

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address James C. Bastian, Jr. – Bar No. 175415 Melissa Davis Lowe – Bar No. 245521 SHULMAN HODGES & BASTIAN LLP 8105 Irvine Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: jbastian@shbllp.com; mlowe@shbllp.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Debtors and Debtors in Possession	FOR COURT USE ONLY
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION**

In re: ASR CONSTRUCTORS, INC., a California corporation, <hr/> ANOTHER MERIDIAN COMPANY, LLC, a California limited liability company, <hr/> INLAND MACHINERY, INC., a ***Jointly Administered Debtor(s).	CASE NO.: 6:13-bk-25794-MH CHAPTER: 11 <p style="text-align: center;">AMENDED NOTICE OF SALE OF ESTATE PROPERTY</p>
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Sale Date: 03/20/2014	Time: to be determined
Location: 765 West Rider Street, Perris, CA 92571	

Type of Sale: Public Private **Last date to file objections:** 3/12/2014 at 5:00 P.M.

Description of property to be sold: Machinery and equipment including: The items to be sold include trucks, a truck tractor, a forklift, loader/backhoe, skip loader, Caterpillar motor grader, crawler tractor, excavator, telescopic boom lift, scissorlifts (including a scissorlift terrain scissorlift), portable enclosed generators, and an air compressor.

Terms and conditions of sale: Free and clear of certain liens pursuant to Bankruptcy Code §§ 363(b)(1) and (f) See attached.

Proposed sale price: Highest bidder

*** Affects: Inland Machinery, Inc.

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Overbid procedure (if any): Public auction sale to the highest bidder - see attached.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

3/18/2014 at 9:00 a.m.

Courtroom 303

U.S. Bankruptcy Court

3420 Twelfth Street

Riverside, CA 92501

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

James C. Bastian, Jr. Esq. and Melissa Davis, Esq.

Shulman Hodges & Bastian LLP

8105 Irvine Center Drive, Suite 600

Irvine, CA 92618

Tel: (949) 340-3400

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Date: 02/28/2014

In re ASR Constructors, Inc.
In re Another Meridian Company, LLC
In re Inland Machinery, Inc.
Jointly Administered Under Case No. 6:13-bk-25794-MH

Attachment to Notice of Sale of Estate Property:

I. INTRODUCTION

Inland Machinery, Inc. (“Inland”), one of three affiliated companies which include ASR Constructors, Inc. a California corporation (“ASR”) and Another Meridian Company, LLC, a California limited liability company (“Meridian”), each a debtor and debtor in possession (collectively the “Debtors”), brings its Motion for an Order Authorizing the Debtor to: (1) Conduct an Auction Sale of Assets of the Estate (Machinery and Equipment) Free and Clear of Liens Pursuant to Bankruptcy Code Section 363(b) and (f); (2) Employ Auctioneer and Pay Compensation to the Auctioneer; and (3) Granting Related Relief (“Auction Motion”). In support thereof, Inland respectfully represents as follows:

By the Auction Motion, Inland respectfully requests that the Court enter an order:

- Authorizing Inland to conduct a public auction sale to the highest bidder(s) of certain assets generally described as rental machinery and equipment (collectively the “Assets”) no longer needed in the operation of the Inland’s machinery and equipment rental business. A list of the Assets to be sold at auction is included in Schedule A to the Auction Contract, a copy of which is attached hereto as **Exhibit 1 to the Declaration of Alan Regotti annexed to the Auction Motion** (“Regotti Declaration”)¹. The auction sale shall be conducted free and clear of any and all liens, encumbrances, claims and/or interests (collectively, the “Liens and Encumbrances”) impacting the Assets, with all such Liens and Encumbrances upon the sold Assets to be unconditionally released, discharged and terminated, and with any Liens and Encumbrances not resolved or satisfied through the sale to attach only to the proceeds of the transaction with the same priority, validity, force and effect as they existed with respect to the

¹ The Assets to be sold do not include all of Inland’s machinery and equipment as some of it is still being utilized by ASR in the completion of pending projects. Once pending ASR projects are completed (estimated time of six months), subject to further motion and Court order at a later date, Inland intends to sell its remaining machinery and equipment not included in the current auction sale.

1 sold Assets before the closing of the auction sale pending further Court order or agreement with
2 the parties. **The proposed auction sale is scheduled for March 20, 2014 (time to be**
3 **determined) at Auctioneer’s business premises in Perris, California.** Inland is advised that
4 its largest secured lienholders, Federal Insurance Company (“Federal”) and Berkley Regional
5 Insurance Company (“Berkley”), have no objection to the proposed auction sale, but this will be
6 confirmed prior to the hearing.

7 • Approving and authorizing Inland to enter into the Auction Contract for the
8 employment of Ritchie Bros. Auctioneers (America) Inc. (“Auctioneer”) to coordinate the
9 auction sale and authorizing payment of the Auctioneer’s compensation pursuant to the terms of
10 the Auction Contract, a copy of which is attached as **Exhibit 1 to the Regotti Declaration**
11 **Annexed to the Auction Motion.**

12 • Inland does not believe that any of the Assets to be sold are subject to lease
13 interests. However, out of an abundance of caution, in the event that it is determined that any of
14 the Assets to be sold are subject to lease interests, provided that there is equity for the Estate and
15 the lessor consents to the sale, authorizing Inland to sell such leased item(s) free and clear of the
16 leasehold interest(s).

17 • With respect to any Assets sold that are subject to secured or other interests,
18 authorizing Inland to reserve any and all rights the Estate may have under Bankruptcy Code
19 Section 506(c) to surcharge the collateral of any lienholders for the costs the Estate may have
20 incurred in the maintenance of their respective collateral as well as with the preservation and
21 liquidation of such collateral.

22 • Directing that the fourteen day stay of the order approving the Auction Motion as
23 provided by Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), or any other
24 applicable rules, shall not apply and that absent judicial imposition of a stay of the Court order
25 approving the Auction Motion pending appeal, Inland may immediately consummate the actions
26 that are approved by such Court order.

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1 • Authorizing Inland to use the proceeds of the auction sale to make Court
2 approved disbursements to the proposed Auctioneer pursuant to the terms of the Auction
3 Contract.

4 • For such other and further relief as the Court deems just and proper under the
5 circumstances of this case.

6 The net auction proceeds estimated to be approximately \$300,000 will be held by the
7 Debtor in a segregated account subject to the liens and cash collateral agreements with Federal
8 and Berkley.

9 **II. SUMMARY OF THE AUCTION MOTION**

10 **A. Commencement of the Debtors' Bankruptcy Cases**

11 ASR filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on
12 September 20, 2013, Case No. 6:13-bk-25794-MH.

13 Meridian and Inland each filed their voluntary petitions for relief under Chapter 11 of the
14 Bankruptcy Code on October 23, 2013. Meridian is Case No. 6:13-bk-27529-MH; and Inland is
15 Case No. 6:13-bk-27532-MH.

16 The Debtors are each continuing in possession of their property, and operating and
17 managing their respective business, as debtors in possession pursuant to Bankruptcy Code
18 Sections 1107 and 1108.

19 Pursuant to Court order entered on November 1, 2013, the Debtors' Chapter 11 cases are
20 being jointly administered under the case number of ASR.

21 **B. Debtors' Background**

22 1. ASR Constructors, Inc.

23 ASR was incorporated in May 1999 and is a general contractor serving the Inland Empire
24 on mainly public works projects. Alan Regotti is ASR's President and Chief Executive Officer.
25 Since its incorporation, ASR has completed over 850 public works projects, with clients such as
26 cities, school districts, and state and federal governments. Just as a few examples, ASR was the
27 general contractor on projects including the Riverside Community College Athletic Complex, the
28 Repplier Aquatic Park in Banning, the Larry D. Smith Correctional Facility, and the Multi-

1 purpose Buildings at Cabrillo, Citrus, Foothill Knolls, Magnolia, Sycamore and Valencia
2 Elementary Schools. At its peak, ASR had over 565 employees and annual revenues of over
3 \$150 million.

4 Due to the dramatic slowdown in the economy throughout the United States that started
5 in December of 2007 and that continues to this day, ASR suffered significant cash flow problems
6 beginning around 2011. As a result, ASR was unable to meet all of its obligations and was
7 suffering financing problems.

8 In March 2013, ASR advised its bonding companies, Federal and Berkley, that it was
9 unable to meet its obligations on bonded projects and its obligations to the sureties under their
10 respective indemnity agreements and surety bonds. Because ASR was unable to complete the
11 work and perform obligations with respect to both payment and performance on the bonded
12 projects, ASR requested the sureties to take such steps necessary or appropriate to perform their
13 obligations as sureties with respect to the bonded projects in order to mitigate losses and
14 expenses. Following this voluntary notice of default, Federal took over management of the
15 projects it bonded and ASR executed assignments of its receivables to Federal. ASR is
16 providing administrative assistance to Federal with respect to its projects. Berkley has taken
17 over management of one of ASR's projects (Barstow Community College) but is in the process
18 of engaging ASR to be its completion contractor. ASR is completing one additional contract
19 where Berkley is the surety (Adelanto) under a funds control arrangement put in place pre-
20 petition Federal and Berkley have also been provided with blanket liens on ASR's accounts
21 receivables and construction projects as follows:

22 • Federal in the amount of \$1,770,817.66: UCC-1 Filing UCC-1 Filing No. 12-
23 7339143518 filed 11/28/12; Amendment No. 13-73536425 filed 3/22/13; Amendment No. 13-
24 73522998 filed 3/15/13; Amendment No. 13-73517704 filed 3/11/13 and Amendment No. 13-
25 73513989 filed 3/6/13

26 • Berkley in the amount of \$129,000.00: UCC-1 Filing No. 13-7366919227 filed
27 6/26/2013.

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1 2. Another Meridian Company, LLC

2 Meridian is in the business of real estate and owns the following real properties:

3 • Wilson Street Property consisting of a light industrial building located at: 5230
4 Wilson Street, Riverside, California with a value of approximately \$3,000,000 based on the
5 offers received and discussed below, but previously was believed to be only worth approximately
6 \$1,720,000. This property is encumbered by liens totaling \$2,869,134.96 consisting of the
7 following: Zions: \$518,213.07; Wells Fargo: \$451,104.23; Federal: \$1,770,817.66 (cross-
8 collateralized by Meridian's other real property as well as the assets of ASR and Inland) and
9 Berkley: \$129,000 (cross-collateralized by the assets of ASR and Inland). The Wilson Street
10 Property is rented by ASR on a month to month tenancy. ASR pays rent in the form of paying
11 the two loan obligations secured by the Wilson Street Property owed to Zions and Wells Fargo.
12 On October 30, 2013, Meridian filed a motion with the Court (docket number 8 on Meridian's
13 case docket) for approval of the sale of the Wilson Street Property for a purchase price of
14 \$3,150,000, which was granted at a hearing held on December 3, 2013.

15 • Two parcels of vacant land located in the city of Perris, County of Riverside, CA:
16 Parcel Nos.: 317-270-001 (10.09 acres) and 317-270-012 (9.66 acres) with a value of
17 approximately \$470,000. This property is subject to the cross-collateralized lien in favor of
18 Federal.

19 • Two parcels of vacant land located in the city of San Bernardino, County of San
20 Bernardino, CA: Parcel Nos.: 0142-042-01 (1.889 acres) and 0269-271-17 (1.3 acres) with a
21 value of \$240,000. This property is subject to the cross-collateralized lien in favor of Federal.

22 • Single family residence located at 3758 Kreuer Rd, Phelan, CA 92371: Parcel
23 No.: 3098-051-14 (5 acres) with a value of \$80,363. This property is subject to the cross-
24 collateralized lien in favor of Federal.

25 The Federal and Berkley liens (consisting of deeds of trust and UCC-1 filings) impacting
26 Meridian's assets were provided as part of agreements with Federal and Berkley to provide
27 funding for completion of ASR projects, to secure obligations owed to Federal and Berkley
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1 under indemnity agreements signed by Meridian and otherwise and to forbear from enforcement
2 of remedies available for default.

3 3. Inland Machinery, Inc.

4 Inland is in the business of machinery and equipment rental. ASR rents machinery and
5 equipment from Inland as necessary for its various construction projects.

6 Prior to the commencement of its bankruptcy case, on October 16, 2013, Inland had
7 Ritchie Bros. Auctioneers conduct an auction sale of Inland's machinery and equipment. The
8 gross sale proceeds were approximately \$368,155. After payment of the auctioneer commission
9 of 9% and the auctioneer's expenses, the net auction proceeds were approximately \$326,000. In
10 its Schedules, Inland listed the value of its remaining machinery and equipment at approximately
11 \$1,469,421.07, consisting of the following:

- 12 • Heavy Equipment: value of approximately \$588,221.64
- 13 • Vehicles: value of approximately \$355,278.93
- 14 • Iron Shop Machinery: value of approximately \$138,000
- 15 • Trailers: value of approximately \$220,538.75
- 16 • Small Equipment: value of approximately \$165,436.75
- 17 • Data Processing: value of approximately \$1,945

18 Inland's net auction proceeds from the prior auction sale and its remaining machinery
19 equipment (some of which are the subject of this Auction Motion) are subject to the cross-
20 collateralized liens of Federal and Berkley. The Federal and Berkley liens (consisting of UCC-1
21 filings) impacting Inland's assets were provided as part of agreements with Federal and Berkley
22 to provide funding for completion of ASR projects, to secure obligations owed to Federal and
23 Berkley under indemnity agreements signed by Inland and otherwise and to forbear from
24 enforcement of remedies available for default.

25 **C. Events Leading to the Chapter 11 Filings**

26 As set forth above, with the downturn in the economy, ASR suffered crippling cash flow
27 problems. ASR has also incurred significant legal fees and expenses related to the defense of
28 multiple collection lawsuits that have been filed against ASR, a few of which Meridian and

1 Inland have been named as co-defendants. However, one of the principal factors for the filing of
2 the bankruptcy cases was a \$6,655,486.47 judgment being asserted against ASR's contractors'
3 license by Gotte Electric, Inc., ("Gotte"). Specifically, ASR received a notice from the Board
4 advising that the ASR was required to submit to the Board by September 22, 2013 either (1)
5 proof that the \$6,655,486.47 judgment in favor of Gotte had been paid, or (2) proof of ASR's
6 bankruptcy filing. In addition, following entry of the judgment against ASR, Gotte filed a
7 second lawsuit that was commenced in the Riverside Superior Court, styled Gotte Electric, Inc.
8 v. ASR Constructors, Inc., Federal Insurance Company, Another Meridian, LLC and Inland
9 Machinery, Inc., Case No. RIC 1310089 ("Gotte State Court Action") seeking recovery of
10 alleged fraudulent transfers.²

11 As ASR did not have the funds to pay the disputed judgment and the second Gotte State
12 Court Action was impacting each of the Debtors, it was determined that the best way to
13 maximize everyone's recovery was for the Debtors to file their respective bankruptcy cases so
14 that (1) ASR could move forward with the completion of pending jobs and (2) Meridian and
15 Inland could move forward to conduct orderly sales of their respective assets, and (3) each of the
16 companies could wind down their affairs in an orderly fashion.

17 **D. The Marketing of Inland's Assets**

18 Inland has been investigating alternatives for maximizing the value of its assets for the
19 benefit of all of its creditors and other parties in interest.

20 Inland has contacted or has been contacted by over five (5) parties who have expressed
21 an interest in the purchase of Inland's assets. Several interested parties have met with Inland's
22 management and/or performed due diligence. Inland received approximately five (5) offers from
23 such parties. Inland received offers from these parties to either buy the assets outright or to
24 conduct an auction but most offered only bids that were too low or subject to significant
25 contingencies. Some parties also submitted bids only for the entirety of the Inland's assets and
26 not just the Assets at issue here. The outright offers were much lower than the projected auction

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28 ² ASR has removed the Gotte State Court Action to the Bankruptcy Court. The Debtors intend to explore
settlement of the Gotte State Court Action.

1 sale proceeds. When Inland considered all offers from parties to conduct an auction, Inland
2 chose the Auctioneer because Inland is comfortable with the Auctioneer in that the Auctioneer
3 has conducted successful auctions for Inland in the past and Auctioneer's proposal for
4 compensation is competitive. As such, in light of the current economic environment and
5 Inland's financial condition, Inland believes the only option available is the orderly auction sale
6 of the Assets of related to its equipment and machinery rental business.

7 Inland is no longer using the Assets to be sold. Furthermore, the Assets are located on
8 the Wilson Street Property that is currently in escrow to be sold. Inland needs to liquidate the
9 Assets as quickly as possible in order to vacate the premises prior to the close of escrow so that
10 the property can be turned over to the buyer of the Wilson Street Property. Inland will incur the
11 cost of moving the items to Auctioneer's premises in Perris, CA but the Assets must be sold as
12 soon as possible so that Inland can avoid having to incur storage costs. As there are numerous
13 separate items to be sold, many of which are large, heavy and cumbersome that would have to be
14 moved and stored, storage costs could be astronomical and would most likely outweigh any
15 benefit the Estate would achieve through the sale of the Assets at a later date.

16 As such, it appears that an auction sale of the Assets is the best way to maximize value
17 for creditors and will be more beneficial to the Estate as compared to attempting to sell each item
18 on a piecemeal basis.

19 **E. The Proposed Auction Sale of Inland's Assets**

20 The Assets which are the subject of the Auction Motion are generally described as
21 equipment and machinery used in Inland's rental business and located at the Wilson Street
22 Property. A complete list of the items to be included in the auction is included in Schedule A
23 annexed to the Auction Contract attached as **Exhibit 1 to the Regotti Declaration annexed to**
24 **the Auction Motion.** The items to be sold include trucks, a truck tractor, a forklift,
25 loader/backhoe, skip loader, Caterpillar motor grader, crawler tractor, excavator, telescopic
26 boom lift, scissorlifts (including a scissorlift terrain scissorlift), portable enclosed generators, and
27 an air compressor.

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1 The Assets to be sold do not include all of Inland's machinery and equipment as some of
2 it is still being utilized by ASR in the completion of pending projects. Once pending ASR
3 projects are completed (estimated time of six months), subject to further motion and Court order
4 at a later date, Inland intends to sell its remaining machinery and equipment not included in the
5 current auction sale.

6 Inland does not believe that any of the Assets to be sold are subject to lease interests.
7 However, out of an abundance of caution, in the event that it is determined that any of the Assets
8 are subject to a lease interest, such leased items will only be sold if there is equity for the Estate
9 and the lessor consents to the sale.

10 Inland has been advised by the proposed Auctioneer that the auction sale may generate
11 gross proceeds between \$360,000 to \$400,000 based on the current business environment.
12 Through the competitive bidding of a public auction sale, it is anticipated that Inland will receive
13 the best and highest value for the Assets and therefore, the ultimate sale price of the Assets will
14 be fair and reasonable.

15 **F. Liens and Encumbrances Against the Assets and Their Proposed Treatment**
16 **Through the Sale**

17 The following chart sets forth and accounts for all of the recorded liens and
18 encumbrances against described in the Assets and their proposed treatment through the sale:

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owed</u>	<u>Treatment of Lien Through the Sale</u>
Federal	UCC-1 Filing No. 12-7339143518 filed 11/28/12; Amendment No. 13-73536425 filed 3/22/13; Amendment No. 13-73522998 filed 3/15/13; Amendment No. 13-73517704 filed 3/11/13 and Amendment No. 13-73513989 filed 3/6/13	\$171,597,580 ³	Pursuant to Bankruptcy Code section 363(f)(2) this lien will be released, discharged and terminated at the close of escrow and the Assets will be sold free and clear of this lien and the lien will attach to the sale proceeds, if any, in the same validity and priority as existed prior to the sale.
Berkley	UCC-1 Filing No. 13-7366919227 filed 6/26/2013	\$15,571,500 ⁴	Pursuant to Bankruptcy Code section 363(f)(2) this lien will be released, discharged and terminated at the close of escrow and the Assets will be sold free and clear of this lien and the lien will attach to the sale proceeds, if any, in the same validity and priority as existed prior to the sale.

³ Claim #2 on ASR's Claims Register, Claim #3 on Meridian's Claims Register and Claim #2 on Inland's Claims Register. Each claim amount is \$171,597,580.

⁴ Claim #42 on ASR's Claims Register, Claim #5 on Meridian's Claims Register and Claim #s 4 and 5 on Inland's Claims Register. Each claim amount is \$15,571,500.

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owed</u>	<u>Treatment of Lien Through the Sale</u>
Riverside County Treasurer and Tax Collector	Proof of claim against Inland asserting a secured claim of \$63,639.66. Tax lien recorded on 11/6/2013, document number 2013-0527072	\$63,639.66.	<p>Pursuant to Bankruptcy Code sections 363(f)(1) and 363(f)(5) this lien will be released, discharged and terminated at the close of escrow and the Assets will be sold free and clear of this lien and the lien will attach to the sale proceeds, if any, in the same validity and priority as existed prior to the sale.</p> <p>This lien is the subject of a bona fide dispute. The lien was recorded after the Petition Date in violation of the automatic stay under Bankruptcy Code Section 362. Inland asserts that under applicable federal bankruptcy law, the lien is invalid as any action taken in violation of the automatic stay is void as a matter of law. <u>See, In re Schwartz</u>, 951 Fed.2d, 596 (9th Cir. 1992).</p> <p>Furthermore, Inland asserts there are causes of action under Bankruptcy Code Section 549 to have the lien set aside in that it was recorded after the Petition Date the lien was not authorized by the Bankruptcy Code nor order of the Bankruptcy Court.</p>

In summary, the sale shall be conducted free and clear of any and all Liens and Encumbrances impacting the Assets, with all such Liens and Encumbrances upon the Assets to be unconditionally released, discharged and terminated, and with any Liens and Encumbrances not resolved or satisfied through the sale to attach only to the proceeds of the transaction with the same priority, validity, force and effect as they existed with respect to the sold assets before the closing of the sale pending further Court order or agreement with the impacted lienholder.

1 Inland desires to sell the Assets quickly in order stop administrative costs associated with
2 the Assets and delays that could result from having to first resolve any disputes related to secured
3 claims that may negatively impact the benefits of the sale. As such, selling the Assets pursuant
4 to Bankruptcy Code Sections 363(b)(1) and (f) free and clear of any and all liens and
5 encumbrances, with such Liens and Encumbrances not released, resolved or satisfied through the
6 auction sale to attach to the auction sale proceeds in the same validity and priority as prior to the
7 Petition Date pending agreement with the lienholder creditor or further order of the Court is
8 proper.

9 **G. Tax Consequences**

10 At this time, Inland does not know what the capital gains taxes liability will be, if any,
11 generated by the sale. In the event that there is any tax liability generated from the sale it is
12 anticipated that such taxes will be paid by the sale proceeds.

13 **H. Reservation of Rights Under Bankruptcy Code Section 506(c)**

14 Inland will reserve any and all rights the Estate may have under Bankruptcy Code Section
15 506(c) to surcharge the collateral of any lienholders for the costs the Estate may have incurred in
16 the maintenance of their respective collateral as well as with the preservation and liquidation of
17 such collateral.

18 **I. The Proposed Auction Date, Proposed Auctioneer and Proposed Auction Contract**

19 Inland proposes to liquidate the Assets by auction to the highest bidder and without any
20 minimum price on March 20, 2014 (time of day to be determined). The auction sale will be
21 conducted at the Auctioneer's business premises located 765 West Rider Street, Perris, CA
22 92571.

23 Inland requests authorization to employ Ritchie Bros. Auctioneers (America) Inc. as the
24 auctioneer to coordinate the auction sale and authorization to pay Auctioneer's compensation
25 pursuant to the terms of the Auction Contract, a true and correct copy of which is attached as
26 **Exhibit 1 to the Regotti Declaration annexed to the Auction Motion.**

27 The Auctioneer will extensively market the Assets for sale, including but not limited to,
28 direct mailing of approximately 80,000 brochures and emailing of approximately 90,000

1 brochures, both locally and internationally. The advertising will cover approximately thirty
2 countries. The Auctioneer's cost for marketing is covered in the 9% commission to be paid to
3 the Auctioneer.

4 The Auctioneer will advertise in local and industry-specific print and online publications,
5 and use search engine optimization to reach the widest audience of potential buyers. The
6 Auctioneer will also conduct direct mail and email campaigns to target select individuals from its
7 database of approximately 620,000 customers in approximately 190 countries.

8 The Auctioneer will upload details of the Assets to the Auctioneer's web site along with
9 any photos taken during the inspection process that potential buyers can access prior to the
10 auction. When Inland transfers the Assets to the auction site, the Auctioneer will capture
11 detailed equipment information and take additional high resolution photographs of each item.
12 This information will be made available for potential buyers to review on the website. On the
13 day of the auction, buyers can bid on the items either in person or online.

14 The Auctioneer conducts hundreds of unreserved public auctions around the world each
15 year, selling billions of dollars of used and unused equipment. The Auctioneer is committed to
16 conducting strictly unreserved public auctions and uses extensive marketing campaigns to attract
17 serious buyers from around the world. Most of the buyers are end-users with specific equipment
18 needs. A typical auction attracts many hundreds of bidders to the auction site, with hundreds
19 more competing online in real time at rbaction.com. As a result of this global competitive
20 bidding environment, it is the Auctioneer's opinion that equipment sells for its true global market
21 value on auction day.

22 Over the past fifty years, the Auctioneer has proven that unreserved public auctions offer
23 the most effective and efficient means of creating maximum value for sellers. Unreserved
24 auction events offer the benefit of certain sale and payment dates for sellers and also create a
25 sense of anticipation and urgency among equipment buyers.

26 For these reasons, it is the Auctioneer's opinion that the auction is likely to yield the
27 highest and best offers for the Assets because the Auctioneer is the largest auctioneer of heavy
28 equipment and trucks, the Auctioneer's contacts and client base is extremely large, and the

1 auction will include not only the Assets of Inland but assets of other unrelated companies which
2 will help attract additional buyers. The Auctioneer has conducted auctions in the past for Inland
3 and they have been very successful.

4 The principal terms of the Auction Contract are as follows (Inland is referred to as the
5 “Owner” and the Assets are referred to as the “Equipment”) in the following summary):

6 1. Sale Date: The Auctioneer shall, as agent of the Owner, offer the Equipment,
7 together with any additional items delivered by the Owner to the auction site for sale, in whole or
8 in party, pursuant to the Bankruptcy Court order to be granted, at unreserved public auction on or
9 about the 20th, day of March, 2014, at the City of Perris, in the State of California.

10 2. Payment: The Auctioneer shall make payment to the Owner within twenty-one
11 (21) days after the auction, the amount due and owing to the Owner from monies collected from
12 the sale of the Equipment after making all deductions permitted under this Contract.

13 3. Commission: The Auctioneer shall be entitled, at the time of the auction, to a
14 commission of nine percent (9%) based on the gross sale price of the Equipment or any part
15 thereof.

16 4. Other: The Auctioneer shall:

17 a. allow the Owner access to records concerning the sale of the Equipment at the
18 auction excluding the names or contact information of the buyers thereof;

19 b. supervise the preparation and organization of the auction;

20 c. provide auctioneers and accountants required for an auction of this type;

21 d. ensure on-site food catering services are available to those in attendance at the
22 auction;

23 e. provide listing catalogs of the lots offered for sale to potential buyers at the
24 auction; and.

25 f. collect and remit State and local sales tax arising upon the sale of the
26 Equipment at the auction.

27 5. Sale Site: The Auctioneer shall provide, at no cost to Owner, a suitable site for
28 conduct of the auction.

1 6. Refurbishing: The Owner shall:

2 a. paint, clean, and refurbish, prior to the auction, the Equipment to a standard
3 acceptable to the Auctioneer. Should the Auctioneer organize and pay for painting, cleaning, or
4 refurbishing any part of the Equipment, the Auctioneer shall be reimbursed for these costs plus
5 ten percent (10%) provided that the total cost shall not exceed Eleven Thousand five hundred
6 dollars (\$11,500.00) without authorization from Owner, and

7 b. reimburse the Auctioneer for the cost of fuel and batteries as the Auctioneer
8 deems necessary for demonstration and sale of the Equipment.

9 7. Delivery: The Owner shall deliver the Equipment, at Owner's cost, to the auction
10 site on or before the 10th day of March, 2014:

11 a. in good operating condition, free of material defects except as disclosed to the
12 Auctioneer, with adequate fuel and batteries and starting at the key;

13 b. free of hazardous materials other than normal operating fuels, oils, and
14 lubricants;

15 c. in a condition equivalent to or better than its condition when viewed by the
16 Auctioneer's representative on or about the 14th day of February, 2014; and

17 d. in compliance with all applicable EPA rules and regulations;

18 e. together with all documents evidencing the Owner's title, and/or necessary to
19 transfer title, to the Equipment, properly endorsed;

20 f. The Owner shall assign Power of Attorney to the Auctioneer for the limited
21 purpose of executing on the Owner's behalf, all documents required to transfer title to, and
22 permit registration or ownership of, any part of the Equipment by the purchaser thereof.

23 8. Searching and Title Documents: The Owner shall:

24 a. conduct searches or use other means available, as deemed necessary by the
25 Owner for the disclosure of liens and encumbrances, and include all such creditors in Bankruptcy
26 Court notices seeking authority under 11 USC § 363 to sell the the Equipment; in no case shall
27 the Owner have a duty to conduct such searches, nor be responsible for the result thereof; and
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1 b. pay a document administration fee of \$65 per unit for each item of Equipment
2 requiring title or registration documents.

3 9. Risk of Loss, Insurance: The Owner shall:

4 a. be responsible for loss or damage to the Equipment, other than loss or damage
5 arising as a result of the negligence of the Auctioneer, its agents or employees, until the earliest
6 of: (i) the removal of the Equipment from the auction site by the purchaser; or (ii) receipt by
7 Owner of all proceeds from the sale of the Equipment; and

8 b. insure the Equipment, with the Auctioneer as additional insured, to its fair
9 market value against all perils so that in the event of damage to, or destruction of, the Equipment
10 or any part thereof, all insurance proceeds shall be credited to the gross proceeds of the auction
11 and payment made to the Auctioneer forthwith for all deductions permitted by this Contract; and

12 c. upon request, provide Auctioneer with a copy of the insurance certificate, or
13 other documentation evidencing the Auctioneer as an additional insured, to the satisfaction of the
14 Auctioneer.

15 10. Indemnity: The Owner shall defend, indemnify and save the Auctioneer, its
16 parents, subsidiaries and affiliates, and each of their officers, directors, shareholders, employees,
17 and agents harmless against all claims, demands, suits, actions, causes of action, damages, costs
18 or charges whatsoever arising from:

19 a. any breach of the representations, warranties or covenants set out herein;

20 b. failure by the Owner to comply with any laws relating to the Owner's right to
21 sell the Equipment;

22 c. hazardous materials associated with the Equipment or contamination resulting
23 from any leakage, spills, or malfunction of the Equipment;

24 d. deficiencies in the provision of documents required for the purpose of titling
25 or registering any part of the Equipment by any purchaser thereof;

26 e. any deficiency in compliance with applicable EPA rules or regulations;

27 f. any negligence, unlawful act, or willful misconduct of the Owner in
28 connection with this Contract; and

1 g. any infringement of a patent, copyright, trademark, agreement or similar right
2 of any third party caused by the offering for sale, advertising or sale of any part of the
3 Equipment.

4 11. No Buybacks, Unreserved Auction Sale: The Owner shall not bid, directly or
5 indirectly, nor allow any other person to bid on the Owner's behalf or for the Owner's benefit, by
6 agency or otherwise, on the Equipment or any part thereof at the auction. Owner acknowledges
7 the auction is unreserved and the Auctioneer shall have no obligation or duty to withdraw the
8 Equipment or any part thereof from the auction sale or to cancel the auction. The Equipment
9 shall be sold to the highest bidder on the date of the auction.

10 12. No Guarantee: The Owner acknowledges that there is no guarantee whatsoever as
11 to the gross proceeds to be realized from the sale of the Equipment at auction.

12 13. Other: The Owner shall:

13 a. provide, at no cost to the Auctioneer, zero (0) competent persons to assist in
14 the preparation of the auction;

15 b. comply with all legislation, regulations, or requirements of any authority of
16 competent jurisdiction relating to the sale of the Equipment;

17 c. be responsible for the payment of any tax or duty whatsoever that may legally
18 be construed as being the responsibility of the Owner;

19 d. provide the Auctioneer with the opportunity to review and comment on the
20 Bankruptcy Court orders: (i) approving the sale of the Equipment pursuant to 11 USC § 363(f),
21 and (ii) approving this Contract; and

22 e. provide the Auctioneer with copies of such Bankruptcy Court orders.

23 Attached as **Exhibit 2 to the Declaration of Zac Dalton annexed to the Auction**
24 **Motion** is a true and correct copy of the resume for the Auctioneer as well as Auctioneer's proof
25 of liability insurance in the amount of \$5,000,000. Immediately on approval of Court approval
26 of this Motion, the Auctioneer will obtain a bond for this case in the amount of \$400,000. The
27 Auctioneer has advised Inland that the total value of all pending bankruptcy auctions in which
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1 the Auctioneer is involved in this District does not exceed the bond it will obtain and liability
2 insurance coverage.

3 Inland believes that the Auction Contract is fair and reasonable and that Inland should be
4 authorized to employ the Auctioneer on the terms and conditions set forth in the Auction
5 Contract. Inland is satisfied from the Dalton Declaration that the Auctioneer is a disinterested
6 person within the meaning of Bankruptcy Code Section 101(14).

7 **J. Request for Authorization to Use the Auction Sale Proceeds**

8 Through this Auction Motion, Inland further requests the Court authorize the use of the
9 proceeds of the auction sale to make Court approved disbursements to the proposed Auctioneer
10 pursuant to the terms of the Auction Contract.

11 **K. Approval of the Auction Motion Serves the Best Interests of the Estate and**
12 **Creditors**

13 Inland has made a business decision and believes that the sale of the Assets by the
14 proposed auction sale is the best available alternative for maximizing the value of the Assets for
15 the Estate and creditors. The auction sale is the most efficient and cost effective way to liquidate
16 the Assets and will allow the Estate to receive the most value for the Assets as compared to
17 attempting to sell each item on a piecemeal basis.

18 Inland has been advised by the proposed Auctioneer that the auction sale may generate
19 gross proceeds of approximately \$360,000 to \$400,000. Through the competitive bidding of a
20 public auction sale, it is anticipated that Inland will receive the best and highest value for the
21 Assets and therefore, the ultimate sale price of the Assets will be fair and reasonable.

22 In addition, the Assets are located on the Wilson Street Property which is in escrow to be
23 sold. Inland is no longer using the Assets and needs to liquidate the Assets as quickly as possible
24 in order vacate the premises prior to the close of escrow so that the property can be turned over
25 to the buyer of the Wilson Street Property. In addition, by selling the Assets by auction sale as
26 soon as possible, Inland will avoid having to incur storage costs to conduct an auction at a later
27 date.

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1 Finally, approval of the auction sale must be resolved as quickly as possible so that the
2 Inland may coordinate the auction sale and afford time for the proposed Auctioneer to commence
3 advertising of the sale.

4 Thus, based on good business reasons, approval of Auction Motion would serve the best
5 interests of the Inland's Estate and its creditors.

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