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UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: DANIEL J.J. ROSS, <div style="text-align: right;">Debtor(s).</div>	CASE NO. SV 04-16181 KT Chapter 7

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: February 2, 2006	Time: 10:30 a.m.
Location: Courtroom 301, 21041 Burbank Boulevard, Woodland Hills, California	

Type of Sale: Public Private Last date to file objections: January 31, 2006

Description of Property to be Sold: (1) 5 acres of undeveloped real property located at 500-533 Lofty Heights Drive, Malibu, California 90265; (2) approximately 6.2 acres of vacant land in Malibu, California; and (3) approximately 5.8 acres of vacant land in Malibu, California.

Terms and Conditions of Sale: See attached Motion for Order: (1) Authorizing and Approving Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b), (f) and (h); (2) Approving Overbid Procedures; and (3) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commission and Other Ordinary Costs of Sale (the "Motion")

Proposed Sale Price: See attached Motion

Overbid Procedure (If Any): See attached Motion

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:
Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Reem J. Bello, Esq.
 Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP
 650 Town Center Drive, Suite 950
 Costa Mesa, CA 92626
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Date: January 24, 2006

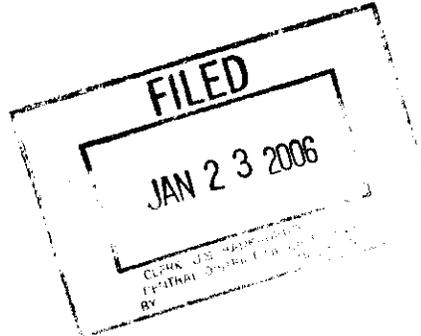
ORIGINAL

Part 1 of 4

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Attorneys for Nancy H. Zamora,
Chapter 7 Trustee



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re
DANIEL J.J. ROSS,

) Case No. SV 04-16181 KT
) Chapter 7 Case

MOTION FOR ORDER:

- (1) **AUTHORIZING AND APPROVING SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS PURSUANT TO 11 U.S.C. §§ 363(b), (f) AND (h);**
- (2) **APPROVING OVERBID PROCEDURES; AND**
- (3) **AUTHORIZING PAYMENT OF UNDISPUTED LIENS, REAL ESTATE BROKER'S COMMISSION AND OTHER ORDINARY COSTS OF SALE**

Debtor.

MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF NANCY H. ZAMORA IN SUPPORT THEREOF

[Motion for Order Shortening Time Filed Concurrently]

**DATE: To Be Set
TIME: To Be Set
CTRM: 301**

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STATE STATUTES

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1 **TO THE HONORABLE KATHLEEN THOMPSON, UNITED STATES BANKRUPTCY**
2 **JUDGE, AND TO ALL PARTIES IN INTEREST:**

3 Nancy H. Zamora, the chapter 7 trustee ("Trustee") of the bankruptcy estate
4 ("Estate") of Daniel J.J. Ross (the "Debtor"), files this motion for an order: (1) authorizing
5 and approving the sale of real property free and clear of liens, claims, and interests
6 pursuant to 11 U.S.C. §§ 363(b), (f) and (h); (2) approving overbid procedures; and (3)
7 authorizing payment of undisputed liens, real estate broker's commission and other
8 ordinary costs of sale (the "Motion"). In support of the Motion, the Trustee submits the
9 following memorandum of points and authorities and the declaration of Nancy H.
10 Zamora, and respectfully represents as follows:

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 The Trustee seeks to sell three parcels of real property to Behnam J. Mahboob
15 (the "Buyer") for a total price of \$1.5 million (the "Purchase Price") pursuant to the terms
16 of the Purchase and Sale Agreement and Escrow Instructions (the "Agreement"). As
17 discussed more fully below, the Trustee seeks to proceed with the sale of the real
18 property because the Trustee believes the Purchase Price represents the fair market
19 value of the real property, and the Trustee believes that the proposed sale and overbid
20 procedures are reasonable and in the best interest of the Estate.

21
22 **II. FACTUAL BACKGROUND**

23 **A. Filing of the Bankruptcy Petition**

24 A voluntary chapter 7 petition was filed by the Debtor on September 20, 2004 (the
25 "Petition Date"). Nancy H. Zamora was subsequently appointed chapter 7 trustee of the
26 Estate.

1 **B. Assets of the Estate**

2 The Debtor's Schedule A reflects his "Fee Owner" interest in approximately 5
3 acres of undeveloped real property located at 500 - 533 Lofty Heights Drive, Malibu,
4 California 90265 and identified by Los Angeles County Assessor's Parcel Numbers
5 4471-015-020, 4471-015-021, 4471-015-022, 4471-015-023, 4471-016-001, 4471-016-
6 002, 4471-016-003, 4471-016-004, 4471-016-006, 4471-016-007, 4471-016-008, 4471-
7 016-015, 4471-016-016, 4471-016-018, 4471-016-019, 4471-016-020, 4471-016-021,
8 4471-016-022, 4471-017-010, 4471-017-011, 4471-017-022, and 471-017-023
9 ("Property No. 1). Title to Property No. 1 is held in joint tenancy by the Debtor and
10 Janice M. Ross ("Janice"), the non-filing spouse of the Debtor.

11 As of the Petition Date, The Wishing Well, Inc., a California corporation ("Wishing
12 Well"), had an ownership interest in two (2) properties adjacent to Property No. 1:
13 (1) approximately 6.2 acres of vacant land in Malibu, California - Los Angeles County
14 Assessor's Parcel Number 4471-018-026 ("Property No. 2"); and (2) approximately 5.8
15 acres of vacant land in Malibu, California - Los Angeles County Assessor's Parcel
16 Number 4471-018-024 ("Property No. 3"). The Trustee believes that Janice currently
17 holds all of Wishing Well's outstanding shares of stock. On the Petition Date, Wishing
18 Well had a fee ownership in Property No. 2 and a fifty percent (50%) tenancy in common
19 interest in Property No. 3 with John M. Wilkin and Luanna M. Wilkin, husband and wife
20 as joint tenants (the "Wilkins"). Property No. 2 and Property No. 3 are collectively
21 referred to as the "Wishing Well Properties." Property No. 1 and the Wishing Well
22 Properties are collectively referred to as the "Real Property."

23 The Trustee contends, among other things, that: (1) prior to the Petition Date, the
24 Debtor transferred his shares of stock in Wishing Well to Janice for no consideration
25 and, consequently, the Estate has a community property interest in Wishing Well and the
26 Wishing Well Properties; and (2) the Wishing Well Properties were transferred by
27 quitclaim deed to Michael Apollo Criscione and Gary Kanter ("Transferees") for no
28

1 consideration after the Petition Date. Transferees have subsequently executed quitclaim
2 deeds back to Wishing Well (the "Wishing Well Quitclaim Deeds").

3
4 **C. The Debtor's Homestead Exemption**

5 On the Debtor's Schedule C, the Debtor claimed a \$50,000.00 homestead
6 exemption in Property No. 1 in accordance with California Code of Civil Procedure
7 §704.730(a)(1) (the "Homestead Exemption").

8
9 **D. Broker Retention and Prior Authorized Sale**

10 The Trustee was previously authorized to employ RE/MAX Grand Central
11 ("Broker") to sell Property No. 1 on the terms, conditions and for the rate of
12 compensation indicated in the Trustee's employment application pursuant to the Court's
13 order entered November 4, 2004.

14 The Trustee was also previously authorized to sell Property No. 1 to Behnam J.
15 Mahboob for a total, all cash, purchase price of \$1,400,000.00 by Court order entered
16 December 17, 2004. The sale to Mr. Mahboob was, however, not consummated.

17 Due to the expiration of the Broker's listing agreement and additional
18 developments that have occurred during the bankruptcy case, the Trustee recently filed
19 an employment application, which application is currently pending, to authorize Broker's
20 retention to sell the Real Property at a commission rate of four percent (4%) on the gross
21 sales price or two percent (2%) for any purchase or settlement payment paid by Debtor
22 or any insider, relative, or affiliate of Debtor.

23
24 **E. The Turnover Order and OSC Order**

25 As a result of the Trustee's assertion that the Debtor had repeatedly failed to: (1)
26 appear at the meeting of creditors and to produce documents requested by the Trustee;
27 (2) cooperate with the Trustee in the marketing and sale of Property No. 1; and
28 (3) vacate and remove personal possessions from Property No. 1, the Trustee filed a

1 motion to compel the Debtor's cooperation. The Court granted the Trustee's motion and,
2 by order entered June 29, 2005, among other things, required the Debtor and his family
3 to vacate, turn over to the Trustee, and remove personal possessions from Property
4 No. 1 by no later than July 21, 2005 ("Turnover Order").

5 The Debtor and Janice continue to reside in a mobile home on Property No. 1
6 notwithstanding the Turnover Order.

7 The Trustee filed a motion for order: (1) to hold the Debtor and Janice in contempt
8 of the Turnover Order; (2) directing and authorizing the United States Marshal's Service
9 to enforce the Turnover Order; and (3) surcharging the Debtor's Homestead Exemption,
10 or, in the alternative, granting sanctions against the Debtor and Janice ("OSC Motion").
11 In response to the OSC Motion, the Court issued its "Order to Show Cause Why Debtor
12 and Janice Ross Should Not Be Held in Contempt for Failure to Comply with This Court's
13 Order of June 29, 2005" ("OSC Order").

14 On January 17, 2006, a continued hearing took place on the OSC Motion and
15 OSC Order. Neither the Debtor nor Janice filed a response and the Court granted the
16 OSC Motion, including a \$10,000.00 surcharge of the Debtor's Homestead Exemption.
17

18 **F. Settlement Agreement and Subsequent Default**

19 While the OSC Motion and OSC Order were pending, the Debtor received a
20 commitment letter from Diversified Lending Group, Inc. ("Diversified"), pursuant to which
21 the Debtor would obtain a loan in the net amount of at least \$1,500,000.00 to be secured
22 by the Real Property. The Trustee was willing to consent to such transaction so long as
23 the entire net amount of the loan (not less than \$1,500,000.00) would be used to satisfy
24 legitimate claims against the Real Property and the Estate. On October 13, 2005, the
25 Trustee and the Debtor, Janice and Wishing Well entered into a Settlement Agreement
26 ("Settlement Agreement") to memorialize the transaction. The Settlement Agreement
27 was approved by Court order entered November 18, 2005, a copy of which is attached
28 as Exhibit 1.

1 In connection with the Settlement Agreement, Diversified opened an escrow with
2 Stoneridge Escrow, Escrow No. SSO401410-OM ("Escrow"), and delivered certain
3 documents to escrow, including the Wishing Well Quitclaim Deeds. The Debtor also
4 delivered documents to Escrow. The Wishing Well Quitclaim Deeds have not been
5 recorded. The Trustee will demand the turnover of all documents delivered to Escrow.

6 In accordance with the sole discretion granted the Trustee pursuant to the
7 Settlement Agreement, the deadline for closing was extended in writing until January 12,
8 2006. No further extensions were granted by the Trustee. The closing deadline has now
9 passed and the Debtor, Janice and Wishing Well are in default of the Settlement
10 Agreement.

11 As a consequence of the existing default under the Settlement Agreement and
12 without the need for further Court order, Janice's ownership interest in Property No. 1
13 and stock ownership in Wishing Well are now community property of the Debtor's Estate.
14 See Exhibit 1.

15
16 **G. Real Property Encumbrances**

17 The Trustee contemplates the payment through escrow at Closing of the actual,
18 undisputed, allowed claims against the Real Property. The Trustee will reserve for
19 disputed claims. The following chart sets forth the purported encumbrances against the
20 Real Property and their payoff amounts (through approximately January 13, 2006 – the
21 anticipated closing date for Escrow in connection with the Settlement Agreement). The
22 Trustee and the Debtor expressly reserve the right to object to all or any portion of each
23 and every claim or encumbrance that has or will be asserted against the Real Property.

24

<u>ENTITY/PERSON</u>	<u>NATURE OF INTEREST</u>	<u>AMOUNT</u>
<u>PROPERTY NO. 1</u>		
County of Los Angeles	Property Taxes	\$ 34,180.00 ¹

25
26
27

28 ¹ This figure reflects the total outstanding property taxes for Property No. 1 and the Wishing Well Properties.

<u>ENTITY/PERSON</u>	<u>NATURE OF INTEREST</u>	<u>AMOUNT</u>
Union Home Loan, Inc.	1 st Deed of Trust	\$ 572,865.84
Dave Roberts & Jan Edwards	2 nd Deed of Trust	\$ 311,000.00 ²
Samuel Mark Tapper	3 rd Deed of Trust	\$ 84,216.77
Mark Sturdefant	Abstract of Judgment	\$ 67,000.00
Performance Development, Inc.	Abstract of Judgment	\$ 5,068.39
George I. Nickel	Lis Pendens	0.00 ³
Michael Elliot	Lis Pendens	0.00 ⁴
SUBTOTAL - Property No. 1		\$ 1,074,331.00
PROPERTY NO. 2		
County of Los Angeles	Property Taxes	<u>See</u> Footnote No. 1
Martin M. Cooper and Barbara Cooper	1 st Deed of Trust	\$ 34,483.02
Jeff Peterson	2 nd Deed of Trust	\$ 83,542.50
Mark Sturdefant	Abstract of Judgment	Same as Property No. 1 (Duplicate)
SUBTOTAL - Property No. 2		\$ 118,025.52
PROPERTY NO. 3		
County of Los Angeles	Property Taxes	<u>See</u> Footnote No. 1
Craig Daltow, Administrator of the estate of Eunice Daltow	1 st Deed of Trust	\$ 146,742.18
SUBTOTAL - Property No. 3		\$ 146,742.18
TOTAL - ALL PROPERTIES		\$ 1,339,098.70

² The Trustee and the Debtor jointly objected to the inclusion of a \$40,000.00 advance based on an unsecured Promissory Note dated November 25, 2002 plus accrued interest, which objection was sustained by the Court at a hearing conducted on January 17, 2006. The \$311,000.00 payoff figure does not include those portions that were disallowed by the Court.

³ The Trustee and Mr. Nickel entered into a Stipulation Regarding Withdrawal of Notice of Pending Action and Allowance of Claim, which stipulation was approved by the Court's order entered November 18, 2005. Pursuant to the Court-approved stipulation, Mr. Nickel's Lis Pendens against Property No. 1 was deemed withdrawn and expunged and his Claim No. 3 in the amount of \$52,187.45 is allowed as a general unsecured claim.

⁴ Upon joint motion by the Trustee and the Debtor, Mr. Elliot's Lis Pendens was ordered expunged by the Court at the hearing conducted on January 17, 2006.

1 **III. TERMS OF THE PROPOSED SALE**

2 The terms of the proposed sale (the "Sale") are set forth in the Agreement
3 attached as Exhibit 2. The salient terms of the Agreement are as follows.

4 **The Terms of the Proposed Sale to the Buyer:**

- 5 1. **Purchase of the Real Property.** At the closing of the Sale, which must
6 occur by no later than February 14, 2006, the Buyer shall acquire title to the
7 Real Property as-is, where is, without representations and warranties, but
8 free and clear of liens and interests, together with all improvements, as well
9 as all easements and appurtenances.
- 10 2. **Consideration.** Pursuant to the Agreement, the total consideration to be
11 given for the Real Property shall be \$1,500,000.00, allocated as follows:
12 Property No. 1 - \$1 million; Property No. 2 - \$300,000.00; and Property
13 No. 3 - \$200,000.00. The Buyer will deposit a security deposit in the
14 amount of Fifty Thousand Dollars (\$50,000.00) into escrow. The remainder
15 of the Purchase Price, \$1,450,000.00 shall be tendered to the Trustee 5
16 days prior to the closing of escrow on the Sale of the Real Property.
- 17 3. **Closing Costs.** The Buyer shall pay all closing costs.
- 18 4. **Vacancy of Real Property.** The Real Property must be delivered vacant to
19 the Buyer prior to the close of escrow.
- 20 5. **Overbid Requirements.** Pursuant to the Agreement, the first overbid over
21 the Purchase Price shall be at least \$1,575,000.00. Subsequent bids are
22 to be in increments of \$10,000.00.

23
24 **IV. SALE OF THE REAL PROPERTY IS IN THE BEST INTEREST OF THE ESTATE**

25 The Trustee seeks this Court's authority to sell the Real Property free and clear of
26 liens, claims and interests pursuant to 11 U.S.C. §§ 363(b), (f), and (h) of the Bankruptcy
27 Code. 11 U.S.C. § 363(b) provides as follows:
28

1 "The trustee, after notice and a hearing, may use, sell, or
2 lease, other than in the ordinary course of business, property
of the estate."

3 11 U.S.C. § 363(b). Section 363(b) of the Bankruptcy Code empowers a debtor in
4 possession to "sell . . . other than in the ordinary course of business, property of the
estate."

5 In considering a proposed sale, courts look at whether the sale is in the best
6 interests of the estate based on the facts and history of the case. In re America West
7 Airlines, 166 B.R. 908, 912 (Bankr. D. A. 1994), citing In re Lionel Corp., 722 F.2d 1063,
8 1071 (2nd Cir. 1983). A bankruptcy court's power to authorize a sale under § 363(b) is to
9 be exercised at the court's discretion. In re Walter, 83 B.R. 14, 19 (B.A.P. 9th Cir. 1988);
10 In re WPRV-TV, 983 F.2d 336, 340 (1st Cir. 1993); New Haven Radio, Inc. v. Meister (In
11 re Martin-Trigona), 760 F.2d 1334, 1346 (2nd Cir. 1985); Committee of Equity Sec.
12 Holder v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069 (2nd Cir. 1983)
13 ("Lionel"); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390-91 (6th Cir. 1986).

14 In considering a proposed sale under §363(b)(1), courts have generally looked to
15 the existence of a "business justification" for the proposed sale. See, e.g., Stephens
16 Indus., Inc., 789 F.2d at 390; In re Baldwin United Corp., 43 B.R. 888, 905 (Bankr. S.D.
17 Ohio 1984).

18
19 **A. The Sale Should Be Approved By the Court Because it is Supported**
20 **by Legitimate Business Justification**

21 The Second Circuit in Lionel adopted, in part, the following criteria for evaluating
22 whether a good business reason exists for authorizing a sale of the debtor's assets: (1)
23 whether the assets to be sold are decreasing or increasing in value; (2) the effect of the
24 planned sale on a plan of reorganization; and (3) whether the sale price of the assets
25 compared to the appraised value of the assets to be sold. Id. at 1071.

26 The Sale of the Real Property conforms with each of these requirements. There
27 is a sound business purpose in that the Sale of the Real Property has no effect on a
28 Chapter 11 plan because this is a Chapter 7 liquidation case and the Sale of the Real

1 Property will allow distribution to creditors. Because the Estate does not have sufficient
2 cash to pay mortgage payments and property taxes, the Sale of the Real Property will
3 cease the accrual of administrative expense and secured claims that will diminish the
4 equity available to unsecured creditors. The Purchase Price represents the best price
5 obtained by listing the Real Property on the open market, and is therefore consistent with
6 market value as discussed in further detail below. See attached declaration of Nancy H.
7 Zamora ("Zamora Decl."). Notice of the Sale is being provided to all creditors. The
8 Trustee has proposed an overbid procedure which will provide for the Estate to receive
9 the highest and best value of the Real Property at the hearing. As is shown by the
10 Zamora Decl., there is no relationship between the Trustee and the Buyer. Thus, the
11 Sale is an arms-length transaction and is entered into in good faith.

12
13 **B. The Purchase Price Represents the Fair Market Value of the Real**
14 **Property**

15 The Ninth Circuit has held that the "fair market value" of an asset is that which a
16 party is willing to pay for such asset in the context of a commercially reasonable
17 transaction. See, e.g., Romey v. Sun National Bank (In re Two "S" Corporation), 875
18 F.2d 240, 243 (9th Cir. 1989) ("Two 'S'") (holding that, for purposes of valuing secured
19 claims under § 506(a), the best evidence of fair market value of property secured by a
20 lien is the price of such property reached in a commercially reasonable sale).

21 The Trustee employed a real estate agent, Behnaz Tavakoli of Re/Max Grand
22 Central (the "Broker"), to locate a buyer for the Real Property in order to ensure that the
23 price received for the Real Property is the "best and highest" available. As indicated in
24 the Zamora Decl., the Real Property has been actively marketed.

25 As discussed below, the Broker procured the instant offer from the Buyer. The
26 Purchase Price from the Buyer was the best offer received to date. The Trustee entered
27 into the Agreement with the Buyer because the Trustee determined through the exercise
28 of her business judgment that the Buyer's offer was the highest and best offer. As such,

1 the Trustee believes that the Purchase Price represents the fair market value of the Real
2 Property.

3 The foregoing militates strongly in support of a Court finding that there is a good
4 business justification for the Sale of the Real Property.

5

6 **C. Adequate Notice of the Sale is Proposed**

7 The Trustee proposes to provide notice of the Sale for the Clerk's Office and the
8 Office of the United States Trustee, all creditors, and all other parties receiving special
9 notice in this case. Moreover, the Trustee proposes to provide additional notice of the
10 proposed Sale to all of the parties who have previously expressed an interest in the Real
11 Property. The ability of other potentially interested parties to provide competing offers for
12 the Real Property ensures that the proposed Sale does not result in a lucrative "windfall"
13 to the Buyer at the expense of creditors of the estate. See In re Onouli-Kona Land Co.,
14 846 F.2d 1170 (9th Cir. 1988).

15

16 **V. THE COURT SHOULD APPROVE THE SALE FREE AND CLEAR OF LIENS,**
17 **CLAIMS AND INTERESTS**

18 **A. The Trustee May Sell the Real Property Free and Clear of All Liens and**
19 **Encumbrances**

20 The Trustee is seeking authority to sell the Real Property free and clear of all liens
21 and encumbrances pursuant to § 363(f) of the Bankruptcy Code.

22 Section 363(f) of the Bankruptcy Code describes the circumstances under which a
23 trustee or a debtor may sell property of the estate free and clear of any interest of third
24 parties in such property. Section 363(f) provides:

25 The Trustee may sell property under subsection (b) or (c) of
26 this section free and clear of any interest in such property of
an entity other than the estate, only if -

- 27 i) applicable nonbankruptcy law permits sale of
28 such property free and clear of such interest;

1 further order of the Court. To the extent that any lien or interest asserted against the
2 Real Property is disputed by the Trustee, the Trustee seeks authority to sell the Real
3 Property free and clear of any disputed lien or interest. The disputed liens and interests,
4 if any, will attach to the same extent, priority and validity as existed on the Petition Date
5 to the remaining proceeds of the Sale, without a waiver of any of the Trustee's or
6 Debtor's rights.

7
8 **B. The Trustee May Sell the Real Property Pursuant to 11 U.S.C. § 363(h)**

9 The Estate holds a fifty percent (50%) tenancy in common interest in Property
10 No. 3 with the Wilkins. The Trustee seeks to sell all of Property No. 3 to the Buyer,
11 including the 50% interest held by the Wilkins. Pursuant to 11 U.S.C. § 363(h), the
12 Trustee may sell a co-owners' interest in real property. Section 363(h) provides, as
13 follows:

14 Notwithstanding subsection (f) of this section, the trustee may
15 sell both the estate's interest, under subsection (b) or (c) of
16 this section, and the interest of any co-owner in property in
17 which the debtor had, at the time of the commencement of
the case, an undivided interest as a tenant in common, joint
tenant, or tenant by the entirety, only if—

18 (1) partition in kind of such property among the estate and
such co-owners is impracticable;

19 (2) sale of the estate's undivided interest in such property
20 would realize significantly less for the estate than sale of such
property free of the interests of such co-owners;

21 (3) the benefit to the estate of a sale of such property free of
22 the interests of co-owners outweighs the detriment, if any, to
such co-owners; and

23 (4) such property is not used in the production, transmission,
24 or distribution, for sale, of electric energy or of natural or
synthetic gas for heat, light, or power.

25 In the instant case, all of the conditions set forth in 11 U.S.C. § 363(h) are met.
26 Section 363(h) permits sale of a co-owner's interest in property in which the debtor had
27 an undivided ownership interest such as a joint tenancy, a tenancy in common, or a
28 tenancy by the entirety. Such a sale is permissible only if partition is impracticable, if

1 sale of the estate's interest would realize significantly less for the estate than sale of the
2 property free of the interests of the co-owners, and if the benefit to the estate of such a
3 sale outweighs any detriment to the co-owners. The Estate holds a undivided tenancy in
4 common interest in Property No. 3. Partition is impracticable as it is raw land amongst
5 other parcels of raw land. More importantly, the Estate would realize significantly less if
6 Property No. 3 is partitioned. The value of the Real Property and the Purchase Price
7 obtained by the Trustee is based upon the collective value of the Real Property which
8 includes all of Property No. 3. Further, the detriment to the Estate greatly outweighs the
9 detriment to the Wilkins.

10 Where all of the conditions are met, the Trustee is entitled to sell Property No. 3,
11 including the interest held by the Wilkins. See In re Palermini, 113 B.R. 380 (Bankr. S.D.
12 Ohio 1990) (chapter 7 trustee was entitled to sell property jointly held by debtor and his
13 wife free and clear of all liens, where partition was impracticable, sale of estate's
14 undivided interest in property would realize significantly less than sale of such property
15 free of interest of wife, and there was no particular showing of detriment to wife);
16 see also In re Block, 259 B.R. 498 (Bankr. D. R.I. 2001) (chapter 7 trustee would be
17 allowed to sell both debtor's one-half interest and one-half interest of other tenant in
18 jointly owned real estate development, where partition of property was impracticable,
19 where sale of estate's interest only would result in significantly reduced return, and where
20 other cotenant was negotiating to sell and would suffer little or no detriment if trustee was
21 allowed to market and sell property and to allocate costs of sale between co-owners). As
22 such, the Trustee requests authority to sell Property No. 3 to the Buyer, including the
23 50% interest held by the Wilkins. The Trustee also requests authority to allocate the
24 costs associated with the Real Property Sale in the same proportion as the current
25 allocation of the Purchase Price when determining the net proceeds that should be paid
26 to the Wilkins.

1 **VI. THE BUYER OF THE REAL PROPERTY SHOULD BE DEEMED A "GOOD**
2 **FAITH PURCHASER" PURSUANT TO § 363(m) OF THE BANKRUPTCY CODE**

3 Bankruptcy Code § 363(m) provides:

4 The reversal or modification on appeal of an authorization
5 under subsection (b) or (c) of this section of a sale or lease of
6 property does not affect the validity of a sale or lease under
7 such authorization to an entity that purchased or leased such
8 property in good faith, whether or not such entity knew of the
9 pendency of the appeal, unless such authorization and such
10 sale or lease were stayed pending appeal.

11 11 U.S.C. § 363(m).

12 A good faith buyer "is one who buys 'in good faith' and 'for value.'" Ewell v.
13 Diebert (In re Ewell), 958 F.2d 276, 281 (9th Cir. 1992) (citing In re Abbotts Dairies of
14 Pennsylvania, Inc., 788 F.2d 143, 147 (3d Cir. 1986)). "[L]ack of good faith is [typically]
15 shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an
16 attempt to take grossly unfair advantage of other bidders.'" Id. (quoting Community Thrift
17 & Loan v. Suchy (In re Suchy), 786 F.2d 900, 902 (9th Cir. 1985)). In the instant case,
18 the Buyer did buy in good faith and has offered to pay market value for the Real
19 Property. The anticipated Sale of the Real Property has been negotiated with the Buyer
20 in "arms-length" discussions. See Zamora Decl. Moreover, the Sale will be conducted in
21 a commercially reasonable manner following appropriate notice and evidence of the
22 Trustee's marketing efforts. Based on such facts and circumstances, the Trustee
23 believes that this Court can properly determine the Buyer, the Successful Bidder, and the
24 Back-Up Bidder as a "good faith purchaser" pursuant to § 363(m) of the Bankruptcy
25 Code.

26 **VII. OVERBID REQUIREMENTS**

27 **A. Proposed Overbid Procedures Sought to be Approved**

28 In connection with the transaction contemplated by the Agreement, the Trustee
seeks approval of the following overbid procedures:

1. Any qualifying bidder ("Qualifying Bidder") shall:

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- a. bid at least \$1,575,000.00, in cash for the Real Property;
 - b. set forth in writing the terms and conditions of the offer that are at least as favorable to the Trustee as those set forth in the Agreement attached as Exhibit "2;"
 - c. be a party financially qualified, in the Trustee's exercise of her sound business judgment, to close the Sale on a timely basis;
 - d. submit an offer that does not contain any contingencies to closing the Sale, including, but not limited to, financing, inspection, or repair contingencies;
 - e. submit a cash deposit in the amount of Fifty Thousand Dollars (\$50,000.00) payable to the Trustee in the form of a cashier's check, which deposit shall be non-refundable if the bid is deemed to be the Successful Bid, as defined in ¶4 below (the "Deposit"). The Deposit and written offer must be delivered to counsel for the Trustee, Philip E. Strok, Esq., Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP, 650 Town Center Drive, Suite 950, Costa Mesa, California 92626, no later than the date and time set by the Court for the hearing on the Motion.
2. At the hearing on the Motion, only the Buyer and any party who is deemed a Qualifying Bidder shall be entitled to bid.
 3. Any incremental bid, including credit bids, in the bidding process shall be at least Ten Thousand Dollars (\$10,000.00) higher than the prior bid.
 4. At the hearing on the Motion, and upon conclusion of the bidding process, the Trustee shall decide which of the bids is the best bid, and such bid shall be deemed to be the "Successful Bid." The bidder who is accepted by the Trustee as the successful bidder (the "Successful Bidder") must pay all amounts reflected in the Successful Bid in cash at the closing of the Sale. At the hearing on the Motion, and upon conclusion of the bidding process,

1 the Trustee may also acknowledge a back-up bidder ("Back-Up Bidder")
2 which shall be the bidder with the next best bid. Should the Successful
3 Bidder fail to close escrow on the Sale, the Trustee may sell the Real
4 Property to the Back-Up Bidder without further Court order.

- 5 5. One possible overbidder on the Real Property, Nissim Edri, expressed an
6 interest in the Real Property prior to the Trustee's retention of the Broker.
7 Therefore, if Mr. Edri is deemed the Successful Bidder as defined in ¶ 4
8 above, the Broker will not be paid a commission on the Sale of the Real
9 Property. Moreover, if Mr. Edri is deemed the Successful Bidder as defined
10 in ¶ 4 above, his bid will be reduced by the amount of the Broker's
11 commission as no Broker's commission will be paid on a Sale of the Real
12 Property to Mr. Edri.

13
14 **B. The Bankruptcy Court has the Authority to Implement the Proposed**
15 **Overbid Procedures**

16 Implementation of the bidding procedures is an action outside of the ordinary
17 course of business. 11 U.S.C. § 363(b)(1) provides that a trustee "after notice and
18 hearing, may use, sell or lease, other than in the ordinary course of business, property of
19 the estate." Furthermore, under 11 U.S.C. § 105(a), "[t]he court may issue any order,
20 process, or judgment that is necessary or appropriate to carry out the provisions of this
21 title." Thus, pursuant to §§ 363(b)(1) and 105(a), this Court may authorize the
22 implementation of overbidding procedures.

23 The bankruptcy court may issue orders determining the terms and conditions for
24 overbids with respect to a sale of estate assets, including specifying the minimum
25 consideration required for an overbid, the particular contractual terms required to be
26 offered by overbidders, and requiring and setting the amount of potential overbidder's
27 deposits. In re Crown Corporation, 679 F.2d 774 (9th Cir. 1982). The overbid
28 procedures proposed in this Motion will ensure that the Real Property will generate the

1 greatest possible value to the Estate. They also place appropriate checks upon
2 overbidders to ensure that only Qualified Bids are considered.

3

4 **VIII. THE BROKER'S COMMISSION SHOULD BE APPROVED**

5 Real estate brokers are "professionals" for Bankruptcy Code § 327 purposes and
6 as such their employment must be approved by the court. In re Cummins, 15 B.R. 893,
7 895 (B.A.P. 9th Cir. 1981). The Broker's commission is 4% of the proposed Sale price
8 and is reasonable. Further, in the Trustee's opinion, broker's commission on raw land
9 are typically 10%. In the instant case, the Broker's commission is 4%. The Broker has
10 performed a very valuable service for the Estate by extensively marketing the Real
11 Property and locating the Buyer to purchase the Real Property.

12 As previously discussed, the Sale is fair and reasonable and is in the best interest
13 of the Estate. Therefore, the 4% commission is reasonable and should be approved by
14 the Court. The Broker's commission will not be paid until the Court approves the
15 Trustee's application seeking to employ the Broker.

16

17 **IX. CONCLUSION**

18 Based on the foregoing, the Trustee respectfully requests that this Court issue an
19 order:

- 20 1. Granting the Motion;
- 21 2. Approve the overbid procedures outlined in the Motion;
- 22 3. Authorize the Trustee to sell the Real Property to the Buyer, the Successful
23 Bidder, or the Back-Up Bidder free and clear of all liens pursuant to 11 U.S.C. §§ 363(b)
24 and (f);
- 25 4. Authorize the Trustee to sell the Real Property to the Buyer, the Successful
26 Bidder, or the Back-Up Bidder pursuant to 11 U.S.C. § 363(h) with a 50% disbursement
27 of net proceeds attributed to Property No. 3 to the Wilkins;
- 28 5. Determine the Buyer, the Successful Bidder, and the Back-Up Bidder as a

- 1 "good faith purchaser" pursuant to 11 U.S.C. § 363(m).
- 2 6. Approve the terms of the Agreement attached as Exhibit "2;"
- 3 7. Authorize the Trustee to execute any and all documents necessary to
- 4 consummate the Sale of the Real Property, including, but not limited to, documents on
- 5 behalf of the Estate, the Debtor, Janice Ross, the Wishing Well, and the Wilkins
- 6 necessary to consummate the Sale of the Real Property;
- 7 8. Authorize the Trustee to pay all undisputed liens, including negotiated
- 8 amounts on liens, lis pendens, costs of Sale, broker's commission, tax liens, and the
- 9 Estate's pro rata share of real property taxes, in full from the proceeds of the Sale
- 10 without further order of the Court;
- 11 9. Waiving the provisions of Federal Rule of Bankruptcy Procedure 6004(g) as
- 12 the Sale of the Real Property must close by February 14, 2006; and
- 13 10. Authorize the Trustee to take any and all necessary action to consummate
- 14 the Sale of the Real Property.

15
16 DATED: January 20, 2006

Respectfully submitted,
WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

18
19 By: 
20 REEM J. BELLO
21 Attorneys for Nancy H. Zamora,
22 Chapter 7 Trustee
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DECLARATION OF NANCY H. ZAMORA

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I, Nancy H. Zamora, declare:

1. I am the duly appointed and acting chapter 7 trustee of the bankruptcy estate ("Estate") of Daniel J.J. Ross ("Debtor"). I submit this declaration in support of the motion for order: (1) authorizing and approving the sale of real property free and clear of liens, claims, and interests pursuant to 11 U.S.C. §§ 363(b), (f) and (h); (2) approving overbid procedures; and (3) authorizing payment of undisputed liens, real estate broker's commission and other ordinary costs of sale (the "Motion"). I know each of the following facts to be true of my own personal knowledge except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. Capitalized terms in this declaration shall have the same meaning ascribed to them in this Motion.

2. The subject of this Motion is the Sale of the Real Property to the Buyer for \$1,500,000.00 pursuant to the Agreement attached as Exhibit "2" and the overbid procedures sought to be approved by the Court herein (the "Overbid Procedures"). The Buyer has made an earnest money deposit into escrow in the amount of \$50,000.00.

3. I believe the Buyer is offering fair market value for the Real Property.

4. I, through my Broker, have engaged in significant marketing activity related to the Real Property for over 1 year. I contracted with the Broker to locate a buyer for the Real Property in order to ensure that the price received for the Real Property is the "best and highest" available. The \$1,500,000.00 offer from the Buyer was the best offer received to date.

5. The anticipated Sale of the Real Property has been negotiated with the Buyer in "arms-length" discussions. There is no relationship between the Buyer and me. Moreover, the Sale will be conducted in a commercially reasonable manner following appropriate notice.

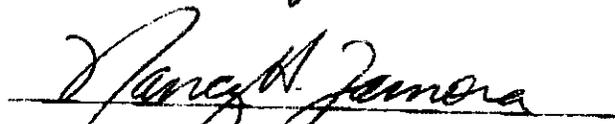
6. Moreover, the proposed overbid procedures will ensure that the Real Property is sold for the best and highest price. A copy of the Notice of the hearing on the

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Sale of the Real Property will be sent to all parties who have previously expressed an interest in the Real Property.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th of January, 2006, at Los Angeles, California



NANCY H. ZAMORA

ORIGINAL

1 **WEILAND, GOLDEN,**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Jeffrey I. Golden, State Bar No. 133040
4 Philip E. Strok, State Bar No. 169296
5 Reem J. Bello, State Bar No. 198840
6 650 Town Center Drive, Suite 950
7 Costa Mesa, California 92626
8 Telephone: (714) 966-1000
9 Facsimile: (714) 966-1002

ENTERED
NOV 18 2005
U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

FILED
NOV 17 2005
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

6 Attorneys for Nancy H. Zamora,
7 Chapter 7 Trustee

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SAN FERNANDO VALLEY DIVISION**

11 In re

12 DANIEL J.J. ROSS,

) Case No. SV 04-16181 KT

) Chapter 7 Case

ORDER AUTHORIZING:

(1) COMPROMISE OF CONTROVERSY
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019; AND

(2) THE OBTAINING OF INDEBTEDNESS
SECURED BY A SENIOR LIEN ON REAL
PROPERTY THAT IS SUBJECT TO A
LIEN

Debtor.

DATE: November 8, 2005
TIME: 11:00 a.m.
CTRM: 301

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23 On November 8, 2005 at 11:00 a.m., a hearing was held in the above-captioned
24 Court on the motion of Nancy H. Zamora, the chapter 7 trustee ("Trustee") of the
25 bankruptcy estate ("Estate") of Daniel J.J. Ross (the "Debtor"), for an order authorizing:
26 (1) compromise of controversy pursuant to Federal Rule of Bankruptcy Procedure 9019;
27 and (2) the obtaining of indebtedness secured by a senior lien on real property that is
28 subject to a lien (the "Motion"). Philip E. Strok, Esq. of Weiland, Golden, Smiley, Wang

1 Ekvall & Strok, LLP, appeared for the Trustee. Other appearances were made as noted
2 on the record.

3 Capitalized terms in this Order shall have the same meaning ascribed to them in
4 the Motion.

5 Having considered the Motion and the evidence submitted, Union Home loan
6 Inc.'s Statement of Conditional Non-Opposition to the Motion, and finding that notice and
7 service of the Motion were properly effectuated on all parties required to be noticed and
8 served, for the reasons stated in the Motion and good cause appearing therefrom,

9 **IT IS ORDERED** that:

10 1. The Motion is granted.

11 2. The Trustee is authorized to enter into the Agreement attached as
12 Exhibit A, which Agreement affects the Real Property described in the Agreement and in
13 Exhibit B.

14 3. The terms of the Agreement are approved pursuant to Federal Rule of
15 Bankruptcy Procedure 9019.

16 4. The Trustee is authorized to execute any and all documents reasonably
17 necessary to effectuate the terms of the Agreement.

18 5. The payment through escrow at Closing (or from the loan proceeds) of the
19 actual undisputed allowed claims against the Real Property is approved and authorized.

20 6. The Trustee is authorized to reserve sufficient cash for disputed claims
21 against the Real Property.

22 7. The Trustee and the Debtor are authorized to obtain secured indebtedness
23 from Diversified or a substitute lender as detailed in the Motion and Agreement secured
24 by a first priority lien on the Real Property.

25 8. The lien obtained by Diversified or a substitute lender shall be deemed
26 senior to the liens against the Real Property remaining after Closing for all purposes and
27 the existing liens shall be unconditionally subordinate to the lien of Diversified or a
28 substitute lender.

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9. The payment of \$15,000.00 to Broker through escrow at Closing or from the net proceeds of the loan not otherwise reserved by the Trustee for disputed claims against the Real Property is approved and authorized.

DATED: 10/10/2005

Kathleen Thompson
THE HONORABLE KATHLEEN THOMPSON
United States Bankruptcy Judge

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is made, executed and entered into effective October 13, 2005 by and between:

Nancy Hoffmeier Zamora, the duly appointed and acting chapter 7 trustee ("**Trustee**") of the bankruptcy estate ("**Estate**") of Daniel J.J. Ross;

Daniel J.J. Ross ("**Debtor**"), debtor in the pending chapter 7 bankruptcy case ("**Bankruptcy Case**") filed on September 20, 2004, as Case No. SV 04-16181 KT, in the United States Bankruptcy Court ("**Court**") for the Central District of California, San Fernando Valley Division, the Honorable Kathleen Thompson presiding;

Janice M. Ross ("**Janice**"), the non-filing spouse of the Debtor; and

The Wishing Well, Inc., a California corporation ("**Wishing Well**");

each, a "**Party**," and all, the "**Parties**," with regard to the following facts, circumstances, beliefs and understandings (collectively, "**Recitals**");

RECITALS:

A. The Debtor filed the Bankruptcy Case on September 20, 2004 ("**Petition Date**") and the Trustee was subsequently appointed.

B. The Debtor's Schedule A reflects his "Fee Owner" interest in undeveloped real property located at 500 - 533 Lofty Heights Drive, Malibu, California 90265 ("**Property No. 1**"). The Debtor also has an interest in certain scheduled and unscheduled personal property assets ("**Personal Property**").

C. On the Debtor's Schedule C, the Debtor claimed a \$50,000.00 homestead exemption in Property No. 1 in accordance with California Code of Civil Procedure § 704.730(a)(1). The Debtor informally asserts that he is entitled to a \$75,000.00 homestead exemption in Property No. 1 in accordance with California Code of Civil Procedure § 704.730(a)(2). The Debtor's claimed homestead exemptions pursuant to this Recital C are collectively referred to as the "**Homestead Exemption**."

D. The Trustee was authorized to employ RE/MAX Grand Central ("**Broker**") to sell Property No. 1 on the terms, conditions and for the rate of compensation indicated in the Trustee's employment application pursuant to the Court's order entered November 4, 2004. The employment application provides that "if Debtor or any insider, relative, or affiliate of Debtor purchases the Estate's interest in the Real Property, the Estate shall pay Broker a four percent (4%) commission on the gross sales price or settlement payment paid by Debtor or any insider, relative, or affiliate of Debtor."

E. As of the Petition Date, Wishing Well had an ownership interest in two (2) properties adjacent to Property No. 1: (1) vacant land in Malibu, California - Assessor's Parcel Number 4471-018-026 ("**Property No. 2**"); and (2) vacant land in Malibu, California - Assessor's Parcel Number 4471-018-024 ("**Property No. 3**"). Property No. 2 and Property

No. 3 are collectively referred to as the "Wishing Well Properties." Property No. 1 and the Wishing Well Properties are collectively referred to as the "Real Property."

F. The Trustee contends, among other things, that: (1) prior to the Petition Date, the Debtor transferred his shares of stock in Wishing Well to Janice for no consideration and, consequently, the Estate has a community property interest in Wishing Well and the Wishing Well Properties; and (2) the Wishing Well Properties were transferred by quitclaim deed to Michael Apollo Criscione and Gary Kanter ("Transferees") for no consideration post-Petition Date. Upon the joint efforts of the Trustee and the Debtor, Transferees have subsequently transferred the Wishing Well Properties back to Wishing Well such that Wishing Well has been restored to its ownership position as if no such transfers had occurred.

G. As a result of the Trustee's assertion that the Debtor had repeatedly failed to: (1) appear at the meeting of creditors and to produce documents requested by the Trustee; (2) cooperate with the Trustee in the marketing and sale of Property No. 1; and (3) vacate and remove personal possessions from Property No. 1, the Trustee filed a motion to compel the Debtor's cooperation. The Court granted the Trustee's motion and, by order entered June 29, 2005, among other things, required the Debtor and his family to vacate, turn over to the Trustee, and remove personal possessions from Property No. 1 by no later than July 21, 2005 ("Turnover Order").

H. The Debtor and Janice continue to reside in a mobile home on Property No. 1 notwithstanding the Turnover Order.

I. The Trustee has filed a motion for order: (1) to hold the Debtor and Janice in contempt of the Turnover Order; (2) directing and authorizing the United States Marshall Service to enforce the Turnover Order; and (3) surcharging the Debtor's Homestead Exemption, or, in the alternative, granting sanctions against the Debtor and Janice ("OSC Motion"). In response to the OSC Motion, the Court issued its "Order to Show Cause Why Debtor and Janice Ross Should Not Be Held in Contempt for Failure to Comply with This Court's Order of June 29, 2005" ("OSC Order"). The OSC Motion and OSC Order are pending.

J. The Debtor has received a commitment letter from Diversified Lending Group, Inc. pursuant to which the Debtor will obtain a loan in the net amount of \$1,500,000.00 to be secured by the Real Property. The Trustee is willing to consent to such transaction so long as the entire \$1,500,000.00 is used to satisfy legitimate claims against the Real Property and the Estate.

K. The Parties desire pursuant to this Agreement to once and forever settle any and all claims, disputes, allegations and defenses of any kind or nature that any Party may have against the other Party, except as otherwise reserved, which may result from, relate to, or otherwise arise in connection with any of the matters referenced in this Agreement.

Therefore, pursuant to the Recitals and for good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties, desiring to be legally bound by this Agreement, hereby covenant, agree, warrant, represent and declare as follows:

ARTICLE 1
APPROVAL OF AGREEMENT BY COURT

1.1 Obligation of Parties to Seek Approval of Agreement. Each Party will in good faith exercise all reasonable efforts which may be required of such Party to cause the Court in the Bankruptcy Case to issue and enter a final binding order approving this Agreement, including promptly executing and delivering any motions or declarations or other items of support that may be reasonably required in connection therewith. The order will be deemed final upon the expiration of any applicable appeal periods without the filing of an appeal therefrom. Each Party will appear at any hearing on the motion seeking approval of this Agreement, and at any subsequent hearings relating to such approval including any appeal of any action by said Court regarding this Agreement.

1.2 Agreement Contingent Upon Court Approval. All of the terms of this Agreement, with the sole exception of the terms set forth in this Article 1 and Article 4, are contingent upon the entry of a final binding order by the Court in the Bankruptcy Case approving the Agreement. The first day upon which such Order has been entered is referred to in this Agreement as the "**Approval Date**." If this Agreement is not approved pursuant to Section 1.1, then this Agreement will automatically terminate and be of no further force or effect, except for Article 1 and Article 4.

ARTICLE 2
SETTLEMENT TERMS

2.1 Loan Transaction. The Debtor, Janice and/or Wishing Well may borrow against the Real Property, solely for the purpose of paying legitimate claims against the Real Property and the Estate, provided that:

- (1) all net proceeds of the loan, which amount shall be not less than \$1,500,000.00, less only the actual undisputed allowed claims against the Real Property which shall be paid through escrow upon Closing (as defined below), are paid directly to the Trustee on behalf of the Estate;
- (2) the escrow instructions governing the loan transaction must require the payment pursuant to Section 2.1(1) directly from escrow to the Trustee on behalf of the Estate;
- (3) the Debtor, Janice and/or Wishing Well shall be responsible for any and all lender's fees and costs, recording fees for lender's deed of trust, document preparation fees charged by lender, loan fees or points charged by lender, brokerage commissions or fees, and any other fees or costs associated with the loan transaction, all of which such fees and costs shall not reduce the net proceeds to be paid to the Estate pursuant to Section 2.1(1);
- (4) the loan records and funds and the Trustee receives all net proceeds therefrom in accordance with Section 2.1(1) by no later than the 30th day following the entry date of the order approving this Agreement ("Closing"); and

- (5) The Closing occurs by no later than December 15, 2005, unless extended in writing by the Trustee in her sole discretion which shall not be unreasonably withheld.

2.2 Abandonment of Real Property and Personal Property. Upon Closing, the Estate's interest in the Real Property and Personal Property will be deemed abandoned to the Debtor.

2.3 Consent to Certain Administrative Expenses. Subject to any orders necessary from the Court in the Bankruptcy Case, the Debtor, Janice and Wishing Well consent to the following payments from the loan proceeds: (1) Trustee's compensation under 11 U.S.C. § 326(a) calculated upon a \$1,500,000.00 distribution by the Trustee; and (2) \$15,000.00 to the Broker.

2.4 Cooperation of the Parties. Both prior to and after the Closing, the Parties will cooperate to resolve all disputed claims against the Real Property and the Estate in an expeditious manner and will execute all documents reasonably required to effectuate the loan transaction discussed in Section 2.1 and in connection with the resolution of disputed claims against the Real Property and the Estate. It shall be a Default of this Agreement by any Party failing to reasonably cooperate as required by this Section 2.4.

2.5 Prohibition Against Transferring or Encumbering the Real Property. Through Closing and except (i) as provided in Section 2.1, and (ii) as reasonably necessary to effectuate the Closing (which may include transfer of the Real Property to Janice or the Debtor), the Debtor, Janice or Wishing Well shall not transfer, hypothecate or otherwise encumber the Real Property.

2.6 Reservation of Rights. The Trustee, on behalf of the Estate, reserves her rights and claims with respect to the Homestead Exemption and any exemption claimed by the Debtor or Janice in Property No. 1, the Wishing Well Properties or Personal Property. The Debtor and Janice reserve all of their rights to defend any such rights or claims asserted by the Trustee.

ARTICLE 3 **RELEASE OF CLAIMS**

3.1 Definition of a Claim for Purposes of this Article. For purposes of this Agreement, "Claim" will mean and refer to any claims, demands, rights, obligations, duties, debts, liens, encumbrances, levies, contracts, agreements, promises, covenants, understandings, damages, injuries, actions, causes of action, expenses, costs, charges, attorneys' fees, judgments, orders and liabilities of any kind, whether in law, equity or otherwise, whether known or unknown, and whether or not concealed or hidden.

3.2 Release of Claims by Debtor, Janice and Wishing Well. Upon the Approval Date, except for and in consideration of obligations and liabilities arising under this Agreement and the rights and Claims reserved under Section 2.6, the Debtor, Janice and Wishing Well, for and on behalf of themselves, and their respective successors, assigns, administrators and trustees (collectively, the "Debtor Releasing Parties"), hereby now and forever release, discharge and promise not to sue the Trustee, individually or in her representative capacity on behalf of the Estate, the Estate in the Bankruptcy Case, or any of their respective administrators, attorneys, accountants, auditors, heirs, successors, executors, trustees or assigns (collectively, the "Estate

Released Parties"), from any and all Claims which the Debtor Releasing Parties may now own or hold, or have at any time prior hereto owned or held, or may in the future own or hold, against the Estate Released Parties, resulting from, arising out of, or otherwise relating in any way to, the acts, errors, omissions, business, affairs, dealings and conduct of the Estate Released Parties, relating to the specific matters and disputes referenced in this Agreement. It is the intention of the Debtor Releasing Parties that by executing this Agreement, this Agreement will be effective as a complete and absolute bar to each and every such Claim. In furtherance of this intention, the Debtor Releasing Parties hereby waive any and all rights and benefits conferred upon the Debtor Releasing Parties pursuant to the provisions of Section 1542 of the California Civil Code, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.3 Release of Claims by Estate. Upon the Closing Date, except for and in consideration of obligations and liabilities arising under this Agreement and the rights and Claims reserved under Section 2.6, the Trustee, individually and on behalf of the Estate in the Bankruptcy Case, and her respective successors, assigns, administrators and trustees (collectively, the **"Estate Releasing Parties"**), hereby now and forever release, discharge and promise not to sue the Debtor, Janice, or Wishing Well, or any of their respective administrators, attorneys, accountants, auditors, heirs, successors, executors, or trustees (collectively, the **"Debtor Released Parties"**), from any and all Claims which the Estate Releasing Parties may now own or hold, or have at any time prior hereto owned or held, or may in the future own or hold, against the Debtor Released Parties, resulting from, arising out of, or otherwise relating in any way to, the acts, errors, omissions, business, affairs, dealings and conduct of the Debtor Released Parties, related to the specific matters and disputes referenced in this Agreement. It is the intention of the Estate Releasing Parties that by executing this Agreement, this Agreement will be effective as a complete and absolute bar to each and every such Claim. In furtherance of this intention, the Estate Releasing Parties hereby waive any and all rights and benefits conferred upon the Estate Releasing Parties pursuant to the provisions of Section 1542 of the California Civil Code, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.4 Binding Effect. To the fullest extent permitted by law, the terms of this Agreement, including all benefits derived by any Party pursuant to the terms of this Agreement, will be binding on all of the Parties and on all of the creditors in the Bankruptcy Case.

ARTICLE 4
DEFAULTS AND REMEDIES

4.1 Default by the Debtor, Janice and Wishing Well. The Debtor, Janice and Wishing Well will be in material default ("Default") of this Agreement upon the occurrence of any of the following events:

- (a). Any failure in the payment to the Trustee in accordance with the requirements of Section 2.1 of all net loan proceeds (but not less than \$1,500,000.00);
- (b). Closing has not occurred by the 30th day following the entry date of the order approving this Agreement;
- (c). Closing has not occurred by December 15, 2005;
- (d). The Debtor, Janice or Wishing Well transfer, hypothecate or otherwise encumber the Real Property; and
- (e). Any breach by the Debtor, Janice or Wishing Well of any covenant, condition, representation or warranty set forth in this Agreement other than those described above;

and with respect to the events of material default described in Sections 4.1(a) through 4.1(e), time is of the strictest essence and there will be no requirement for any giving of notice or any opportunity to cure before such event constitutes a Default.

4.2 Remedies Upon Default. In the event of Default and without the need for any order from the Court:

- (a). Janice's stock ownership in Wishing Well shall be deemed community property of the Debtor's Estate;
- (b). Janice shall immediately turn over her stock in Wishing Well to the Trustee;
- (c). Janice's ownership interest in Property No. 1 shall be deemed community property of the Debtor's Estate;
- (d). The Debtor, Janice and their family shall vacate and turn over the Real Property to the Trustee within five (5) days of the event of Default, unless extended by the Trustee, extension will not be unreasonably withheld;
- (e). The Debtor, Janice and their family shall remove all personal possessions from the Real Property within five (5) days of the event of Default and if said personal possessions are not removed within five (5) days, the Trustee shall be authorized to dispose of or liquidate same in any manner she deems appropriate with any proceeds inuring to the benefit of the Estate;
- (f). The Debtor, Janice and Wishing Well shall fully cooperate with the Trustee and her agents respecting efforts and arrangements by the Trustee for the sale of the Real Property, including, without limitation, the

execution of all documents reasonably required by the Trustee in connection with any such sale;

- (g). The Trustee shall be immediately entitled to pursue all relief sought in the OSC Motion; and
- (h). The Trustee and the Estate will be entitled to any other remedy available at law or inequity.

4.3 Remedies are Non-Exclusive. The rights and remedies set forth above are entirely non-exclusive, such that the exercise by any Party of any rights or remedies will not preclude the exercise by any Party of any other rights or remedies, or of the same rights or remedies at any time thereafter.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Legal Capacity to Contract. Each Party represents that, subject to the entry of the order by the Court approving of this Agreement pursuant to Section 1.1, it has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Agreement and to fully perform its duties and obligations under this Agreement, and that neither this Agreement nor the performance by such Party of any duty or obligation under this Agreement will violate any other contract, agreement, covenant or restriction by which such Party is bound except that the Trustee acknowledges that Wishing Well may not be a corporation in "good standing" in the State of California and no Default will be asserted in this regard by the Trustee. Neither the Debtor, Janice nor Wishing Well shall be obligated by this Agreement to seek and/or obtain reinstatement of Wishing Well as a corporation in "good standing."

5.2 No Prior Assignments. Each Party represents that it has not pledged, transferred or assigned to any third party any right, interest, claim, or cause of action being transferred, conveyed, released or compromised pursuant to this Agreement, and such Party will indemnify all other Parties from and against any third party claim asserting such an pledge, transfer or assignment of any such right, interest, claim or cause of action.

5.3 No Undisclosed Inducements. Each Party represents that it executed and entered into this Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties or promises other than those set forth in this Agreement were made by any Party or any employee, agent or legal counsel of any Party to induce said Party to execute this Agreement.

5.4 No Admission of Liability. This Agreement has been negotiated and executed for the purpose of settling the various disputes described herein and obtaining the release of any known, suspected or unknown claims that the Debtor Releasing Parties may have against the Estate Released Parties and that the Estate Released Parties may have against the Debtor Released Parties with respect to the various disputes described herein. The execution of this Agreement by any Party does not constitute, infer or evidence the truth of any claim, the admission of any liability, the validity of any defense or the existence of any circumstance or fact which could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the terms and provisions of this Agreement.

5.5 Representation by Counsel. Each Party represents that it has acted pursuant to the advice of legal counsel of its own choosing in connection with the negotiation, preparation and execution of this Agreement, or that it was advised to obtain the advice of such legal counsel, had ample opportunity to obtain the advice of such legal counsel and willfully declined to obtain the advice of such legal counsel.

5.6 Truth and Accuracy of Representations and Warranties. Each of the representations, warranties and covenants set forth in this Agreement will be, and the Party making the same will cause them to be, true and correct as of the time of execution of this Agreement and as of the time of the entry by the Court pursuant to Section 1.1 of the order approving this Agreement.

5.7 Survival. Each of the statements, certifications, representations, warranties, covenants, disclosures, disclaimers, waivers and other agreements contained in this Agreement will survive:

- (a). The execution and delivery of this Agreement and entry of the final approval order in the Bankruptcy Case;
- (b). The performance of any obligations pursuant to this Agreement;
- (c). With respect to the Bankruptcy Case, its dismissal, the withdrawal of any reference, the conversion from a case under chapter 7 of the Bankruptcy Code to one under another chapter of the Bankruptcy Code;
- (d). The sale, conveyance, assignment, transfer or disposition of all or a portion of the assets of any Party; and
- (e). The assignment, transfer or delegation to any third party of this Agreement or any right, privilege, entitlement, interest, duty, obligation or liability thereunder.

ARTICLE 6 GENERAL TERMS AND PROVISIONS:

6.1 Entire Agreement. This Agreement will constitute the sole and entire agreement between the Parties with respect to the settlement of disputes and release of claims provided for herein. Any and all prior or contemporaneous agreements and negotiations, whether oral or written, with respect to the subject matter of this Agreement, are hereby superseded. No employee or agent of any Party has authority to orally modify any term or condition of this Agreement, or to make any representation or agreement other than as contained in this Agreement. Unless any representation or agreement is contained in this Agreement or is added pursuant to a written agreement executed by all Parties, it will not be binding nor otherwise affect the validity of this Agreement.

6.2 Amendment of Agreement. No modification of, deletion from, or addition to this Agreement will be effective unless made in writing and executed by each Party hereto.

6.3 Construction of Agreement. The provisions of this Agreement will be liberally construed to effectuate the intended settlement of the disputes and the release of all related claims. Section headings have been inserted for convenience only and will not

be given undue consideration in resolving questions of construction or interpretation. For purposes of determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, term or provision of this Agreement, each Party will be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal control over the preparation of this document, such that neither the Agreement nor any uncertainty or ambiguity herein will be arbitrarily construed or resolved against any Party under any rule of construction.

6.4 Further Assurances. Each Party will promptly execute any and all instruments and documents and take all other actions, including the payment of money that may be required to effectuate the contemplated settlement and release.

6.5 Gender and Quantitative Use. Wherever the context of this Agreement may so require, the gender will include the masculine, feminine and neuter, and the quantitative usage of any word, term or phrase will include the singular and plural.

6.6 Enforcement of Agreement. Each Party to this Agreement will have the right to enforce by proceedings at law or in equity all of the terms and provisions of this Agreement, including the right to prosecute proceedings at law or in equity against the person(s) who have violated or who are attempting to violate any of such terms or provisions, to enjoin such person(s) from doing so, to cause such violation to be remedied, and/or to recover damages for such violation.

6.7 Waiver. The failure by any Party to enforce any term or provision of this Agreement will not constitute a waiver of the right to enforce the same term or provision, or any other term or provision, thereafter. No waiver by any Party of any term or provision of this Agreement will constitute a waiver of any other provision of this Agreement, whether or not similar, nor will any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

6.8 Severability. In the event that any term or provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, then the remaining portions of this Agreement will nonetheless remain in full force and effect, unless such portion of the Agreement is so material that its deletion would violate the obvious purpose and intent of the Parties.

6.9 Litigation Costs and Attorneys' Fees. If any Party(s) commences legal proceedings against any other Party(s) to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, then the prevailing Party(s) will recover from the losing Party(s) its/their costs of suit, including reasonable attorneys' fees, as determined by the court.

6.10 Governing Law, Jurisdiction and Venue. This Agreement is made under and will be construed in accordance with and governed by the laws of the State of California, without giving effect to the principles of conflicts of law. All Parties consent to the jurisdiction and venue of the United States Bankruptcy Court - Central District of California, San Fernando Valley Division, the Honorable Kathleen Thompson presiding over the Bankruptcy Case, for the purpose of resolving any disputes which may arise under this Agreement. If for any reason said Court declines to accept such jurisdiction, then the Parties will be deemed to have consented to the jurisdiction of California courts and to venue in Los Angeles County, California.

6.11 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together constitute one and the same agreement. Signatures may be provided by facsimile, with the same force as an original.

6.12 Inurement. This Agreement shall inure to the benefit of and be fully binding upon each of the Parties and upon their respective heirs, executors, successors, assigns and grantees.

6.13 Conventions and Rules of Construction. The words "include," "includes" and "including" will be deemed to be followed by the words "without limitation." Words or phrases denoting the singular will be deemed to include the plural and words or phrases denoting the plural will be deemed to include the singular, unless contrary to the obvious intent of this Agreement. A reference to any Party will include such Person's successors. References to "days" will mean calendar days, unless otherwise specifically provided. A "Business Day" will mean any day other than a Saturday or Sunday upon which a majority of federally insured banks within the State of California are open for business. References to "Dollars" or "\$" will mean United States currency. "Person" will include any natural person, corporation, partnership, limited liability company, trust, estate, governmental entity or agency, incorporated or unincorporated association, or other entity. Article and Section headings are for convenience only and will not be given undue consideration in resolving questions of construction or interpretation. Each Party will be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal responsibility for the preparation of this document and any exhibits hereto, such that neither this document, nor any exhibit hereto, nor any uncertainty or ambiguity herein or therein, will be arbitrarily construed or resolved against any Party pursuant to any law or rule of construction to the effect that ambiguities in documents are to be construed against the drafter of the document.

THE UNDERSIGNED PARTIES TO THIS AGREEMENT have made, executed and entered into this Agreement.

"TRUSTEE"


Nancy Hoffmeier Zamora

"DEBTOR"

Daniel J.J. Ross

6.11 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together constitute one and the same agreement. Signatures may be provided by facsimile, with the same force as an original.

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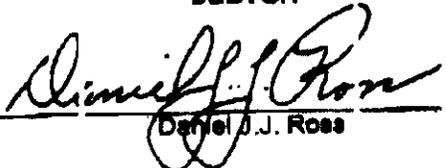
6.13 Conventions and Rules of Construction. The words "include," "includes" and "including" will be deemed to be followed by the words "without limitation." Words or phrases denoting the singular will be deemed to include the plural and words or phrases denoting the plural will be deemed to include the singular, unless contrary to the obvious intent of this Agreement. A reference to any Party will include such Person's successors. References to "days" will mean calendar days, unless otherwise specifically provided. A "Business Day" will mean any day other than a Saturday or Sunday upon which a majority of federally insured banks within the State of California are open for business. References to "Dollars" or "\$" will mean United States currency. "Person" will include any natural person, corporation, partnership, limited liability company, trust, estate, governmental entity or agency, incorporated or unincorporated association, or other entity. Article and Section headings are for convenience only and will not be given undue consideration in resolving questions of construction or interpretation. Each Party will be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal responsibility for the preparation of this document and any exhibits hereto, such that neither this document, nor any exhibit hereto, nor any uncertainty or ambiguity hereir or therein, will be arbitrarily construed or resolved against any Party pursuant to any law or rule of construction to the effect that ambiguities in documents are to be construed against the drafter of the document.

THE UNDERSIGNED PARTIES TO THIS AGREEMENT have made, executed and entered into this Agreement.

"TRUSTEE"

Nancy Hoffmeier Zarora

"DEBTOR"



Daniel J. Ross

"JANICE"

Janice M. Ross
Janice M. Ross

"WISHING WELL"

Wishing Well, Inc., a California corporation.

By: Janice M. Ross
(signature)

Janice M. Ross
(typed or printed name)

President
(title or capacity)

All that certain real property situated in the County of Los Angeles , State of California, described as follows:

Lot 96, of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160 Page(s) 33 to 36 inclusive of Maps, in the office of the County Recorder of said County.

Together with those portions of Ames Drive and Henry Drive as shown on said Map of Tract No. 9013, now vacated by the County Board of Supervisors, a Certified Copy of which was Recorded February 17, 1939 as Instrument No. 1141 of Official Records, that would pass with the legal conveyance of said Lot 96.

Except those portions of said Lot 96, describe as Parcels 2-33 and 2-34 in the Deed to said County Recorded October 19, 1967 as Instrument No. 2229, in said Office of the County Recorder.

Assessor's Parcel Number: **4471-015-020**

- 3 OF 4 -

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Lot 97, of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160 Page(s) 33 to 36, inclusive of Maps, in the office of the County Recorder of said County.

Together with those portions of Ames Drive and Henry Drive as shown on said Map of Tract No. 9013, now vacated by the County Board of Supervisors, a Certified Copy of which was recorded February 17, 1939, as Instrument No. 1141 of Official Records, that would pass with the legal conveyance of said Lots 78, 96, 98 and 99.

Except those portions of said Lot 96, 98, and 99 described as Parcels 2-33 and 2-24 in the deed to said County Recorded October 19, 1967 as Instrument No. 2229, in said Office of the County Recorder.

Assessor's Parcel Number: **4471-015-021**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Lot 98 of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160 page(s) 33 to 36 inclusive of Maps, in the office of the County Recorder of said County.

Together with those portions of Ames Drive and Henry Drive as shown on said Map of Tract No. 9013, now vacated by the County Board of Supervisors, A Certified Copy of which was recorded February 17, 1939 as Instrument No. 1141 of Official Records, that would pass with the legal conveyance of said Lots 78, 96, 97, 98 and 99.

Except those portions of said Lots 96, 98, and 99 described as Parcels 2-33 and 2-34 in the Deed to said County recorded October 19, 1967 as Instrument No. 2229, in said office of the County recorder.

Assessor's Parcel Number: **4471-015-022**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Lot 99 of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160 page(s) 33 to 36 inclusive of Maps, in the office of the County Recorder of said County.

Together with those portions of Ames Drive and Lofty Heights Drive as shown on said map of Tract No. 9013, now vacated by the County Board of Supervisors, a certified copy of which was recorded February 17, 1939 as Instrument No. 1141 of Official Records, that would pass with the legal conveyance of said Lot 99.

Except those portions of said Lot 99 described as parcels 2-33 and 2-34 in the deed to said county recorded October 19, 1967 as Instrument No. 2229, in said office of the county recorder.

Assessor's Parcel Number: **4471-015-023**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Lot 77 of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160 Page(s) 33 to 36 inclusive of Maps, in the office of the County Recorder of said County, together with those portions of Ames Drive as shown on said Map of Tract no. 9013, now vacated, by the Los Angeles County Board of Supervisors, a certified copy of which was recorded February 17, 1939, as Instrument No. 1141 of Official Records of said County, that would pass with legal conveyance of said Lot 77.

Assessor's Parcel Number: **4471-016-018**
4471-016-004

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Lot 81 inclusive of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160, Page 33 to 36 inclusive of Maps, in the office of the County Recorder of said County, together with those portions of Ames Drive and Henry Drive, as shown of Supervisors, a Certified Copy of which was recorded February 17, 1939 as File No. 1141 of Official Records of said County, that would pass with legal conveyance of said lot 81 inclusive.

Assessor's Parcel Number: **4471-016-008**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Lot 78, of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160 pages 33 to 36 inclusive of Maps, in the office of the County Recorder of said County.

Together with those portions of Ames Drive and Henry Drive as shown on said map of Tract No. 9013, now vacated, by the Los Angeles County Board of Supervisors, a certified copy of which was recorded February 17, 1939 as Instrument No. 1141 of Official Records of said County, that would pass with legal conveyance of said Lot.

Except those portions of said Lots 96, 98 and 99 described as Parcels 2-33 and 2-34 in the Deed to said County, recorded October 19, 1967 as Instrument No. 2229 of Official Records, in the Office of the County Recorder of said County.

Assessor's Parcel Number: **4471-016-022**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Parcel 1:

Those portions of Lots 71 and 72 of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160, Pages 33 to 36 inclusive of Maps, in the office of the County Recorder of said County, parts of those portions of Henry Drive and Ames Drive as shown on said map vacated by order of the Board of Supervisors of said County, a copy of which was recorded February 17, 1939 as File No. 1141, in Book 16309, Page 331 of Official Records, in said office of the County Recorder and that portion of the Northeast Quarter of Section 13, Township 1 South, Range 19 West, San Bernardino Meridian, according to the official plat thereof.

Commencing at the Southeasterly terminus of that certain 500 foot radius curve having a length of 618.78 feet in the center line of that certain 100 foot strip of land described in Parcel 2-49 of the deed to the County of Los Angeles, for Kanan Dume Road (formerly Kimberly Canyon Road) recorded as File No. 3280, on August 16, 1967 in Book D3738, Page 32 of Official Records, in said office of the County Recorder; thence South 30° 35' 25" East along said center line 48.00 feet; thence North 68° 39' 35" East to a point on the Northeasterly boundary of said 100 foot strip of land, said point being the True Point of Beginning; thence continuing North 68° 39' 35" East to a point distant North 68° 39' 35" East 110.27 feet from said center line, said last mentioned point being the beginning of a tangent curve concave to the West and having a radius of 25 feet; thence Northerly along said last mentioned curve, through a central angle of 99° 32' 00" an arc distance of 43.34 feet; thence North 30° 52' 25" West, tangent to said last mentioned curve, to the Northwesterly boundary of that certain parcel of land conveyed to said County of Los Angeles and described as "Part B" of Parcel 2-56X in the final order of condemnation, a certified copy of which was recorded as Document No. 2418, on October 30, 1969 in Book D4541, Page 880 of Official Records, in said Office of the County Recorder; thence Southwesterly and Southerly along the general Northwesterly and Westerly boundaries of said certain parcel of land to the Northwest corner of said Lot 71; thence Southerly along the Westerly line of said last mentioned lot to said Northeasterly boundary of the above mentioned 100 foot strip of land; thence Southeasterly along said Northeasterly boundary to the True Point of Beginning.

Except all oil, gas, hydrocarbons or other minerals in and under said land without the right to use the surface or subsurface thereof to a depth of 500 feet, measured vertically from said surface, as provided for in deed recorded December 27, 1984 as File No. 84-1509417, in said Office of the County Recorder.

Parcel 2:

Those portions of Lots 71 and 72 of Tract No. 9013, in the County of Los Angeles, State of California, as per map recorded in Book 160, Pages 33 to 36 inclusive of Maps, in the office of the County Recorder of said County, parts of those portions of Henry Drive and Ames Drive as shown on said map, vacated by order of the Board of Supervisors of said County, a copy of which was recorded February 17, 1939 as File No. 1141, in Book 16309, Page 331 of Official Records, in said office of County Recorder and that portion of the Northeast Quarter of Section 13, Township 1 South, Range 19 West, San Bernardino Meridian, according to the official plat thereof, described as a whole as follows:

Commencing at the Southeasterly terminus of that certain 500 foot radius curve having a length of 618.78 feet in the center line of that certain 100 foot strip of land described in Parcel 2-49 of the deed to the County of Los Angeles, for Kanan Dume Road (formerly Kimberly Canyon road), recorded as Document No. 3280, on August 16, 1967 in Book D3738, Page 32 of Official Records, in said office of the County Recorder; thence South 30° 35' 25" East along said center line 48.00 feet; thence North 68° 39' 35" East to a point on the Northeasterly boundary of said 100 foot strip of land, said point being the True Point of Beginning; thence continuing North 68° 39' 35" East to a point distant North 68° 39' 35" East 110.27 feet from said center line, said last mentioned point also being the beginning of a tangent curve concave to the West and having a radius of 25 feet; thence Northerly along said last mentioned curve, through a central angle of 99° 32' 00" an arc distance of 43.34 feet; thence North 30° 52' 25" West tangent to said last mentioned curve, to the Northwesterly boundary of that certain parcel of land conveyed to said County of Los Angeles and described as "Part B" of Parcel 2-56X in the final order of condemnation, a certified copy of which was recorded as File No. 2418, on October 30, 1969 in Book D4541, Page 830 of Official Records, in said Office of the County Recorder; thence Northeasterly, Southeasterly and Southerly along the Northwesterly; Northeasterly and Easterly boundaries of said certain parcel of land to the Northeast corner of said Lot 72; thence Southerly along the Easterly line of said last mentioned lot to the Southeast corner of said last mentioned lot; thence Southwesterly in a direct line to the most Easterly corner of that certain 30 foot strip of land described as Parcel 2-49D.1 in said deed to the County of Los Angeles recorded August 16, 1967; thence Westerly along the Southerly line of said certain 30 foot strip of land to said Northeasterly boundary of the above mentioned 100 foot strip of land; thence Northwesterly along said last mentioned Northeasterly boundary to the True Point of Beginning.

Except all oil, gas, hydrocarbons or other minerals in and under said land, without the right to use the surface or subsurface thereof to a depth of 500 feet, measured vertically from said surface, as provided for in the deed recorded December 27, 1984 as File No. 84-1509418 in said office of the County Recorder.

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

That portion of the South half of the South half of the Northeast Quarter of the Northeast Quarter and the North half of the Southeast Quarter of the Northeast Quarter of Section 13, Township 1 South, Range 19 West, San Bernardino Meridian, in the County of Los Angeles, State of California, according to the Official Plat thereof, lying Easterly of the Easterly line of Kimberley Canyon Road (100 feet wide) as described as Parcel 2-49 in Deed recorded August 16, 1967 as Instrument No. 3280 in Book D-3738 Page 32, Official Records.

Except therefrom that portion of said land described as Parcel 2-55 in Deeds recorded April 30, 1969 as Instrument No. 4136 and May 06, 1969 as Instrument No. 1707, of Official Records.

Assessor's Parcel Number: **4471-018-026**

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

The North one-half of the South half of the Southeast Quarter of the Northeast Quarter of Section 13, Township 1 South, Range 19 West, San Bernardino Meridian, in the County of Los Angeles, State of California, according to the official plat of said land filed in the District Land Office April 10, 1900 lying Easterly of that certain 60 foot strip of land condemned for Newton Canyon Road by Final Decree of Condemnation recorded August 24, 1948 in Book 28072, page 31 of Official Records, of said County, the centerline of which is more particularly described as follows:

Beginning at the Northerly terminus of the course of South $14^{\circ} 46' 05''$ East 90.20 feet in the centerline of Newton Canyon Road, as described in deed to the County of Los Angeles, recorded October 3, 1947 as Instrument No. 2863 of Official Records, thence South $14^{\circ} 46' 05''$ East along said course, 90.20 feet to the beginning of a curve, concave to the Northwest, tangent to said course and having a radius of 200 feet, thence Southwesterly along said curve, 349.17 feet, thence, South $85^{\circ} 15' 45''$ West 63.05 feet to the beginning of a curve concave to the Southeast, tangent to said last mentioned course, tangent to the course of North $18^{\circ} 38'$ East 345.09 feet to the centerline of Newton Canyon Road, as described in deed to the County of Los Angeles, recorded October 13, 1931 in Book 11200, page 129 of Official Records and having a radius of 200 feet, thence, Southwesterly along said last mentioned curve, 232.58 feet to said last mentioned course, thence, South $18^{\circ} 38'$ West along said last mentioned course, 300 feet.

Assessor's Parcel Number: **4471-018-024**

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 650 Town Center Drive,
6 Suite 950, Costa Mesa, California 92626.

7 On November 10, 2005, I served the foregoing documents described as **ORDER**
8 **AUTHORIZING: (1) COMPROMISE OF CONTROVERSY PURSUANT TO**
9 **FEDERAL RULE OF BANKRUPTCY PROCEDURE 9010; AND (2) THE OBTAINING**
10 **OF INDEBTEDNESS SECURED BY A SENIOR LIEN ON REAL PROPERTY THAT IS**
11 **SUBJECT TO A LIEN** on the interested parties in this action by placing true copies
12 thereof enclosed in sealed envelopes addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

14 BY MAIL

15 I deposited such envelopes in the mail at Costa Mesa, California. The
16 envelope was mailed with postage thereon fully prepaid.

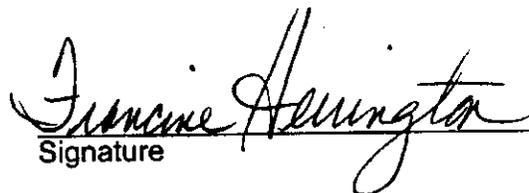
17 I am "readily familiar" with the firm's practice of collection and processing
18 correspondence for mailing. It is deposited with U.S. postal service on that
19 same day with postage thereon fully prepaid at Costa Mesa, California in
20 the ordinary course of business. I am aware that on motion of the party
21 served, service is presumed invalid if postal cancellation date or postage
22 meter date is more than one day after date of deposit for mailing in
23 affidavit.

24 Executed on **November 10, 2005**, at Costa Mesa, California.

25 (State) I declare under penalty of perjury under the laws of the State of California
26 that the above is true and correct.

27 (Federal) I declare that I am employed in the office of a member of the bar of this
28 court at whose direction the service was made.

29 Francine Herrington

30 
Signature

SERVICE LIST

Office of the United States Trustee
21051 Warner Center Lane, Suite 115
Woodland Hills, CA 91367

Daniel J.J. Ross
533 Lofty Heights Drive
Malibu, CA 90265
Debtor

Charles Shamash, Esq.
Caceres & Shamash, LLP
8383 Wilshire Blvd., Suite 1010
Beverly Hills, CA 90211-2409
Attorneys for Debtor

David R. Hagen, Esq.
Merritt & Hagen
6320 Canoga Avenue, Suite 1400
Woodland Hills, CA 91367
Facsimile: (818) 992-3309
Former Attorney for Debtor

Nancy H. Zamora, Esq.
Zamora & Hoffmeier
444 South Flower Street, Suite 1550
Los Angeles, CA 90071
Chapter 7 Trustee

Bruce Friedman
Diversified Lending Group, Inc.
14930 Ventura Blvd., Suite 340
Sherman Oaks, CA 91403

David R. Hagen, Esq.
Law Offices of David R. Hagen
16830 Ventura Blvd., Suite 500
Encino, CA 91436-1795
Attorneys for Mark Sturdefant

Steven S. Loeb, Esq.
Rosen and Loeb
15233 Ventura Blvd., Suite 410
Sherman Oaks, CA 91403

Shalom Rubanowitz, Esq.
Law Offices of Shalom Rubanowitz
8281 Melrose Avenue, #205
Los Angeles, CA 90046
Attorneys for Union Home Loan, Inc.

Liat Cohen, Esq.
17525 Ventura Blvd., Suite 201
Encino, CA 91316

NOTE TO THE USERS OF THIS FORM:
Physically attach this form as the last page of the proposed Order or Judgment
Do not file this form as a separate document.

In re (Short Title) Chapter 7 Case No:
DANIEL J.J. ROSS, SV 04-161981 KT
Debtor.

**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1, that a judgment or order entitled (specify):

NOV 18 2005

**ORDER AUTHORIZING: (1) COMPROMISE OF CONTROVERSY PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9010; AND (2) THE OBTAINING
OF INDEBTEDNESS SECURED BY A SENIOR LIEN ON REAL PROPERTY THAT IS
SUBJECT TO A LIEN**

NOV 18 2005

was entered on (specify date):

I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (specify date):

DATED: **NOV 18 2005**

Clerk of the Bankruptcy Court

By: 
Deputy Clerk

- 4 of 4 -

In re: DANIEL J.J. ROSS
Case No. SV 04-16181 KT

SERVICE LIST

Office of the United States Trustee
21051 Warner Center Lane, Suite 115
Woodland Hills, CA 91367

Daniel J.J. Ross
533 Lofty Heights Drive
Malibu, CA 90265
Debtor

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Former Attorney for Debtor

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Zamora & Hoffmeier
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Los Angeles, CA 90071
Chapter 7 Trustee

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8281 Melrose Avenue, #205
Los Angeles, CA 90046
Attorneys for Union Home Loan, Inc.

Liat Cohen, Esq.
17525 Ventura Blvd., Suite 201
Encino, CA 91316

PES

**WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK LLP
950 TOWN CENTER DR. SUITE 950
COSTA MESA CA. 92626**

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This purchase and sale agreement and escrow instructions (the "Agreement") is entered into as of January 18, 2006 (the "Execution Date") by and between Behnam J. Mahboob and/or assign(s) ("Buyer") and Nancy Hoffmeier Zamora ("Trustee") in her capacity as chapter 7 trustee for the bankruptcy estate (the "Ross Estate") of Daniel J.J. Ross. Together, Buyer and Trustee hereinafter shall be referred to as the "Parties."

RECITALS

- A. That certain undeveloped land commonly known as 500 - 533 Lofty Heights Drive, Malibu, California 90285 ("Parcel A") and identified by Los Angeles County Assessor's Parcel Numbers:

4471-015-020	4471-015-021	4471-015-022	4471-015-023
4471-015-001	4471-015-002	4471-015-003	4471-015-004
4471-015-005	4471-015-007	4471-015-008	4471-015-015
4471-015-015	4471-015-018	4471-015-019	4471-015-020
4471-015-021	4471-015-022	4471-017-010	4471-017-011
4471-017-022	4471-017-023		
- and two adjoining parcels of undeveloped land identified by Los Angeles County Assessor's Parcel Numbers 4471-015-025 ("Parcel B") and 4471-015-024 ("Parcel C"), respectively (collectively, the "Real Property").
- B. Trustee is the duly appointed chapter 7 trustee for the Ross Estate.
- C. Subject to approval by the United States Bankruptcy Court (the "Bankruptcy Court"), Section 363(f) of the United States Bankruptcy Code authorizes Trustee to sell the Real Property free and clear of any interests and liens pursuant to the Agreement.
- D. Article 1.5 ("Article 1.5") of the California Civil Code ("Civil Code") requires disclosure by sellers upon the transfer of residential real property (Civil Code section 1102 et seq.). Civil Code section 1102.2 of the Civil Code exempts Trustee from the provisions of Article 1.5.

AGREEMENT

In consideration of the mutual covenants and agreements reflected herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties to this Agreement agree as follows:

1. **Purchase of the Real Property.** Buyer shall purchase the Real Property from the Ross Estate for a total sales price of \$1,500,000.00 (the "Purchase Price") payable in cash upon Close of Escrow (as defined below in Paragraph 6). The Purchase Price is allocated as follows: \$1,000,000.00 of the Purchase Price is for Parcel A, \$300,000.00 of the Purchase Price is for Parcel B, and \$200,000.00 of the Purchase Price is for Parcel C.
2. **As-is; Where-is.** Buyer agrees to purchase the Real Property on an "as-is, where-is" basis. Buyer acknowledges that Trustee made no investigation of nor makes any representation or warranty regarding the condition of the Real Property.
3. **Earnest Money Deposit.**
 - a. **Escrow Account.** Buyer shall deposit \$50,000.00 (the "Earnest Money") with Escrow Holder (as defined below in Paragraph 6) within three (3) business days of the Execution Date. The Earnest Money shall be in the form of a cashier's check made payable to Escrow Holder. Escrow Holder shall apply the Earnest Money to the Purchase Price upon Close of Escrow.

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Handwritten signatures and initials
Page 1 of 8

EXHIBIT 2 PAGE 100

b. Refund of the Earnest Money. Trustee shall authorize Escrow Holder to refund the Earnest Money to Buyer if the Parties cancel Escrow pursuant to Paragraphs 4 and/or 12 (as provided below in Paragraph 5(g)(2)).

c. Surrender of the Earnest Money. As provided below in Paragraph 14, Buyer shall surrender the Earnest Money to Trustee as liquidated damages if the Bankruptcy Court approves Trustee's sale of the Real Property to Buyer, then Buyer defaults under this Agreement.

4. Motion for Order Approving Sale of Real Property.

a. Buyer Acknowledgment. Buyer acknowledges that sale of the Real Property pursuant to this Agreement is subject to prior approval by the Bankruptcy Court. As such, the Bankruptcy Court's approval of this Agreement is a contingency of sale.

b. Motion and Overbid Hearing.

(1) Motion. After the Parties execute this Agreement, Trustee shall file with the Bankruptcy Court a motion (the "Motion") for order approving sale of the Real Property free and clear of any interests and liens, subject to overbid, and a notice of hearing (the "Overbid Hearing") on the Motion. Trustee shall attach this Agreement as an exhibit to the Motion.

(2) Order. At the conclusion of the Overbid Hearing, Trustee shall lodge a proposed order with the Court approving sale of the Real Property to Buyer pursuant to this Agreement or to the highest bidder approved by the Bankruptcy Court at the Overbid Hearing. Upon the Bankruptcy Court's entry of the order approving Trustee's sale of the Real Property to Buyer pursuant to this Agreement (the "Sale Order"), Trustee shall deposit a certified copy of the Sale Order into Escrow.

(3) Buyer Not Approved as Highest Bidder. If the Bankruptcy Court does not approve Buyer as the Highest Bidder, the Parties shall cancel Escrow and Trustee shall authorize Escrow Holder to refund the Earnest Money to Buyer.

5. Escrow.

a. Opening Escrow. This sale shall be consummated through an escrow ("Escrow") established with Brackenridge Escrow ("Escrow Holder"), located at 18948 Ventura Boulevard, Tarzana, California 91356, or if Escrow Holder is unable or unwilling to act, through an alternative escrow at Market Street Escrow, located at 18928 Ventura Boulevard, Tarzana, California 91356. Within three (3) business days of the Execution Date, the Parties shall deposit this Agreement with Escrow Holder, which deposit shall open Escrow for sale of the Real Property.

b. Earnest Money. Within three (3) business days of the Execution Date, Escrow Holder shall deposit the Earnest Money into an escrow account established exclusively for the purpose of selling the Real Property.

c. Joint Escrow Instructions to Escrow Holder. The applicable portions of this Agreement shall constitute joint escrow instructions (the "Joint Escrow Instructions") of Trustee and Buyer to Escrow Holder.

d. Supplemental Escrow Instructions. The Joint Escrow Instructions may be modified and/or supplemented pursuant to addenda executed by the Parties. Trustee and Buyer acknowledge that Escrow Holder will ask the Parties to execute general escrow provisions (the "Supplemental Escrow Instructions") that control the duties and obligations of Escrow Holder only. To the extent the Supplemental Escrow Instructions conflict with this Agreement or the Joint Escrow Instructions, this Agreement and the Joint Escrow Instructions, not the Supplemental Escrow Instructions, shall control the rights, duties, and obligations of the Parties.

e. Close of Escrow. "Close of Escrow" shall occur when Escrow Holder records the Quitclaim Deed (as defined below in Paragraph 15) transferring fee title to the Real Property from the Ross Estate to Buyer.

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M. B. M.
Page 2 of 2

EXHIBIT 2 PAGE 01

f. Closing Date. Close of Escrow shall occur by no later than February 14, 2006 provided that the Bankruptcy Court has entered the Sale Order approving this Agreement (the "Closing Date"). The Parties can extend the Closing Date by executing an amendment to this Agreement that provides for a later Closing Date.

g. Cancellation of Escrow.

(1) Buyer Default. If Close of Escrow does not occur by the Closing Date because Buyer defaults on Buyer's obligations pursuant to this Agreement, Buyer agrees to forfeit the Earnest Money to Trustee and the Ross Estate as provided below in Paragraph 15.

(2) Cancellation Pursuant to Contingency. If Buyer cancels Escrow pursuant to Paragraphs 4 and/or 12 of this Agreement, the Parties shall cancel Escrow and Trustee shall authorize Escrow Holder to refund the Earnest Money to Buyer.

(3) No Prejudice. Cancellation of Escrow as provided herein shall be without prejudice to whatever legal rights Trustee and Buyer may have against each other.

h. Preliminary Closing Statements. No less than ten (10) days prior to Close of Escrow, Escrow Holder shall provide Trustee with preliminary closing statements (the "Preliminary Closing Statements") for both Trustee as seller of the Real Property and Buyer as purchaser of the Real Property.

i. Closing Documents. No less than ten (10) days prior to Close of Escrow, Escrow Holder shall provide the Parties with any and all documents that the Parties must execute and deposit with Escrow Holder prior to Close of Escrow.

6. Balance of Purchase Price. Buyer shall deposit the balance of the Purchase Price (the "Purchase Price Balance"), i.e., \$1,450,000.00, into Escrow in the form of cash or by wire transfer at least one (1) business day before the Closing Date or by cashier's check during business hours at least two (2) business days before the Closing Date. After paying all approved costs, liens, and interests, Escrow Holder shall pay the Purchase Price Balance to Trustee by check made payable to "Nancy Hoffmeier Zamora, Chapter 7 Trustee, Ross Estate."

7. Closing and Possession.

a. Delivery. Trustee shall deliver possession and occupancy of the Real Property to Buyer on the Closing Date.

b. Assignable Warranty Rights. Upon Close of Escrow, to the extent permitted by law and/or contract, Trustee shall hereby assign warranty rights, if any, for the Personal Property.

8. Reports and Disclosures.

a. Pest Control. Trustee shall not pay for or provide Buyer with a pest control report for the Real Property as a condition of sale. Trustee has made no investigation of and makes no representation or warranty regarding the physical condition of the Real Property. Buyer acknowledges that sale of the Real Property is on an "as-is, where-is" basis.

b. Natural Hazard Zone Disclosure Report. Buyer acknowledges that Civil Code section 1103.2(a)(1) specifically exempts transfers of real property by a trustee in bankruptcy. Accordingly, Buyer acknowledges that Trustee shall not pay for or otherwise provide a natural hazard zone disclosure report (the "NHZD Report") for Buyer's review prior to Close of Escrow, if Buyer and/or Title Company (as defined below in Paragraph 12) require a NHZD Report in order to close Escrow. Buyer shall pay for the NHZD Report. Trustee has made no investigation of and makes no representation or warranty regarding the physical condition of the Real Property or the location of the Real Property. Buyer acknowledges that sale of the Real Property is on an "as-is, where-is" basis.

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[Handwritten signatures]
Trustee Buyer
Page 3 of 8

EXHIBIT 2 PAGE 02

c. Data Base Disclosure Addendum (Megan's Law). Buyer acknowledges that Civil Code section 2079.10a) (referring to Civil Code section 1102) specifically exempts transfers of real property by a trustee in bankruptcy from the requirements of 2079.10a, commonly referred to as "Megan's Law." Accordingly, Buyer acknowledges that Trustee will not execute a "Data Base Disclosure Addendum (Megan's Law)" as a condition for closing Escrow. Trustee has made no investigation of and makes no representation or warranty regarding the existence or non-existence of convicted sex offenders or other criminals in the neighborhood surrounding the Real Property. Buyer acknowledges that sale of the Real Property is on an "as-is, where-is" basis.

d. Real Estate Transfer Disclosure Statement. Buyer acknowledges that Civil Code section 1102 specifically exempts from the provisions of Article 1.5 transfers of real property by a trustee in bankruptcy. Buyer acknowledges that Article 1.5 requires, among other things, disclosures by sellers upon the sale of residential real property. Accordingly, Buyer acknowledges that Trustee will not provide Buyer with a Real Estate Transfer Disclosure Statement or addenda thereto, including, without limitation, an "Airport Proximity Addendum for Los Angeles County." Trustee has made no investigation and makes no representation or warranty regarding the Real Property, the neighborhood surrounding the Real Property, or the general location of the Real Property. Buyer acknowledges that sale of the Real Property is on an "as-is, where-is" basis.

e. Mello-Roos Community Facilities Act. Trustee has made no investigation and makes no representation or warranty regarding any special taxes assessed against the Real Property by a local agency pursuant to the Mello-Roos Community Facilities Act ("Mello-Roos").

9. Prorations of Property Taxes and Other Items.

a. Buyer and Trustee. The following items shall be paid current and prorated between Buyer and Trustee as of Close of Escrow:

- (1) real property taxes and assessments;
- (2) interest;
- (3) rents;
- (4) municipal utilities;
- (5) payments on bonds and assessments assumed by Buyer, if any;
- (6) payments on Mello-Roos and other special assessment district bonds and assessments, if any, which are now a lien; and
- (7) any and all other items identified by Escrow Holder in the Preliminary Closing Statements and approved by the Parties prior to Close of Escrow.

b. Buyer. Buyer shall be responsible for prorated payments on Mello-Roos and other special assessment district bonds and assessments that are now a lien but not yet due.

c. Supplemental Tax Bills. For periods after Close of Escrow, Buyer shall be responsible for any and all supplemental taxes assessed against the Real Property. For periods prior to Close of Escrow, Trustee shall be responsible for any and all supplemental taxes assessed against the Real Property.

10. Additional Buyer Costs. In addition to costs allocated to Buyer by other provisions of this Agreement, Buyer shall pay for the cost of:

- a. smoke detector installation and/or water heater bracing, if required by law;
- b. compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing Escrow under any law;

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[Handwritten signatures]
 Trustee Buyer
 Page 4 of 8

EXHIBIT 2 PAGE 63

15. Additional Obligations.

a. Withholding Taxes. Trustee and Buyer agree to execute and deliver any instrument, affidavit, statement, or instruction reasonably necessary to comply with federal and state tax withholding laws.

b. Additional Documents. Trustee and Buyer agree to take such further action and execute all such further documents as may be necessary or appropriate in order to consummate this Agreement.

16. Brokers' Compensation.

a. Brokers' Fee. Subject to approval by the Bankruptcy Court, in consideration of real estate brokerage services rendered, Trustee agrees to pay RE/MAX Grand Central ("Estate Broker") and EMC Realty ("Buyer Broker"), upon Close of Escrow, a total real estate brokerage fee equal to four percent (4%) of the Purchase Price, i.e., Estate Broker and Buyer Broker each will be paid a fee equal to two percent (2%) of the Purchase Price.

b. Failure to Close Escrow. No commission or other fee shall be payable to Estate Broker or Buyer Broker if Escrow fails to close. Trustee and Buyer acknowledge that no other broker's commission or finder's fee is payable with regard to this transaction.

c. Indemnification. Trustee and Buyer each ("Indemnitor") agree to indemnify and hold the other harmless from and against all liability, claims, demands, damages, or costs of any kind arising from or connected with any broker's or finder's fee or commission or charge claimed to be due any person arising from Indemnitor's conduct with respect to this transaction, other than the commissions authorized in this paragraph.

17. Miscellaneous.

a. Disputes. The Bankruptcy Court shall have sole and exclusive jurisdiction over any dispute between the Parties over the terms of this Agreement and over any transaction or event referenced or contemplated by this Agreement.

b. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall have continuing jurisdiction to interpret and enforce this Agreement.

c. Attorneys' Fees. The prevailing party in any dispute arising out of this Agreement shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys' fees and costs to be fixed by the Bankruptcy Court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not said suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney's fees. No sum for attorneys' fees shall be included in calculating the amount of a judgment for purposes of deciding whether a party is entitled to its costs or attorneys' fees.

d. Time of the Essence. Time is of the essence of each provision of this Agreement in which time is an element. Unless the context otherwise requires, all periods terminating on a given day, period of days, or date, shall terminate at 5:00 p.m., Pacific Time, on that day or date, and reference to "days" shall refer to calendar days.

e. Amendment and Waiver. Neither this Agreement, nor any of the provisions hereof, may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

f. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

g. Headings. Paragraph headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement.

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NJ B.F.M.
Page 8 of 8

EXHIBIT 2 PAGE 05

h. Third Party Rights. Except with respect to the releases provided for above, no rights are intended to be created in any person not a party to this Agreement.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same instrument.

j. Entire Agreement. This Agreement sets forth the entire agreement among the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter of this Agreement.

k. Understanding of the Parties. The Parties have each read this Agreement carefully, and the contents hereof are known and understood by all, and the Agreement is signed freely by each person executing this Agreement. Prior to the execution of this Agreement by the Parties, and each of them, each of the Parties hereto has had the opportunity to receive independent legal advice by attorneys of his or her choice with respect to the advisability of executing this Agreement.

l. No Statements, Representations, and/or Reliance. Except as expressly stated in this Agreement, neither of the Parties hereto has made any statement or representation to any other party regarding any fact relied upon by such other party entering into this Agreement, and each of the Parties specifically does not rely upon any statement, representation or promise of any other party in executing this Agreement, except as expressly stated in this Agreement.

m. Constructing the Agreement. This Agreement shall be construed without regard as to which party drafted the Agreement, and this Agreement shall be construed as if the Parties hereto participated equally in the drafting of the Agreement.

n. Applicable Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California and applicable federal law.

o. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid, or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

p. Recitals. The recitals at the beginning of this Agreement are incorporated herein by this reference.

q. Terms. Whenever the singular number is used in this Agreement, and when required by the context, the same shall include the plural, and the masculine, and feminine and neuter genders shall each include the others.

r. Representations and Warranties. All representations and warranties contained herein shall survive the execution and delivery of this Agreement. All obligations of the Parties to this Agreement which have not been fully performed, paid and satisfied as of the Execution Date, shall survive the execution and delivery of this Agreement.

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dan@zohar.com

[Signature]
B.J.M.
Page 7 of 8

EXHIBIT 2 PAGE 00

SIGNATURES OF THE PARTIES

OFFER

As of the Execution Date, the undersigned offers and agrees to buy the Real Property on the terms and conditions stated in this Agreement and acknowledges receiving a copy of this Agreement.

BUYER:


Behnam J. Mahboob

ACCEPTANCE

As of the Execution Date, Trustee accepts the foregoing offer to purchase the Real Property and agrees to sell the Real Property to Buyer on the terms and conditions specified in this Agreement. Trustee acknowledges receipt of a copy of this Agreement and authorizes Estate Broker to deliver a signed copy to Buyer.

ROSS ESTATE:

By: 
Nancy Hoffmeier Zamora, Esq.
Trustee, Chapter Estate of Daniel J.J. Ross.
In Re Daniel J. Ross, Case No. SV 04-10181 KT

daniel/ross/ya.D02

8.


Page 2 of 8

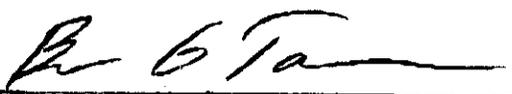
EXHIBIT 2 PAGE 67

SIGNATURE OF THE BROKER

ESTATE BROKER'S CONSENT

Estate Broker consents to the commission provision in Paragraph 16 above. By signing below, Estate Broker acknowledges that any all disputes arising under this Agreement or related to the sale of the Real Property is subject to the jurisdiction of the Bankruptcy Court. The signing of this paragraph shall not result in Estate Broker being deemed a party to this Agreement.

ESTATE BROKER:



Behnaz Tavakoli, Real Estate Agent
RE/MAX Grand Central

BUYER BROKER'S CONSENT

Buyer Broker consents to the commission provision in Paragraph 16 above. By signing below, Buyer Broker acknowledges that any all disputes arising under this Agreement or related to the sale of the Real Property is subject to the jurisdiction of the Bankruptcy Court. The signing of this paragraph shall not result in Buyer Broker being deemed a party to this Agreement.

BUYER BROKER:

Bijan R. Veziri, Broker
EMC Realty

Handwritten initials
Buyer
Page 2 of 9

SIGNATURE OF THE BROKER

ESTATE BROKER'S CONSENT

Estate Broker consents to the commission provision in Paragraph 16 above. By signing below, Estate Broker acknowledges that any all disputes arising under this Agreement or related to the sale of the Real Property is subject to the jurisdiction of the Bankruptcy Court. The signing of this paragraph shall not result in Estate Broker being deemed a party to this Agreement.

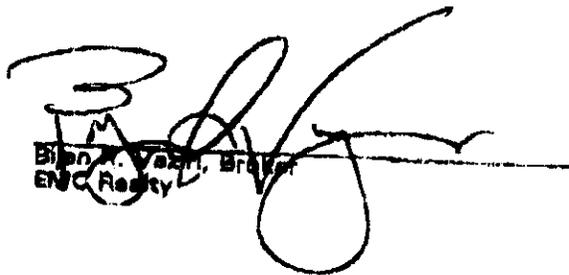
ESTATE BROKER:

~~Behnaz Tavakoli, Real Estate Agent
RE/MAX Grand Central~~

BUYER BROKER'S CONSENT

Buyer Broker consents to the commission provision in Paragraph 16 above. By signing below, Buyer Broker acknowledges that any all disputes arising under this Agreement or related to the sale of the Real Property is subject to the jurisdiction of the Bankruptcy Court. The signing of this paragraph shall not result in Buyer Broker being deemed a party to this Agreement.

BUYER BROKER:


~~Bijan A. Vaziri, Broker
ENC Realty~~

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9.


1/19/06
Page 5 of 6

EXHIBIT 7 PAGE 69

Letter of intent to purchase

- ✓ 1. Buyer: Behnam J. Mahboob and / or Assignee
- ✓ 2. Property Location: 500-533 Lofty Height, Malibu Consist of 22 parcels (APN: 4471-017-022, 4471-017-023, 4471-017-010, 4471-017-011, 4471-016-001, 4471-016-021, 4471-016-002, 4471-016-020, 4471-016-003, 4471-016-019, 4471-016-004, 4471-016-018, 4471-016-022, 4471-016-006, 4471-016-016, 4471-016-007, 4471-016-015, 4471-016-008, 4471-015-020, 4471-015-021, 4471-015-022, 4471-015-023) and two adjoining parcels with APN (4471-018-026 & 4471-018-024)
- ✓ 3. Purchase price: \$1,500,000 (\$1,000,000 allocated to property at 500-533 Lofty height, Malibu consist of 22 parcels and \$300,000 allocated to parcel with APN: 4471-018-026 and \$200,000 allocated to parcel with APN:4471-018-024)
- ✓ 4. Broker commission will be 4% total (2% to EMC Realty & 2% Re/Max Realty)
- ✓ 5. Clear title to buyer free from all liens on all properties at close of escrow, Title Company is responsible to guarantee release of liens and reconveyances.
- 6. Escrow & Title fees if paid by buyer, must be discounted at 60% of customary rate as it was agreed under the original escrow.
- 7. All over bid must be 5% in excess of buyer purchase price to be accepted by bankruptcy trustee.
- 8. Offer is subject to 30 days maximum for court approval and closure of escrow.
- 9. Seller must vacate the property and remove all personal properties prior to close of escrow. (NO EXCEPTIONS)


Behnam J. Mahboob

01-17-2006
Date

EXHIBIT 2 PAGE 70

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PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 650 Town Center Drive, Suite 950, Costa Mesa, California 92626.

On January 20, 2006, I served the foregoing document described as **MOTION FOR ORDER: (1) AUTHORIZING AND APPROVING SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO 11 U.S.C. SECTION 363(B)(F) AND (H); (2) APPROVING OVERBID PROCEDURES; AND (3) AUTHORIZING PAYMENT OF UNDISPUTED LIENS, REAL ESTATE BROKER'S COMMISSION AND OTHER ORDINARY COSTS OF SALE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF NANCY ZAMORA IN SUPPORT THEREOF** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

BY MAIL

I deposited such envelope in the mail at Costa Mesa, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on January 20, 2006, at Costa Mesa, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Kelly M. Rivera
Type or print name


Signature

Service List

Debtor

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Office of the United States Trustee

Office of the United States Trustee
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Woodland Hills, CA 91367
Attn: S. Margaux Ross, Esq.

Chapter 7 Trustee

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Estate Accountant

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Biggs & Co.
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Calabasas, CA 91306

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Malibu, CA 90265

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Woodland Hills, CA 91364-1718

Samuel Marc Tapper
c/o Earle Hagen, Esq.
Hagen & Hagen
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Encino, CA 91316

Performance Development, Inc.
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Corporate Officer
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Encino, CA 91316

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Craig Daltow
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Harbor City, CA 90701

LA County Tax Collector
Los Angeles County Treasurer and Collector
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Bankruptcy Group
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Franchise Tax Board
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Sacramento, CA 95812-2952

Los Angeles City Clerk
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Los Angeles, CA 90053-0200

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Ventura, CA 93009-0001

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Barbie Gibson
Breckenridge Escrow
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