Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

DAVID B. GOLUBCHIK (SBN 185520)
KRIKOR J. MESHEFEJIAN (SBN 255030)
JONATHAN D. GOTTLIEB (SBN 339650)
LEVENE, NEALE, BENDER, YOO & GOLUBCHIK L.L.P.
2818 La Clenega Avenue
Los Angeles, California 90034
Telephone: (310) 229-1234; Facsimile: (310) 229-1244
Email: dbg@lnbyg.com; kjm@lnbyg.com; jdg@lnbyg.com

☐ *Individual appearing without attorney*
☒ *Attorney for:* Chapter 11 Trustee

FOR COURT USE ONLY

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re:

CHERRY MAN INDUSTRIES, INC.

Debtor(s).

CASE NO.: 2:22-bk-11471-NB

CHAPTER: 11

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 05/20/2022	**Time:** 8:00 am
Location: Courtroon 1545, 255 East Temple Street, Los Angeles, CA 90012	

Type of Sale: ☐ Public ☒ Private **Last date to file objections**: May 20, 2022

Description of property to be sold: Personal property comprised of pallet racking and miscelaneous equipment located at 4053 Grand Lakes Way, Suite 100, GRand Prairie, Texas 75050. See Asset Purchase Agreement attached as Exhibit 1 hereto.

Terms and conditions of sale: As-is, where is, without any representations or warranties. See Asset Purchase Agreement attached as Exhibit 1 hereto

Proposed sale price: $515,456

Overbid procedure (*if any*): Not applicable

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

Date: May 20, 2022
Time: 8:00 a.m.
Place: United States Bankruptcy Court, Central District of California
Courtroom 1545
255 East Temple Street
Los Angeles, CA 90012

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

Krikor J. Meshefejian, Esq.
Levene, Neale, Bender, Yoo & Golubchik L.L.P.
2818 La Cienega Avenue
Los Angeles, CA 90034
Tel: (310) 229-1234
Fax: (310) 229-1244
Email: KJM@LNBYG.COM

Date: 05/18/2022

EXHIBIT "1"

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "***Agreement***") is made as of May __, 2022 (the "***Effective Date***"), by and between Hamid Rafatjoo, Chapter 11 Trustee of the estate of Cherry Man Industries, Inc. (the "***Seller***"), and BLF Leasing DBA Warehouse Equipment Solutions (the "***Buyer***").

RECITALS

A. Cherry Man Industries, Inc. is a debtor ("***Debtor***") in a pending Chapter 11 bankruptcy case, Case No. 2:22-bk-11471-NB (the "***Case***").

B. Pursuant to an order entered on May 10, 2022, Hamid Rafatjoo was appointed as the Chapter 11 Trustee in the Case.

C. Among the assets of the Debtor are racking and miscellaneous equipment located in a warehouse utilized by the Debtor located at 4053 Grand Lakes Way Suite 100, Grand Pairie, TX 75050 (the "***Warehouse***").

D. The Debtor filed a motion to reject the lease for the Warehouse and move out.

E. The remaining assets in the Warehouse (the "***Assets***"), which are the subject of this Agreement are the following:

ups						
288 x 42		96" beams		144"		wd
1080		7854		272		8562

F. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller the Assets on the terms and conditions set forth in this Agreement, subject to approval of the Bankruptcy Court presiding over the Case.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter set forth, subject to approval of the Bankruptcy Court, Buyer and Seller hereby agree as follows:

1. PURCHASE AND SALE OF ASSETS.

1.1 Agreement to Sell and Purchase Assets. Subject to the terms and conditions of this Agreement, and approval of the Bankruptcy Court, Seller agrees to sell, assign, transfer and convey to Buyer at the Closing (as defined in Section 2.2 below), and Buyer agrees to purchase and acquire from Seller at the Closing, all of Seller's right, title and interest in and to all of the Assets. The Assets will be sold, assigned, transferred and conveyed to Buyer on the Closing Date "as is" and "where is", with no representations or warranties of any kind.

1.2 Assets Defined. As used in this Agreement, the term "***Assets***" means, collectively, Seller's right, title and interest in and to the following assets:

ups						
288 x 42		96" beams		144"		wd
1080		7854		272		8562

Buyer shall promptly execute and deliver to Seller any and all such further assignments and other documents as Seller may reasonably request for the purpose of effectuating the terms and conditions of this Section.

1.3 Asset Transfer; Passage of Title; Delivery.

(a) Title Passage. Except as otherwise provided in this Section, upon the Closing, title to all of the Assets shall pass to Buyer, and Seller shall make available to Buyer possession of all of the Assets, and shall further, upon Buyer's request, execute assignments, conveyances and/or bills of sale reasonably requested to convey to Buyer title to all the Assets, as well as such other instruments of conveyance as counsel for Buyer may reasonably deem necessary to effect or evidence the transfers contemplated hereby.

(b) Removal of Assets. On the Closing Date, Seller shall make available to Buyer possession of the Assets, *provided however,* that the expenses of retrieving, removing and transferring the Assets shall be borne exclusively by Buyer. The Assets are being sold on an "as is," "where is," "with all faults" bases with no representations and warranties from the Seller. Seller is not providing any technical assistance, actions or support which may be necessary for the Assets, all of which are the sole responsibility and obligation of the Buyer, and at the sole costs of the Buyer. On the Closing Date, Seller shall provide to Buyer access to the Warehouse to remove and relocate the Assets. All Assets must be removed and the Warehouse left in clean broom swept condition not later than June 30, 2022, after which time Buyer shall be solely responsible for rent and expenses related to the Warehouse. Prior to the commencement of removal of the Assets, Buyer will provide to Seller a copy of Buyer's insurance policy in an amount sufficient to provide adequate protection for the removal of the Assets from the Warehouse.

2. PURCHASE PRICE; PAYMENTS.

2.1 Purchase Price. In consideration of the sale, transfer, conveyance and assignment of all the Assets to Buyer at the Closing, Buyer shall, as of the Closing, pay $515,456 (U.S. Dollars) (the "***Purchase Price***") to the Seller on the following terms:

(a) $50,000 upon execution of this Agreement as a deposit for the transaction which will be non-refundable unless the Bankruptcy court does not approve this Agreement; and

(b) Balance of $465,459 at Closing.

2.2 Closing. The consummation of the purchase and sale of the Assets contemplated hereby will take place at a closing to be held at the offices of the Seller (the ***"Closing"***), not later than three (3) days after approval of this Agreement by the Bankruptcy Court (the ***"Closing Date"***),

or at such other time or date, and at such place, or by such other means of exchanging documents, as may be agreed to by the parties hereto. If the Closing does not occur on or before June 15, 2022, or such later date upon which Buyer and Seller may agree in writing, this Agreement shall terminate upon written notice of termination given by either party hereto that is not in default of its obligations hereunder, and thereupon this Agreement shall become null and void and no party hereto will have any further rights or obligations hereunder.

3. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller that all the following statements are true, accurate and correct:

3.1 Due Organization. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of Texas. Buyer has all necessary power and authority to enter into this Agreement and all other documents that Buyer is required to execute and deliver hereunder.

3.2 Power and Authority; No Default. Buyer has all requisite power and authority to enter into and deliver this Agreement and to perform its obligations hereunder. The signing, delivery and performance by Buyer of this Agreement, and the consummation of all the transactions contemplated hereby, have been duly and validly authorized by Buyer. This Agreement, when signed and delivered by Buyer, will be duly and validly executed and delivered and will be the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the laws relating to bankruptcy, insolvency and relief of debtors, and rules and laws governing specific performance, injunctions, relief and other equitable remedies.

3.3 Authorization for this Agreement. No authorization, approval, consent of, or filing with any governmental body, department, bureau, agency, public board, authority or other third party is required for the consummation by Buyer of the transactions contemplated by this Agreement.

3.4 Taxes. Buyer shall be solely responsible for any and all taxes, including, without limitation, sales taxes, if required, with respect to this Agreement and the transaction contemplated thereby.

4. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents and warrants to Buyer that all of the following statements are true, accurate and correct:

4.1 Standing. Seller is the duly appointed and acting Chapter 11 Trustee of the Debtor's estate in the Case.

4.2 Power and Authority; No Default Upon Transfer. Subject to approval of the Bankruptcy Court, Seller has all requisite power and authority to enter into and deliver this Agreement and to perform its obligations hereunder. The signing, delivery and performance by

Seller of this Agreement, and the consummation of all the transactions contemplated hereby, have been duly and validly authorized by Seller. This Agreement, when signed and delivered by Seller, will be duly and validly executed and delivered and will be, subject to approval of the Bankruptcy Court, the valid and binding obligation of Seller, enforceable against Debtor's estate in accordance with its terms as governed by applicable law, regulations and rules.

4.3 **Access To Warehouse.** Seller shall provide to Buyer access to the Warehouse in accordance with Section 1.3(b) above to dismantle and remove the Assets. Access shall be provided for 12 hours per day, 7 days per week.

4.4 **Title.** To the best of Seller's knowledge after reasonable inquiry, the Debtor's estate has good and marketable title to all of the Assets. Seller sells, assigns, transfers and conveys the Assets to Buyer "as is" and "where is", with no representations or warranties, including, without limitation, as to merchantability, fitness or use.

(a) **AS-IS SALE; DISCLAIMERS; RELEASE. IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE ASSETS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(b) **BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE ASSETS "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PURCHASED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. BUYER ALSO ACKNOWLEDGES THAT THE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE ASSETS ARE BEING SOLD "AS IS, WHERE IS, WITH ALL FAULTS."**

(c) **BUYER ACKNOWLEDGES TO SELLER THAT BUYER HAS HAD THE OPPORTUNITY TO CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE ASSETS AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE ASSETS AND ITS ACQUISITION THEREOF. BUYER FURTHER WARRANTS AND REPRESENTS TO SELLER THAT BUYER WILL RELY SOLELY ON ITS OWN REVIEW AND OTHER INSPECTIONS AND INVESTIGATIONS IN THIS TRANSACTION AND NOT UPON THE INFORMATION PROVIDED BY OR ON BEHALF OF DEBTOR, SELLER, OR THEIR AGENTS, EMPLOYEES OR REPRESENTATIVES WITH RESPECT THERETO.**

5. CONDITIONS TO CLOSING.

5.1 Conditions to Buyer's Obligations. The obligations of Buyer hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Buyer may expressly waive the same in writing:

(a) Approval of this Agreement by the Bankruptcy Court.

(b) Seller shall have made the Assets available to Buyer.

(c) Seller shall have made access to the Warehouse to remove the Assets available to Buyer.

6.2 Conditions to Seller's Obligations. The obligations of Seller hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Seller may expressly waive the same in writing:

(a) Buyer shall have complied in all material respects with, and shall have fully performed, the terms, conditions, covenants and obligations of this Agreement imposed thereon to be performed or complied with by Buyer at, or prior to, the Closing Date.

(b) Buyer shall have timely paid the Deposit ($50,000).

(c) Buyer shall have timely paid the balance of the Purchase Price.

7. CLOSING OBLIGATIONS.

7.1 Buyer's Closing Obligations. At the Closing, Buyer shall deliver to Seller the balance of the Purchase Price.

7.2 Seller's Closing Obligations. At the Closing, Seller shall deliver to Buyer the following:

(a) Access to the Assets;
(b) Access to the Warehouse; and
(c) Copy of the Bankruptcy Court's order approving this Agreement.

8. MISCELLANEOUS.

8.1 Expenses. Each of the parties hereto shall bear its own expenses (including without limitation attorneys' fees) in connection with the negotiation and consummation of the transaction contemplated hereby.

8.2 **Notices.** Any notice under this Agreement shall be in writing and shall be personally or sent by certified or registered United States mail, postage prepaid, or sent by nationally recognized overnight express courier or email and addressed as follows:

(a) If to Seller:

With copy to:

(b) If to Buyer:

With copy to:

8.3 **Entire Agreement.** This Agreement and any agreements to be executed and delivered in connection herewith, together constitute the entire agreement and understanding between the parties and there are no agreements or commitments with respect to the transactions contemplated herein except as set forth in this Agreement. This Agreement supersedes any prior offer, agreement or understanding between the parties with respect to the transactions contemplated hereby.

8.4 **Amendment; Waiver.** Any term or provision of this Agreement may be amended only by a writing signed by Seller and Buyer. The observance of any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound by such waiver. No waiver by a party of any breach of this Agreement will be deemed to constitute a waiver of any other breach or any succeeding breach.

8.5 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or to give any person, firm or corporation, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

8.6 **Execution in Counterparts.** For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.7 **Benefit and Burden.** This Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and their respective successors and permitted assigns.

8.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California (excluding application of any choice of law doctrines that would make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law. Venue shall be before the Bankruptcy Court presiding over the Case.

8.9 **Severability.** If any provision of this Agreement is for any reason and to any extent deemed to be invalid or unenforceable, then such provision shall not be voided but rather shall be enforced to the maximum extent then permissible under then applicable law and so as to reasonably effect the intent of the parties hereto, and the remainder of this Agreement will remain in full force and effect.

8.10 **Attorneys' Fees.** Should a suit or arbitration be brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed in amount by the Court or the Arbitrator(s) (including without limitation costs, expenses and fees on any appeal). The prevailing party will be entitled to recover its costs of suit or arbitration, as applicable, regardless of whether such suit or arbitration proceeds to a final judgment or award.

IN WITNESS WHEREOF, Buyer and Seller executed and delivered this Agreement by their duly authorized representatives as of the Effective Date.

SELLER:

HAMID RAFATJOO,
Chapter 11 Trustee for the Estate of
Cherry Man Industries, Inc.

By:_____
Hamid Rafatjoo, solely in his capacity
As Chapter 11 Trustee

BUYER:

BLF LEASING dba
Warehouse Equipment Solutions

By:_____
Alan DeYoung, Its Partner and
Authorized Agent

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2818 La Cienega Avenue, Los Angeles, CA 90034.

A true and correct copy of the foregoing document entitled **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **May 18, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Michael Jay Berger michael.berger@bankruptcypower.com, yathida.nipha@bankruptcypower.com;michael.berger@ecf.inforuptcy.com**
- **Dustin P Branch branchd@ballardspahr.com, carolod@ballardspahr.com;hubenb@ballardspahr.com**
- **Ronald K Brown ron@rkbrownlaw.com**
- **Steve Burnell sburnell@sulmeyerlaw.com, sburnell@ecf.courtdrive.com;sburnell@ecf.inforuptcy.com;mviramontes@sulmeyerlaw.com**
- **Steven P Chang heidi@spclawoffice.com, schang@spclawoffice.com,assistant1@spclawoffice.com,attorney@spclawoffice.com;g9806@notify.cincompass.com;changsr75251@notify.bestcase.com**
- **Glen Dresser gombd@aol.com**
- **Alan W Forsley alan.forsley@flpllp.com, awf@fkllawfirm.com,awf@fl-lawyers.net,addy.flores@flpllp.com**
- **Todd S Garan ch11ecf@aldridgepite.com, TSG@ecf.inforuptcy.com;tgaran@aldridgepite.com**
- **David B Golubchik dbg@lnbyg.com, stephanie@lnbyb.com**
- **Michael J Gomez mgomez@frandzel.com, dmoore@frandzel.com**
- **Asa S Hami ahami@sulmeyerlaw.com, pdillamar@sulmeyerlaw.com;pdillamar@ecf.inforuptcy.com;cblair@sulmeyerlaw.com;ahami@ecf.inforuptcy.com**
- **Eric D. Houser scleere@houser-law.com**
- **David S Kupetz David.Kupetz@lockelord.com, dperez@sulmeyerlaw.com;dperez@ecf.courtdrive.com;dkupetz@ecf.courtdrive.com**
- **Christopher J Langley chris@slclawoffice.com, omar@slclawoffice.com;langleycr75251@notify.bestcase.com**
- **Dare Law dare.law@usdoj.gov, ron.maroko@usdoj.gov**
- **Elan S Levey elan.levey@usdoj.gov, julie.morales@usdoj.gov**
- **Peter W Lianides plianides@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com**
- **Krikor J Meshefejian kjm@lnbyg.com**
- **Hamid R Rafatjoo hrafatjoo@raineslaw.com, bclark@raineslaw.com**
- **Victor A Sahn vsahn@sulmeyerlaw.com, pdillamar@sulmeyerlaw.com;pdillamar@ecf.inforuptcy.com;vsahn@ecf.inforuptcy.com;cblair@sulmeyerlaw.com;cblair@ecf.inforuptcy.com**
- **Zev Shechtman zshechtman@DanningGill.com, danninggill@gmail.com;zshechtman@ecf.inforuptcy.com**
- **Louis F Solimine Louis.Solimine@thompsonhine.com**
- **Laurie A Spindler laurie.spindler@lgbs.com**
- **United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov**
- **Gerrick Warrington gwarrington@frandzel.com, sking@frandzel.com**

- **Eric R Wilson kdwbankruptcydepartment@kelleydrye.com, MVicinanza@ecf.inforuptcy.com**

2. SERVED BY UNITED STATES MAIL: On **May 18, 2022**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

☐ *Service information continued on attached page*

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **May 18, 2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

None.

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

May 18, 2022	Lourdes Cruz	*/s/ Lourdes Cruz*
Date	*Type Name*	*Signature*