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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>IN RE:</b>	§	
	§	<b>CHAPTER 11</b>
	§	
<b>WHITESTONE HOUSTON LAND, LTD.,</b>	§	<b>CASE NO. 11-42400</b>
	§	
	§	
<b>Debtor.</b>	§	

**HILLCREST BANK, N.A.'S LIMITED OBJECTIONS TO BID PROCEDURES**

Hillcrest Bank, N.A. ("Bank"), first priority secured creditor (owed in excess of \$19.6 million) and party in interest, files this it's Limited Objections to Bid Procedures ("Objection"), and in support thereof would show the Court the following:

**A. The bid procedures appear to allocate funds from the sale to specific pockets.**

1. Any order should provide that the proceeds of the sale will be wired directly to the Bank at closing, as a condition to the Bank's consent to the sale and release of its lien.

**B. The bid procedures contemplate that \$500,000.00 will be spent to assume a contract, upon belief, with the Debtor's current ownership/insiders.**

2. The Bank objects to such provision – the provision appears to be a disguised way to allocate a portion of the sale proceeds to insiders/equity. Such \$500,000.00 should be considered sale proceeds and paid to the Bank.

**C. The bid procedures do not attach a form Asset Purchase Agreement.**

3. Potential bidders need to be provided the form of the agreement that they are required to bid upon. Moreover, such agreement should be provided to the parties in interest and the Court for opportunity to object before it is approved as the base-line form. The proposed bid procedures contemplate that the form will be added later but will be deemed pre-approved, sight unseen. The Bank objects to such a process and reserves all rights with respect to the form of APA. This is a piece of undeveloped real estate, not a large, operating business – it should not be a complex or time consuming matter to draft an APA. The bid procedures should also make clear that a potential bidder is not required to include in its bid the \$500,000.00 contract assumption, the purchase option or the consulting and management agreement contract.

**D. The 3% break-up fee is excessive in this case.**

4. The other cases cited by the Debtor, where 3% was used appear to be operating companies where extensive operational due diligence was required. This is undeveloped real estate – while some diligence is required, certainly it is not as time consuming and expensive as the diligence in connection with an operating business. A fee of 1.5% would be more appropriate in this case.

**E. The term sheet includes financing and due diligence and other “outs.”**

5. It should be made clear that the buyer does not earn the breakup fee if the APA is terminated by these outs or otherwise terminated by the buyer.
6. In each instance where the procedures contemplate “sole discretion” on behalf of the buyer or debtor, it should be changed to reasonable discretion subject to Court review.
7. The bid procedures should be modified to provide that all offers and bids go to Bank counsel; that the Bank attend the auction; and that the Bank is considered a qualified bidder automatically.

8. The Bank objects to the provision that requires the Bank to pay a break-up fee upon foreclosure or credit bid. Such provision is a lien impairment that is not appropriate without the Bank's consent.
9. The Purchase Option, if allowed, is part of the proceeds of the sale. The Bank's lien should attach to such option.
10. The Bank objects to the Consulting and Management agreement contemplated –again, like the \$500,000 contract assumption, this appears to be a disguised way to funnel a part of the purchase proceeds to insiders.
11. The procedures need to more adequately explain the marketing process going forward and the marketing period. Moreover, further disclosure should be made by the Debtor regarding the Purchase Option, the \$500,000.00 insider contact assumption, and the management and consulting agreement.

### **CONCLUSION**

WHEREFORE, based on the foregoing, Hillcrest Bank respectfully requests this Court require to modify the bid procedures and order approving same. Hillcrest Bank also requests any such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

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**ATTORNEYS FOR HILLCREST BANK,  
N.A.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served electronically via the Court's ECF noticing system on those parties who receive notice from that system, on the 28<sup>th</sup> day of March, 2012.

/s/ Samuel M. Stricklin

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