740, Costa Mesa, California 92626; Michael.Schwarzmans@crowehorwath.com; (3) Bridge Bank, c/o Jeffrey D. Cawdrey, Gordon & Rees LLP, 101 W. Broadway, Suite 2000, San Diego, California 92101; JCawdrey@gordonrees.com; and (4) Ulmer/Clements, c/o Gerald P. Kennedy, Procopio, Cory, Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San Diego, California 92101; gerald.kennedy@procopio.com (collectively, the “**Notice Parties**”); provided, however, that the Bid Deadline may be extended by agreement of the Debtor, the Committee and Bridge Bank, upon consultation with Ulmer/Clements. The Notice Parties prefer to accept Bids by e-mail, but will accept them by hand delivery or overnight delivery. If the Notice Parties do not receive any Qualified Bids by the Bid Deadline, the Debtor will report the same to the Court.

Determination of Qualified Bids

For a Bid to be deemed a “Qualified Bid,” it must comply with the requirements of and be accompanied by the additional information set forth in the section above titled “Bid Requirements,” as determined in the discretion of the Debtor and the Committee, upon consultation with Bridge Bank. The Debtor and the Committee, upon consultation with Bridge Bank, reserve the right to waive any and all such requirements and deem a Bid to be a Qualified Bid in the absence of some or all such requirements, provided that all three parties are in agreement. A “Qualified Bidder” is a Potential Bidder that submits a Qualified Bid and, in the reasonable discretion of the Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements, is determined to demonstrate the financial capability to consummate the purchase of the Assets that are the subject of its Qualified Bid.

Impact of Bid Rejection

If the Debtor and the Committee (upon consultation with Bridge Bank and Ulmer/Clements) determine that a Potential Bidder is not a Qualified Bidder, they shall return the Deposit to the Potential Bidder promptly upon such determination; provided, however, that the Debtor and the Committee, in their discretion, may work with a Potential Bidder to improve or modify its bid so as to make it Qualified. At the Auction, only Qualified Bidders who have submitted Qualified Bids for some or all of the Assets shall be ensured of being able to bid on the Assets.

Credit Bidding

Bridge Bank shall have the right, but not the obligation, to credit bid up to the full amount of its secured claim (including, without limitation, reasonable attorneys' fees and costs incurred through the Auction Date) (collectively, the "Bridge Secured Claim") and if it chooses to credit bid any part of the Bridge Secured Claim, it shall be deemed to have submitted a Qualified Bid. If Bridge Bank wishes to credit bid for any of the Assets, it shall notify the Debtor and the Committee of its intention to do so in writing by no later than the Bid Deadline. No other secured or allegedly secured creditor of the Debtor shall have the right to credit bid for any or all of the Assets.

Timing and Location of Auction

If the Debtor and the Committee receive two or more Qualified Bids, an Auction shall be conducted on **August 10, 2015 at 9:00 a.m.** (the "Auction Date"). The Auction will be held at the offices of Sullivan Hill Lewin Rez & Engel, APLC, 550 West "C" Street, 15th Floor, San Diego, California 92101. In the event of a change in time or place of the Auction, the Debtor and the Committee shall use their reasonable best efforts to notify all Qualified Bidders (as defined below) who have timely submitted Qualified Bids (as defined below) on or before the Bid Deadline; provided, however, that the Bid Deadline can be extended by order of the Bankruptcy Court or written agreement of the Debtor, the Committee, and Bridge Bank, upon consultation with Ulmer/Clements.

Auction Procedures

The Auction shall be conducted in accordance with commercially reasonable procedures to be established by the Debtor and the Committee in consultation with Bridge Bank and Ulmer/Clements, including, without limitation, relating to minimum bidding increments, the order in which certain Assets will be auctioned, and the manner by which the Auction will be conducted (whether through sealed bidding, open outcry or otherwise). Bridge Bank, if it timely submits a credit bid, shall be permitted to participate in the Auction, subject to the auction procedures established by the Debtor and the Committee. The following procedures, at a minimum, shall apply to the Auction:

- (a) Only the Debtor, the Committee, Bridge Bank, Ulmer/Clements and any Qualified Bidder who has timely submitted a Qualified Bid will (and their respective professionals) shall be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.
- (b) All Qualified Bidders who have submitted Qualified Bids may be entitled to be present for all subsequent bids with the understanding that the true identity of each bidder may be fully disclosed to all other bidders and that all material terms of each subsequent bid may be fully disclosed to all other bidders throughout the entire Auction.

- (c) Any Qualified Bidder, regardless of the Assets comprising its bid, may participate in the Auction for any other Assets, provided that it satisfies the Bid Requirements for any overbid (including, without limitation, establishing wherewithal to close a purchase of such Assets and the ability to provide adequate assurance of future performance for additional Contracts that it wishes to have assigned to it);
- (d) The Debtor and the Committee may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith.
- (e) Bidding at the Auction will begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids and continue in such minimum increments or other bid improvements as determined by the Debtor and the Committee in consultation with Bridge Bank. For the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Purchaser), the Debtor may give effect to, among other things, any Break-Up Fee that may be payable to a Stalking Horse Bidder, if one is designated. The Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements, shall have the discretion to value all proposed overbids, to assign an appropriate discount to any bids that are not “all cash” or contain deferred or non-cash consideration, and to make a determination as to whether such overbid is higher or otherwise better than the immediately preceding bid or otherwise Qualified.

Determination of Successful Bids and Back-Up Bids

Upon completion of the Auction, the Debtor and the Committee, in their discretion and in consultation with Bridge Bank and Ulmer/Clements, shall select the Bid or Bids that will maximize the value of the Assets and are in the best interest of the Debtor, its bankruptcy estate, and creditors (collectively, the “Successful Bid(s)”). The Debtor and the Committee, in consultation with Bridge Bank and Ulmer/Clements, may also designate one or more “Back-Up Bids” by one or more Back-Up Bidders if deemed necessary or desirable. If, for any reason, a Successful Bidder(s) fails to consummate the purchase of the Assets,

- (a) a Back-Up Bidder(s) shall be deemed to have submitted the highest and best bid; and
- (b) the Debtor shall be authorized to effect the sale of the relevant Assets to the Back-Up Bidder(s) as soon as is commercially reasonable without further order of the Bankruptcy Court. The Back-Up Bidder(s)’s deposit shall be held until the

closing of the transaction with the Successful Bidder(s).

Sale Hearing

Upon completion of the Auction, the Debtor and the Committee shall then submit the Successful Bid(s) and Back-Up Bid(s) for approval by the Bankruptcy Court at a final sale hearing (the "**Sale Hearing**") to be held on **August 10, 2015 at 2:30 p.m. Pacific Standard Time**, or as soon thereafter as reasonably practicable, and shall submit an order for entry by the Bankruptcy Court approving the sale (the "**Final Sale Order**"). Objections to the Sale(s) of the Assets must be filed with the Bankruptcy Court by no later than **5:00 p.m. (Pacific Standard time) on August 7, 2015**. Any replies to Sale objections shall be filed with the Bankruptcy Court prior to the commencement of the Sale Hearing.

Return, Application and Surrender of Deposits

The Deposit(s) for the Qualified Bidder(s) that submitted Successful Bid(s) shall be non-refundable, and shall be applied against the purchase price, unless (x) the Bankruptcy Court does not authorize a sale to the Successful Bidder(s) or (y) the sale to the Successful Bidder(s) does not timely close due to a breach or failure of the Debtor. The Deposit(s) for the Qualified Bidder(s) that submitted Back-Up Bid(s) shall be non-refundable, and shall be applied against the purchase price, unless (x) the Bankruptcy Court does not authorize a sale to the Back-Up Bidder(s) or (y) if a Back-Up Bidder is required to close due to a failure to close of a Successful Bidder, but does not timely close due to a breach or failure of the Debtor. Upon the failure to consummate the sale because of a breach or failure on the part of a Successful Bidder or Successful Bidders, or a Back-Up Bidder or Back-Up Bidders to the extent they are required to close a transaction (collectively, a "**Bidder Failure**"), any Deposit received from such Successful Bidder or Back-Up Bidder shall be retained by the Debtor as liquidated damages and shall under no circumstances be refunded to the Successful Bidder or Back-Up Bidder.

Closing of Sale(s)

Closing of the sale of the Assets to a Successful Bidder (or a Back-Up Bidder, to the extent that a Successful Bidder fails to close) shall occur by no later than the Outside Closing Date, provided that a Final Sale Order has been entered. The Outside Closing Date may be extended in the discretion of the Debtor and the Committee, with the consent of Bridge Bank, or upon Bankruptcy Court approval.

Reservations of Rights

The Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements: (i) may determine which Qualified Bid, if any, is the highest or otherwise best offer; (ii) may value a bid, or apply an appropriate discount to a bid, that is not an "all cash" bid; and (iii) may reject at any time any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtor and its estate and

creditors, and other parties in interest as determined by the Debtor and the Committee in their discretion.

Questions Regarding Bidding Procedures

Questions regarding the foregoing Bidding Procedures, the Sale and the Auction process should be directed to:

- The Committee's and Debtor's financial advisor and sale agent, Michael Schwarzmann, Crowe Horwath LLP (Michael.Schwarzmann@crowehorwath.com; 818.325.8461; mobile phone 714.623.1854)
- The Debtor's restructuring counsel, James P. Hill, Sullivan Hill Lewin Rez & Engel, APLC (hill@sullivanhill.com; 619.595.3226)
- The Committee's counsel, Thomas R. Fawkes, Goldstein & McClintock LLLP (tomf@restructuringshop.com; 312.219.6702)

EXHIBIT A

Exhibit A

Asset Purchase Agreement

[to be supplied]

EXHIBIT B

Exhibit B

Assignment Agreement

[to be supplied]

SULLIVAN HILL LEWIN REZ &
ENGEL
A Professional Law Corporation
James P. Hill, SBN 90478
Christopher V. Hawkins, SBN 222961
550 West "C" Street, Suite 1500
San Diego, California 92101
Telephone: (619) 233-4100
Fax Number: (619) 231-4372

Counsel for Debtor,
Sullivan International Group, Inc.

GOLDSTEIN & MCCLINTOCK LLLP
Thomas R. Fawkes (*pro hac vice*)
Brian J. Jackiw (*pro hac vice*)
208 S. LaSalle Street, Suite 1750
Chicago, Illinois 60604
Telephone: (312) 337-7700
Facsimile: (312) 277-2305

BALLARD SPAHR LLP
Christopher Celentino, SBN 131688
Dawn A. Messick, SBN 236941
655 West Broadway, Suite 1600
San Diego, California 92101-8494
Telephone: (619) 487-0797
Facsimile: (619) 969-9269

Counsel to the Official Committee of
Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re
SULLIVAN INTERNATIONAL
GROUP, INC.,

Debtor.

CASE NO. 15-02281-LT11

Chapter 11

**NOTICE OF SALE OF ASSETS, BIDDING
PROCEDURES, ASSUMPTION AND
ASSIGNMENT OF CONTRACTS, AND
SALE HEARING**

Initial Hearing Date: July 31, 2015

Time: To be announced by Court

Sale Hearing Date: August 10, 2015

Time: 2:30 p.m.

Ctrm: Dept. 3, Room 129
United States Bankruptcy Court
325 West "F" Street
San Diego, CA 92101-6991

Judge: Hon. Laura S. Taylor

1 PLEASE TAKE NOTICE THAT on July 24, 2015, Sullivan International
2 Group, Inc. (“Debtor”), the Chapter 11 debtor and debtor in possession and the
3 Official Committee of Unsecured Creditors filed their Joint Motion for (I) an Order
4 (A) Establishing Bidding Procedures Relating to the Sale of Substantially All of the
5 Debtor’s Assets;(B) Establishing Procedures Relating to the Assumption and
6 Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice
7 of Proposed Cure Amounts; Approving Form and Manner of Notice of All
8 Procedures, Schedules, and Agreements; Scheduling a Hearing to Consider the
9 Proposed Sale; and Granting Certain Related Relief; and (II) an Order (A) Approving
10 the Sale of Substantially All of the Debtor’s Assets; and (B) Authorizing the
11 Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in
12 Connection with the Sale (the “Motion”)with the United States Bankruptcy Court for
13 the Southern District of California (“Bankruptcy Court”).

14 By order dated July __, 2015, the Bankruptcy Court approved the “Bidding
15 Procedures” (as that term is defined in the Motion) governing the sale of substantially
16 all of the assets of the Debtor. A copy of the Bidding Procedures is attached as
17 Exhibit A hereto.

18 All interested parties are invited to make a bid in accordance with the terms of
19 the Bidding Procedures.

20 Bids shall be due on or before August 5, 2015 at 4:00 p.m. Pacific Standard
21 Time (the “Bid Deadline”). Bid submissions shall be delivered so as to be received by
22

1 the Bid Deadline to: (1) the Debtor, c/o James P. Hill, Sullivan Hill Lewin Rez &
2 Engel APLC, 550 West “C” Street, 15th Floor, San Diego, California 92101;
3 hill@sullivanhill.com; (2) the Committee, c/o (a) Thomas R. Fawkes, Goldstein &
4 McClintock LLP, 208 S. LaSalle St., Suite 1750, Chicago, Illinois 60604;
5 tomf@restructuringshop.com; and (b) Michael D. Schwarzmans, Crowe Horwath
6 LLP, 650 Town Center Drive, Suite 740, Costa Mesa, California 92626;
7 Michael.Schwarzmans@crowehorwath.com; (3) Bridge Bank, c/o Jeffrey D.
8 Cawdrey, Gordon & Rees LLP, 101 W. Broadway, Suite 2000, San Diego, California
9 92101; JCawdrey@gordonrees.com; and (4) Ulmer and Clements c/o Gerald P.
10 Kennedy, Procopio, Cory, Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San
11 Diego, California 92101; gerald.kennedy@procopio.com (collectively, the “Notice
12 Parties”); provided, however, that the Bid Deadline may be extended by agreement of
13 the Debtor, the Committee and Bridge Bank. The Notice Parties prefer to accept Bids
14 by e-mail, but will accept them by hand delivery or overnight delivery.
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17
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19 If the Debtor and the Committee receive two or more Qualified Bids, an
20 Auction shall be conducted on August 10, 2015 at 9:00 a.m. (the “Auction Date”).
21 The Auction will be held at the offices of Sullivan Hill Lewin Rez & Engel, APLC,
22 550 West “C” Street, 15th Floor, San Diego, California 92101. In the event of a
23 change in time or place of the Auction, the Debtor and the Committee shall use their
24 reasonable best efforts to notify all Qualified Bidders (as defined below) who have
25 timely submitted Qualified Bids (as defined below) on or before the Bid Deadline;
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27
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1 provided, however, that the Bid Deadline can be extended by order of the Bankruptcy
2 Court or written agreement of the Debtor, the Committee, and Bridge Bank.

3 Upon completion of the Auction, the Debtor and the Committee shall then
4 submit the Successful Bid(s) and Back-Up Bid(s) for approval by the Bankruptcy
5 Court at a final sale hearing (the "Sale Hearing") to be held on August 10, 2015 at
6 2:30 p.m. Pacific Standard Time, or as soon thereafter as reasonably practicable, and
7 shall submit an order for entry by the Bankruptcy Court approving the sale (the "Final
8 Sale Order"). Objections to the Sale(s) of the Assets must be filed with the
9 Bankruptcy Court by no later than 5:00 p.m. (Pacific Standard time) on August 7,
10 2015. Any replies to Sale objections shall be filed with the Bankruptcy Court prior to
11 the commencement of the Sale Hearing.
12
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14

15
16
17 Dated: July 24, 2015

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

18
19
20 By: *James P. Hill*
James P. Hill
Christopher V. Hawkins
21 Counsel for Debtor,
22 Sullivan International Group, Inc.
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EXHIBIT A

In re Sullivan International Group, Inc.
Case No. 15-02281-LT11 (Bankr. S.D. Cal.)

BIDDING PROCEDURES

These Bidding Procedures serve as an exhibit to that certain *Joint Auction and Sale Notice* for the sale of substantially all of the personal property of Sullivan International Group, Inc. (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case pending in the United States Bankruptcy Court for the Southern District of California (the “Bankruptcy Court”). The transactions contemplated herein are subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

On July 24, 2015, the Debtor and the Official Committee of Unsecured Creditors appointed in the Debtor’s chapter 11 case (the “Committee”) filed their Joint Motion (A) Establishing Bidding Procedures Relating to the Sale of Substantially All of the Debtor’s Assets; (B) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (C) Approving Form and Manner of Notice of All Procedures, Schedules, and Agreements; (D) Scheduling a Hearing to Consider the Proposed Sale; and (E) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtor’s Assets and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale (the “Sale Motion”). On [DATE], the Bankruptcy Court entered an order approving the Bid Procedures set forth herein (the “Bidding Procedures Order”). The Bid Procedures Order sets August 10, 2015 as the date when the Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to authorize the Debtor to sell all or some of its assets (collectively, the “Assets”) to the successful bidders at an Auction that will be conducted in advance thereof.

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein), respectively, the coordination of diligence efforts among bidders, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder(s) and Back-Up Bidder(s) (as defined herein), and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”). The Debtor and the Committee are jointly conducting the Bidding Process, and intend to consult with the Debtor’s senior secured lender, Bridge Bank, N.A. (“Bridge Bank”) and the Debtor’s junior secured creditors, Neal Clements and William Ulmer (“Clements/Ulmer”) throughout the Bidding Process. In the event that any party-in-interest disagrees as to the interpretation or application of these Bidding Procedures, the Bankruptcy Court will have jurisdiction to hear and resolve such dispute.

Assets to Be Sold

The Debtor is offering for sale substantially all of its Assets. The Debtor’s Assets generally consist of (i) prime contracts with both governmental and private customers for which

the Debtor serves as a prime contractor ("Prime Contracts"); (ii) subcontracts under which the Debtor is providing services to prime contractors that are parties to contracts with both governmental and private customers ("Subcontracts"; and together with Prime Contracts, "Contracts"); (iii) interests in joint ventures that are party to contracts with both governmental and private customers ("JV Interests"); and (iv) assets related to the Debtor's contracting business, including accounts receivable and unbilled work in process ("Miscellaneous Assets"). Schedules of the contracts and other assets comprising the Assets are available to potential bidders upon request to the Debtor and the Committee, subject to the due diligence procedure discussed herein and entry into an acceptable non-disclosure and confidentiality agreement.

Qualified Bidders may submit a bid for (i) all of the Assets; or (ii) any portion of the Assets, including individual contracts, joint venture interests and subcontracts. The Debtor and the Committee reserve the right to enter into agreements for the sale of any of the Assets, individually or as part of a package, until the Bid Deadline (as defined below) which agreements, if any, shall be subject to higher or otherwise better bids at the Auction (as defined below). In addition, prior to the Auction, the Debtor and the Committee may select a stalking horse bidder with respect to any of the Assets until the Stalking Horse Deadline (as defined below) and agree to reasonable bidding protections (including a break-up fee, provided that such break-up fee not exceed three percent (3%) of the offered purchase price), subject to Bankruptcy Court approval. Finally, the Debtor and the Committee, with the advice and consent of Bridge Bank, reserve the right to pull certain Assets from the Auction to the extent that a preemptive bid is received for such Assets that is deemed high enough to be exempt from Auction. The Debtor shall retain all rights to the Assets that are not subject to a bid accepted by the Debtor and the Committee and approved by the Bankruptcy Court at the Sale Hearing (the "Unsold Assets").

"As Is, Where Is"

The sale of the Assets, or any portion thereof, will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, the Committee or the Debtor's estate, except, with respect to a Successful Bidder, to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Bankruptcy Court.

Free of Any and All Claims And Interests

Except to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder or ordered by the Bankruptcy Court, all of the Debtor's right, title and interest in and to the Assets to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests on and/or against the Assets (collectively, the "Claims and Interests"), such Claims and Interests to attach to the net proceeds of the sale of such Assets.

Due Diligence

The Debtor and the Committee will afford each potential Qualified Bidder due diligence access to the Assets. Due diligence access has included presentations by the Debtor and the Committee, access to an online data room with details concerning the Assets and the financial condition and performance of the Debtor, and such other matters which a potential Qualified Bidder has requested and as to which the Debtor and the Committee have agreed. The Debtor and the Committee will coordinate all reasonable requests for additional information and due diligence access from potential Qualified Bidders prior to the Bid Deadline. The Debtor and the Committee may, in their discretion, coordinate diligence efforts such that multiple potential Qualified Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at presentations.

Bid Requirements

In order to be declared a Qualified Bidder, and in order to participate in the Auction, each person (each a "Potential Bidder") must deliver to the Notice Parties (defined below) the following on or before the Bid Deadline:

- (i) either (a) in the case of Qualified Bidders bidding on JV Interests and/or Miscellaneous Assets, an executed asset purchase agreement (an "APA") for the Assets being bid upon in substantially the form attached hereto as Exhibit A, along with a blackline reflecting any revisions made to the APA or (b) in the case of Qualified Bidders bidding *only* on Contracts, an executed assumption and assignment agreement (an "Assignment Agreement") for the Assets being bid upon in substantially the form attached hereto as Exhibit B, along with a blackline reflecting any revisions made to the Assignment Agreement;
- (ii) a deposit equal to ten percent (10%) of the aggregate purchase price offered by the Potential Bidder (the "Deposit"), to be wired to the client trust account of Sullivan Hill Lewin Rez & Engel, APLC, the Debtor's restructuring counsel. Wiring instructions will be provided at the request of the Potential Bidder, which request shall be made to the Committee's and Debtor's financial advisor and sale agent, Michael Schwarzmann of Crowe Horwath LLP (Michael.Schwarzmann@crowehorwath.com; 818.325.8461; mobile phone 714.623.1854);
- (iii) documentary evidence (which may include financial statements, deposit account statements or executed correspondence from an authorized agent of the Potential Bidder's depository bank or lender) that the Potential Bidder has the ability and wherewithal to close a purchase of the Assets by the Outside Closing Date (as defined below);
- (iv) to the extent the Potential Bidder seeks assignment of any of the Debtor's executory contracts or leases (collectively, "Contracts"), sufficient information to permit the Debtor and the Committee to determine, in their discretion, the

proposed assignee's ability to comply with section 365 of the Bankruptcy Code, including providing adequate assurance of such assignee's ability to perform in the future with respect to any Contract proposed to be assumed and assigned;

- (v) a signed statement acknowledging that the sale is as-is, where-is, with no due diligence contingencies or financing contingencies of any kind;
- (vi) a signed statement acknowledging the prohibition against collusive bidding pursuant to section 365(n) of the Bankruptcy Code;
- (vii) an acknowledgment that the Potential Bidder is prepared to enter into and consummate the transaction by not later than **August 14, 2015** (the "Outside Closing Date"); and
- (viii) an acknowledgement that the Potential Bidder's bid is irrevocable until the later of: (1) the Auction date, if the Potential Bidder is not approved as a Successful Bidder or a Back-Up Bidder (as defined below), whether due to the Potential Bidder being not selected by the Debtor, the Potential Bidder not being approved by the Bankruptcy Court, or for any other reason whatsoever; and (2) the Outside Closing Date, if the Potential Bidder is selected as a Successful Bidder or Back-Up Bidder; in which case the Deposit will be refunded or applied to the purchase price, as applicable, unless otherwise forfeited as a result of a breach.

Cure Amounts Associated With Assumed and Assigned Contracts

On or before July 24, 2015, the Debtor will file with the Court and serve on each non-Debtor party to a Contract a notice of potential assumption and assignment (the "Cure Notice"). The Cure Notice shall state the cure amount that the Debtor believes is necessary to assume such Contract pursuant to section 365 of the Bankruptcy Code (the "Cure Amount") and notify each party that such party's Contract is subject to potential assumption and assignment to a Successful Bidder or Back-Up Bidder to be identified at the conclusion of the Auction. Each non-Debtor party to the Contracts shall have ten (10) days from the date of the Cure Notice to object to the assumption and assignment of the Contract and/or the Cure Amount and must state in its objection with specificity what Cure Amount is required (with appropriate documentation in support thereof). If no objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to the Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims as to such Contract against the Debtor, an assignee of the Contract, or the property of any of them. If an objection to the Cure Amount is timely filed and received and the parties are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code, if any, with respect to such objection will be determined at the Sale Hearing or at a subsequent hearing date to be determined by the Bankruptcy Court. Cure Amounts with respect to any Contract that is assumed and assigned to a purchaser shall be paid out of the proceeds of sale.

Bid Deadline

Bids shall be due on or before **August 5, 2015 at 4:00 p.m. Pacific Standard Time** (the “**Bid Deadline**”). Bid submissions shall be delivered so as to be received by the Bid Deadline to: (1) the Debtor, c/o James P. Hill, Sullivan Hill Lewin Rez & Engel, APLC, 550 West “C” Street, 15th Floor, San Diego, California 92101; hill@sullivanhill.com; (2) the Committee, c/o (a) Thomas R. Fawkes, Goldstein & McClintock LLP, 208 S. LaSalle St., Suite 1750, Chicago, Illinois 60604; tomf@restructuringshop.com; and (b) Michael D. Schwarzmans, Crowe Horwath LLP, 650 Town Center Drive, Suite 740, Costa Mesa, California 92626; Michael.Schwarzmans@crowehorwath.com; (3) Bridge Bank, c/o Jeffrey D. Cawdre, Gordon & Rees LLP, 101 W. Broadway, Suite 2000, San Diego, California 92101; JCawdre@gordonrees.com; and (4) Ulmer/Clements, c/o Gerald P. Kennedy, Procopio, Cory, Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San Diego, California 92101; gerald.kennedy@procopio.com (collectively, the “**Notice Parties**”); provided, however, that the Bid Deadline may be extended by agreement of the Debtor, the Committee and Bridge Bank, upon consultation with Ulmer/Clements. The Notice Parties prefer to accept Bids by e-mail, but will accept them by hand delivery or overnight delivery. If the Notice Parties do not receive any Qualified Bids by the Bid Deadline, the Debtor will report the same to the Court.

Determination of Qualified Bids

For a Bid to be deemed a “Qualified Bid,” it must comply with the requirements of and be accompanied by the additional information set forth in the section above titled “Bid Requirements,” as determined in the discretion of the Debtor and the Committee, upon consultation with Bridge Bank. The Debtor and the Committee, upon consultation with Bridge Bank, reserve the right to waive any and all such requirements and deem a Bid to be a Qualified Bid in the absence of some or all such requirements, provided that all three parties are in agreement. A “Qualified Bidder” is a Potential Bidder that submits a Qualified Bid and, in the reasonable discretion of the Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements, is determined to demonstrate the financial capability to consummate the purchase of the Assets that are the subject of its Qualified Bid.

Impact of Bid Rejection

If the Debtor and the Committee (upon consultation with Bridge Bank and Ulmer/Clements) determine that a Potential Bidder is not a Qualified Bidder, they shall return the Deposit to the Potential Bidder promptly upon such determination; provided, however, that the Debtor and the Committee, in their discretion, may work with a Potential Bidder to improve or modify its bid so as to make it Qualified. At the Auction, only Qualified Bidders who have submitted Qualified Bids for some or all of the Assets shall be ensured of being able to bid on the Assets.

Credit Bidding

Bridge Bank shall have the right, but not the obligation, to credit bid up to the full amount of its secured claim (including, without limitation, reasonable attorneys' fees and costs incurred through the Auction Date) (collectively, the "Bridge Secured Claim") and if it chooses to credit bid any part of the Bridge Secured Claim, it shall be deemed to have submitted a Qualified Bid. If Bridge Bank wishes to credit bid for any of the Assets, it shall notify the Debtor and the Committee of its intention to do so in writing by no later than the Bid Deadline. No other secured or allegedly secured creditor of the Debtor shall have the right to credit bid for any or all of the Assets.

Timing and Location of Auction

If the Debtor and the Committee receive two or more Qualified Bids, an Auction shall be conducted on **August 10, 2015 at 9:00 a.m.** (the "Auction Date"). The Auction will be held at the offices of Sullivan Hill Lewin Rez & Engel, APLC, 550 West "C" Street, 15th Floor, San Diego, California 92101. In the event of a change in time or place of the Auction, the Debtor and the Committee shall use their reasonable best efforts to notify all Qualified Bidders (as defined below) who have timely submitted Qualified Bids (as defined below) on or before the Bid Deadline; provided, however, that the Bid Deadline can be extended by order of the Bankruptcy Court or written agreement of the Debtor, the Committee, and Bridge Bank, upon consultation with Ulmer/Clements.

Auction Procedures

The Auction shall be conducted in accordance with commercially reasonable procedures to be established by the Debtor and the Committee in consultation with Bridge Bank and Ulmer/Clements, including, without limitation, relating to minimum bidding increments, the order in which certain Assets will be auctioned, and the manner by which the Auction will be conducted (whether through sealed bidding, open outcry or otherwise). Bridge Bank, if it timely submits a credit bid, shall be permitted to participate in the Auction, subject to the auction procedures established by the Debtor and the Committee. The following procedures, at a minimum, shall apply to the Auction:

- (a) Only the Debtor, the Committee, Bridge Bank, Ulmer/Clements and any Qualified Bidder who has timely submitted a Qualified Bid will (and their respective professionals) shall be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.
- (b) All Qualified Bidders who have submitted Qualified Bids may be entitled to be present for all subsequent bids with the understanding that the true identity of each bidder may be fully disclosed to all other bidders and that all material terms of each subsequent bid may be fully disclosed to all other bidders throughout the entire Auction.

- (c) Any Qualified Bidder, regardless of the Assets comprising its bid, may participate in the Auction for any other Assets, provided that it satisfies the Bid Requirements for any overbid (including, without limitation, establishing wherewithal to close a purchase of such Assets and the ability to provide adequate assurance of future performance for additional Contracts that it wishes to have assigned to it);
- (d) The Debtor and the Committee may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith.
- (e) Bidding at the Auction will begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids and continue in such minimum increments or other bid improvements as determined by the Debtor and the Committee in consultation with Bridge Bank. For the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Purchaser), the Debtor may give effect to, among other things, any Break-Up Fee that may be payable to a Stalking Horse Bidder, if one is designated. The Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements, shall have the discretion to value all proposed overbids, to assign an appropriate discount to any bids that are not “all cash” or contain deferred or non-cash consideration, and to make a determination as to whether such overbid is higher or otherwise better than the immediately preceding bid or otherwise Qualified.

Determination of Successful Bids and Back-Up Bids

Upon completion of the Auction, the Debtor and the Committee, in their discretion and in consultation with Bridge Bank and Ulmer/Clements, shall select the Bid or Bids that will maximize the value of the Assets and are in the best interest of the Debtor, its bankruptcy estate, and creditors (collectively, the “Successful Bid(s)”). The Debtor and the Committee, in consultation with Bridge Bank and Ulmer/Clements, may also designate one or more “Back-Up Bids” by one or more Back-Up Bidders if deemed necessary or desirable. If, for any reason, a Successful Bidder(s) fails to consummate the purchase of the Assets,

- (a) a Back-Up Bidder(s) shall be deemed to have submitted the highest and best bid; and
- (b) the Debtor shall be authorized to effect the sale of the relevant Assets to the Back-Up Bidder(s) as soon as is commercially reasonable without further order of the Bankruptcy Court. The Back-Up Bidder(s)’s deposit shall be held until the

closing of the transaction with the Successful Bidder(s).

Sale Hearing

Upon completion of the Auction, the Debtor and the Committee shall then submit the Successful Bid(s) and Back-Up Bid(s) for approval by the Bankruptcy Court at a final sale hearing (the "Sale Hearing") to be held on **August 10, 2015 at 2:30 p.m. Pacific Standard Time**, or as soon thereafter as reasonably practicable, and shall submit an order for entry by the Bankruptcy Court approving the sale (the "Final Sale Order"). Objections to the Sale(s) of the Assets must be filed with the Bankruptcy Court by no later than **5:00 p.m. (Pacific Standard time) on August 7, 2015**. Any replies to Sale objections shall be filed with the Bankruptcy Court prior to the commencement of the Sale Hearing.

Return, Application and Surrender of Deposits

The Deposit(s) for the Qualified Bidder(s) that submitted Successful Bid(s) shall be non-refundable, and shall be applied against the purchase price, unless (x) the Bankruptcy Court does not authorize a sale to the Successful Bidder(s) or (y) the sale to the Successful Bidder(s) does not timely close due to a breach or failure of the Debtor. The Deposit(s) for the Qualified Bidder(s) that submitted Back-Up Bid(s) shall be non-refundable, and shall be applied against the purchase price, unless (x) the Bankruptcy Court does not authorize a sale to the Back-Up Bidder(s) or (y) if a Back-Up Bidder is required to close due to a failure to close of a Successful Bidder, but does not timely close due to a breach or failure of the Debtor. Upon the failure to consummate the sale because of a breach or failure on the part of a Successful Bidder or Successful Bidders, or a Back-Up Bidder or Back-Up Bidders to the extent they are required to close a transaction (collectively, a "Bidder Failure"), any Deposit received from such Successful Bidder or Back-Up Bidder shall be retained by the Debtor as liquidated damages and shall under no circumstances be refunded to the Successful Bidder or Back-Up Bidder.

Closing of Sale(s)

Closing of the sale of the Assets to a Successful Bidder (or a Back-Up Bidder, to the extent that a Successful Bidder fails to close) shall occur by no later than the Outside Closing Date, provided that a Final Sale Order has been entered. The Outside Closing Date may be extended in the discretion of the Debtor and the Committee, with the consent of Bridge Bank, or upon Bankruptcy Court approval.

Reservations of Rights

The Debtor and the Committee, upon consultation with Bridge Bank and Ulmer/Clements: (i) may determine which Qualified Bid, if any, is the highest or otherwise best offer; (ii) may value a bid, or apply an appropriate discount to a bid, that is not an "all cash" bid; and (iii) may reject at any time any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtor and its estate and

creditors, and other parties in interest as determined by the Debtor and the Committee in their discretion.

Questions Regarding Bidding Procedures

Questions regarding the foregoing Bidding Procedures, the Sale and the Auction process should be directed to:

- The Committee's and Debtor's financial advisor and sale agent, Michael Schwarzmann, Crowe Horwath LLP (Michael.Schwarzmann@crowehorwath.com; 818.325.8461; mobile phone 714.623.1854)
- The Debtor's restructuring counsel, James P. Hill, Sullivan Hill Lewin Rez & Engel, APLC (hill@sullivanhill.com; 619.595.3226)
- The Committee's counsel, Thomas R. Fawkes, Goldstein & McClintock LLLP (tomf@restructuringshop.com; 312.219.6702)

EXHIBIT A

Exhibit A

Asset Purchase Agreement

[to be supplied]

EXHIBIT B

Exhibit B

Assignment Agreement

[to be supplied]