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Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No.		FOR COURT USE ONLY
Leonard M. Shulman - Bar No. 126349 Lynda T. Bui - Bar No. 201002 SHULMAN HODGES & BASTIAN LLP 26632 Towne Centre Drive, Suite 300 Foothill Ranch, California 92610 Telephone: (949) 340-3400 Facsimile: (949) 340-3000		<div style="border: 2px solid black; padding: 5px; text-align: center;"> FILED JUN 10 2009 <small>CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</small> </div>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		
In re:	Debtor(s).	CASE NO.: 1:98-bk-15561 GM Chapter 7
KAVEH LAHIJANI,		

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: June 26, 2009	Time: 9:00 A.M.
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Location: Courtroom 303, U.S. Bankruptcy Court, 21041 Burbank Blvd, Woodland Hills, CA 91367

Type of Sale: Public Private Last date to file objections: See attached Notice

Description of Property to be Sold: **Real property located at: 630 Vista Lane, Laguna Beach, CA 92651**

Terms and Conditions of Sale: **See the attached Notice of Motion for Order (1) Approving the Sale of Real Property Asset of the Estate Free and Clear of Liens, (2) Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilitized; (3) Approving Asset Purchase Agreement in Connection With the Sale, (4) Approving Payment of Real Estate Commission and Other Costs of Sale; and (5) Granting Other Related Relief ("Notice") and the attached Notice of Errata and Supplement to the Motion, et al.**

Proposed Sale Price: **\$3,600,000, subject to overbids - see the attached Notice and Notice of Errata and Supplement to the Motion for the terms of the sale**

Overbid Procedure (If Any): **Notice and Notice of Errata and Supplement to the Motion for the Bidding Procedures**

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

June 26, 2009 at 9:00 A.M. in Courtroom 303 of the above-entitled Court located at 21041 Burbank Boulevard, Woodland Hills, CA 91367.

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Lynda T. Bui, Esq.
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive, Suite 300, Foothill Ranch, CA 92610
Telephone: (949) 340-3400; Facsimile: (949) 340-3000

Date: **June 9, 2009**

SALE NOTICE

COPY

1 Leonard M. Shulman - Bar No. 126349
Lynda T. Bui - Bar No. 201002
2 **SHULMAN HODGES & BASTIAN LLP**
26632 Towne Centre Drive, Suite 300
3 Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
4 Facsimile: (949) 340-3000
Email: lshulman@shbllp.com; lbui@shbllp.com

5 Attorneys for John M. Wolfe,
6 The Chapter 7 Bankruptcy Trustee

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO DIVISION**
10

11 In re

12
13 **KAVEH LAHIJANI,**

14 Debtor.

Case No. 1:98-bk-15561 GM

Chapter 7

NOTICE OF CHAPTER 7 TRUSTEE'S MOTION FOR ORDER:

- (1) APPROVING THE SALE OF REAL PROPERTY ASSET OF THE ESTATE FREE AND CLEAR OF LIENS;
- (2) COMBINED WITH NOTICE OF BIDDING PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES UTILIZED
- (3) APPROVING ASSET PURCHASE AGREEMENT IN CONNECTION WITH THE SALE;
- (4) APPROVING PAYMENT OF REAL ESTATE COMMISSION AND OTHER COSTS OF SALE; AND
- (5) GRANTING OTHER RELATED RELIEF

**[Property Located at:
630 Vista Lane, Laguna Beach, CA 92651]**

Date: June 26, 2009
Time: 9:00 A.M.
Place: Courtroom 303
United States Bankruptcy Court
21041 Burbank Boulevard
Woodland Hills, CA 91367

1
2 **TO THE HONORABLE GERALDINE MUND, UNITED STATES BANKRUPTCY**
3 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND THE DEBTOR**
4 **AND CREDITORS AND PARTIES-IN-INTEREST:**

5 **PLEASE TAKE NOTICE** that on **June 26, 2009 at 9:00 A.M.**, in Courtroom 303 of
6 the above-entitled Court located at 21041 Burbank Boulevard, Woodland Hills, CA 91367,
7 John M. Wolfe, Chapter 7 Trustee for the bankruptcy estate ("Estate") of Kaveh Lahijani, the
8 debtor herein ("Debtor") will bring a Motion for Order (1) Approving the Sale of Real Property
9 Asset of the Estate Free and Clear of Liens, (2) Combined With Notice of Bidding Procedures
and Request for Approval of the Bidding Procedures Utilized, (3) Approving Asset Purchase
Agreement in Connection With the Sale, (4) Approving Payment of Real Estate Commission and
Other Costs of Sale; and (5) Granting Other Related Relief ("Sale Motion"). Following is a
summary of the Sale Motion.

10 **I. PREFACTORY REMARKS AND SUMMARY OF SALE**

11 Through the Sale Motion, the Trustee seeks Court approval to sell the Vista Lane
12 Property¹ to the Buyer for a purchase price of \$3,600,000, all cash. This \$3.6 million sale price
is \$400,000 over the amount claimed by the Debtor to be the value of the Vista Lane Property.
13 The Trustee estimates that after payment of allowed secured claims and costs of the sale, the
estimated unencumbered net sale proceeds will be approximately \$312,000. As set forth below,
14 the disputed lien of Bankers West Mortgage in the amount of approximately \$1,500,000 will
attach to the net proceeds of the sale (estimated at \$1,812,000 currently) in the same validity and
15 priority as prior to the sale pending agreement with the creditor or further Court order. As set
forth below, due to the very suspect and unusual circumstances associated with the Flamingo
16 Property loan from Bankers West Mortgage (who appears to be a "friendly" secured creditor of
the Debtor), the Trustee is very concerned and disputes the validity, priority and amount of the
Bankers West Mortgage loan related to the Vista Lane Property.

17 The Vista Lane Property will be sold free and clear of all Liens and Encumbrances², with
18 Liens and Encumbrances not resolved through the sale, to attach to the proceeds of the sale in the
same validity and priority as prior to sale. The Trustee is advised that except for Bankers West
19 Mortgage whose lien is disputed, secured creditors will likely have no objection to the proposed
sale. The Trustee does not believe it is prudent or necessary to resolve the Bankers West
20 Mortgage disputed lien by Court order or judgment prior to the sale. The alleged lien of Bankers
West Mortgage is subject to a bona fide dispute and the Bankruptcy Code provides for a means
21 to sell free and clear of such interest. If the Estate is forced to wait for resolution of the dispute,
the Trustee may lose the opportunity to capitalize on the current interest from the Buyer and may
22 also lose the subject property through a foreclosure. As such, the sale should proceed now, with
any claims or interests of Bankers West Mortgage to attach to the proceeds.

23 In addition, the Trustee seeks approval of the payment of real estate commission and
24 other costs of sale associated with the sale of the Vista Lane Property. The real estate
commission and costs of sale to be paid related to the sale transaction will be paid through
25 escrow from the proceeds of the sale.

26 ¹ Title to the Vista Lane Property is held in the name of "Vista Lane, LLC, a California limited liability
27 company" ("Vista Lane LLC"). Pursuant a final order entered on October 3, 2005, this Court substantively
consolidated the Debtor's assets with that of Elan Enterprises, Inc. and Vista Lane LLC. As such, the Vista Lane
28 Property is an asset of the Estate.

² "Liens and Encumbrances" means any and all liens, claims, and encumbrances of any nature whatsoever.

1 The sale of the Vista Lane Property at this time is essential because (1) the Trustee
2 does not want to lose the favorable opportunity to sell the Vista Lane Property as-is where-
3 is for \$3.6 million, at least \$400,000 *over* the amount the Debtor adamantly claims is the
4 fair market value of the Vista Lane Property, in the current uncertain real estate market,
5 (2) the Debtor is causing a substantial depletion of equity (at least \$145,000 from January
6 2009) in the Vista Lane Property, which will soon make it impossible for the Trustee to
7 administer if the Debtor further delays and does not pay all allowed claims in full based on
8 the terms of the Second Amended Stipulation³; and (3) the Trustee is very concerned that
9 the Debtor will continue to deplete equity out of assets of the Estate like the Vista Lane
10 Property so that by the time there is a final non-appellable order allowing the
11 administrative claims, the Trustee would be left with no assets to liquidate to satisfy the
12 administrative claims.

13 Based on the above and under the terms as set forth in more detail below, the Trustee
14 believes the only option available is the orderly sale of the Vista Lane Property and based on
15 good business reasons, including the current real estate market and the economics of this Estate,
16 it is in the best interest of the creditors of this Estate that this Sale Motion be approved so that
17 Trustee does not lose these favorable business opportunity.

18 **A. Bankruptcy Filing and Trustees**

19 Kaveh Lahijani (“Kaveh” or “Debtor”) commenced this case by filing a voluntary
20 Chapter 7 Bankruptcy Petition on April 22, 1998 (“Petition Date”).

21 The predecessor trustee Steven E. Smith filed a no asset report, and the Debtor received a
22 discharge.

23 The case was closed pursuant to Order of this Court entered August 3, 1999.

24 On motion by the Debtor and pursuant to Order of the Bankruptcy Court entered June 6,
25 2002, the Debtor’s bankruptcy case was reopened to abandon a cross-complaint held by the
26 estate against the Simantob creditors and Peter C. Anderson was appointed as the Chapter 7
27 trustee (“Trustee Anderson”). On July 24, 2006, Trustee Anderson resigned.

28 On July 25, 2006, the Office of the United States Trustee appointed John P. Pringle
 (“Trustee Pringle”) to serve as the Chapter 7 trustee in this bankruptcy case.

 Following a disputed election, John M. Wolfe was confirmed as the permanent Chapter 7
trustee pursuant to Order entered on October 18, 2007. Mr. Wolfe is the fourth trustee in the
case.

B. Consolidation with Elan Enterprises, Inc. and Vista Lane LLC

 Pursuant to an order entered on October 3, 2005 (“Substantive Consolidation Order”),
this Court substantively consolidated the Debtor’s assets with that of Elan Enterprises, Inc. and
Vista Lane LLC. The Debtor appealed the Substantive Consolidation Order to the District Court.
The District Court affirmed pursuant to a December 7, 2007 Order Affirming Orders of the
Honorable Geraldine Mund of the United States Bankruptcy Court Granting Motion for
Substantive Consolidation and Denying Motion for Reconsideration and/or Amendment. The
Debtor then appealed to the Ninth Circuit Court of Appeals. The appeal was pending when the
Debtor and the Trustee executed the Second Amended Stipulation (defined below). The Second
Amended Stipulation required the Debtor to dismiss the Ninth Circuit appeal, which he did.

³ Capitalized terms are defined below.

1 Prior to the Substantive Consolidation Order, Vista Lane LLC owned all rights, title and
2 interests in and to certain real property located at 630 Vista Lane, Laguna Beach, CA ("Vista
Lane Property"), which was acquired from Bryan Mashian in 2000.

3 Prior to the Substantive Consolidation Order, Elan Enterprises, Inc. owned all rights, title
4 and interests in and to certain real property located at 1000 Flamingo Road, Laguna Beach, CA
5 ("Flamingo Property"), which was purchased on June 10, 1999 from "John J. Terry and Carol A.
Terry, Trustees for the Terry Family Trust dated 9/13/85 who acquired title under trust dated
9/13/94."

6 As a result of the Substantive Consolidation Order, both the Vista Lane Property and the
7 Flamingo Property are assets of this Estate.

8 **C. Second Amended Stipulation, Tolling Agreement and the Debtor's Performance**

9 The Trustee and the Debtor reached an agreement entitled Second Amended Stipulation
10 Among Successor Trustee, John M. Wolfe, Vista Lane LLC, Elan Enterprises, Inc. and Debtor,
Kaveh Lahijani Regarding Administration of the Estate and Commitment to Pay Allowed Claims
11 in Full ("Second Amended Stipulation") which was approved by Judge Mund pursuant to an
order entered on April 3, 2008.

12 The Trustee also entered into a certain Third Tolling Stipulation Between the Chapter 7
Trustee and Bryan B. Mashian, Micha Mottale and Larissa Lahijani re Tolling and Standstill
13 Agreement ("Tolling Agreement") to toll the expiring of the statute of limitations concerning the
Estate's alleged avoidance claims against the Debtor's family and friends ("Insider Claims").
14 The Tolling Agreement was approved by the Court pursuant to an order entered on April 2,
2009.

15 Although the Debtor has paid substantial sums in administrative fees and costs allowed
16 by final order to date pursuant to the terms of the Second Amended Stipulation, he has defaulted
under said stipulation by failing to stay current on the mortgage payments with respect to the
17 Vista Lane Property, as well as the Flamingo Property. With respect to the Vista Lane Property,
the Trustee is informed and believes that the Debtor has not made a mortgage payment to
18 Washington Mutual (now JP Morgan Chase) (which holds the first priority deed of trust on the
Vista Lane Property) since March 2009. The Trustee is further informed and believes that
19 Debtor has not made payments to Bankers West Mortgage (which holds a second priority deed
of trust against the Vista Lane Property) since December 2008. With respect to the Flamingo
20 Property, the Trustee is informed and believes that the Debtor has not made payments to Bankers
West Mortgage (which holds a first priority deed of trust on the Flamingo Property) since
21 September 2008 allegedly when construction funds were exhausted. Bankers West Mortgage
filed a motion for relief from the automatic stay as to the Flamingo Property. JP Morgan Chase
22 filed a motion for relief from stay as to the Vista Lane Property. Both motions for relief from
stay were opposed by the Trustee and denied by the Court. However, due to the Debtor's failure
23 to make payments to the secured lenders, the Trustee is concerned that the equity in the Vista
Lane Property as well as the Flamingo Property may be diminished significantly and rapidly. As
24 such, following the Debtor's defaults under the Second Amended Stipulation, the Trustee
immediately commenced active marketing of the Vista Lane Property and the Flamingo Property
25 for sale. The Debtor has been interfering and preventing such sales and the Trustee fears that by
the time that all remaining claims are reduced to final judgment, there will be no assets for which
26 to satisfy such claims.

27 **D. The Proposed Sale of the Vista Lane Property**

28 The Vista Lane Property is the real property that is the subject of this Sale Motion. The
legal description of the Vista Property is set forth in the Preliminary Title Report dated

1 March 3, 2009, a true and correct copy of which is attached as **Exhibit 1** to the Declaration of
2 John M. Wolfe ("Wolfe Declaration"). The legal description for the Vista Lane Property is
3 believed to be accurate but may be corrected or updated by the title company in the transfer
documents as necessary to complete the proposed sale transaction.

4 As set forth in the Preliminary Title Report provided to the Trustee, title to the Vista Lane
Property is held in the name of "Vista Lane, LLC, a California limited liability company" ("Vista
5 Lane LLC"). Pursuant a final order entered on October 3, 2005, this Court substantively
6 consolidated the Debtor's assets with that of Elan Enterprises, Inc. and Vista Lane LLC. As
such, the Vista Lane Property is an asset of the Estate.

7 **The Debtor is not entitled to a homestead exemption in the Vista Lane Property not**
8 **having resided there when he filed the bankruptcy petition. Therefore no proceeds from**
9 **the sale will be disbursed to the Debtor.**

10 In brief, subject to approval of the Court, the principal terms of the sale of the Vista Lane
11 Property under the Residential Purchase Agreement and Joint Escrow Instructions ("Purchase
12 Agreement") are as follows⁴:

11 Buyer:	Thalia Street LLC
12 Purchase Price:	\$3,600,000 (\$200,000 deposit and balance due at closing, all cash)
13 Closing	Within 7 days of the date of entry of the Court order approving the sale 14 transaction and the Agreement.
15 Contingency Period:	Buyer shall have a 14 day contingency period after escrow is opened to 16 conduct all inspections. Based on prior orders of the Court, escrow may not open until on or after July 1, 2009.
17 Outstanding Real Property Taxes:	To be paid by Seller through escrow
18 Closing Date:	Thirty Days After Acceptance
19 Allocation of Certain Costs:	Escrow Fees – Buyer and Seller to each pay their own costs 20 If so desired, Buyer to pay for a natural hazard zone disclosure report. 21 If so desired, Buyer to pay for wood destroying pest inspection report and recommended work for repairs. 22 If so desired, Buyer to pay for inspection report from the City of Laguna Beach. 23 If so desired, Buyer to pay for all costs for compliance 24 If so desired, Buyer to pay for a home warranty plan.

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26
27 ⁴ This summary of the material terms is not meant to be a complete review of every provision of the Asset
28 Purchase Agreement. In the event of any inconsistency between the terms of the Asset Purchase Agreement and this
summary, the terms of Asset Purchase Agreement shall control and not this summary.

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Real Estate Commission:	Through this Sale Motion, the Debtor seeks authorization to pay a listing real estate broker commission to Sellers agent, Joseph Galosic of Capstone Realty and a selling commission to the Buyer's real estate agent, Hom Real Estate Group, in the total amount not to exceed six percent of the purchase price with such commission to be split 50/50 as follows:								
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Joseph Galosic of Capstone Realty</td> <td style="text-align: right;">\$108,000</td> </tr> <tr> <td>Brian Johnson of Home Real Estate Group</td> <td style="text-align: right;">\$108,000</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black;">Total Commission</td> </tr> <tr> <td></td> <td style="text-align: right;">\$216,000</td> </tr> </table>	Joseph Galosic of Capstone Realty	\$108,000	Brian Johnson of Home Real Estate Group	\$108,000	Total Commission			\$216,000
Joseph Galosic of Capstone Realty	\$108,000								
Brian Johnson of Home Real Estate Group	\$108,000								
Total Commission									
	\$216,000								

In addition, the Trustee proposes to sell the Vista Lane Property on an "as is – where as" basis with all faults and conditions then existing at property, and the Buyer shall agree that (1) the Trustee is not making any representations, warranties, either express or implied, as to the condition, use (prior, present and future), or otherwise of the Vista Lane; and (2) the Trustee shall not provide the Buyer with any reports as to the conditions or uses for the Vista Lane Property.

E. Treatment of the Liens and Encumbrances Under the Sale

The following chart sets forth the liens and encumbrances against the Vista Lane Property along with the Trustee's proposed treatment of the liens and encumbrances through the proposed sale:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment Through the Sale</u>
Orange County Treasurer and Collector	Real property taxes	\$0.00	All outstanding real property taxes, if any, will be paid through escrow on the sale transaction.
Columbia Financial Corporation	Deed of Trust recorded November 7, 2088, Instrument No. 88-570455	\$0.00	Although listed on the Title Report, the Trustee is advised this lien has been paid.
JP Morgan Chase as successor to Washington Mutual Bank	Deed of Trust recorded July 9, 2003, Instrument No. 2003000804700	\$1,500,000	This claim shall be paid through escrow on the sale transaction, thus, the Vista Lane Property shall be sold free and clear of the lien.

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owning</u>	<u>Treatment Through the Sale</u>
Bankers West Mortgage	Deed of Trust recorded February 13, 2004, Instrument No. 2004000115216. A partial beneficial interest in the Deed of Trust from Bankers West Mortgage to Patricia C. Vogelsang, Trustee of the P.C.V. Retirement Plan Trust recorded September 3, 2008, Instrument No. 2008000416577	\$1,500,000	The priority, validity and amount of this lien is disputed by the Trustee. As it is subject to a bona-fide dispute, the Trustee seeks to sell the Vista Lane Property free and clear of the lien in favor of the Bankers West Mortgage, with such disputed lien to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order. See further discussion below regarding the disputed lien of Bankers West Mortgage

It should be noted that the amount (and possibly validity) of Bankers West Mortgage's lien for the \$1.5 million against the Vista Lane Property is suspect for various reasons. As a preliminary matter, the loan advances by Bankers West Mortgage to Vista Lane LLC (the borrower at the time) did not total anywhere near the \$1.5 million on the face of the deed of trust. It is believed that the amount Bankers West Mortgage can prove it advanced to Vista Lane LLC is much less and is actually somewhere close to \$500,000. In addition, there is inconsistency regarding repayment terms within the loan file produced by Bankers West Mortgage. Finally, it does not appear that Vista Lane LLC made any regular monthly payments to Bankers West Mortgage towards repayment of the loan.

F. Estimated Net Proceeds

The Trustee estimates that the unencumbered net proceeds to be generated from the sale will be approximately \$312,000 as follows:

Purchase Price	\$3,600,000
Less: Cost of Sale (8%)	(\$288,000)
Less: Payoff to Washington Mutual/JP Morgan	(\$1,500,000)
Estimated Net Sale Proceeds	\$1,812,000
Disputed Lien of Bankers West Mortgage ⁵	(\$1,500,000)
Estimated Unencumbered Net Sale Proceeds (Free and Clear of Disputed Liens)	\$312,000

⁵ As set forth above, the disputed lien of Bankers West Mortgage in the amount of approximately \$1,500,000 will attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with the creditor or further Court order.

1 **G. The Debtor's Intentional Depletion of Equity in the Vista Lane Property and Other**
2 **Games**

3 The Debtor has not made the monthly mortgage payments of \$17,707.16 (excluding late
4 charges and all other costs) to JPMorgan Chase (the first lienholder on Vista Lane Property)
5 since February 2009. Similarly, the Debtor has not made the monthly mortgage payments of
6 \$12,500 (excluding late charges and other costs) to Bankers West Mortgage (the second
7 lienholder on Vista Lane Property) since January 2009. In aggregate, the Debtor has managed to
8 live in the Vista Lane Property rent-free for 6 months and has caused an equity decrease in the
9 Vista Lane Property in the amount of at least **\$145,828.64** ($\$17,707.16 \times 4 = \$70,828.64$ plus
10 $\$12,500 \times 6 = \$75,000$).

11 The Trustee is concerned that the Debtor will engage in his old machinations and will
12 again claim that he has no money to pay any of the allowed administrative claims or worse,
13 appeal the orders allowing the administrative claims so that there will be significant delays.
14 Meanwhile, he will continue to deplete equity out of assets of the Estate like the Vista Lane
15 Property so that by the time there is a final non-appellable order allowing the administrative
16 claims, the Trustee would be left with no assets to liquidate to satisfy the administrative claims.

17 This is most evident by the recent event involving the Flamingo Property. Immediately
18 after the hearing on May 14, 2009 wherein the Court vacated the turnover order that was to be
19 effective on May 18, 2009 or alternatively on June 30, 2009 if the Debtor was current on his
20 mortgages, the Debtor caused the cancellation of the insurance on the Flamingo Property with
21 Caspian Insurance Services. The Trustee understands that Caspian Insurance Services is the
22 same company that the Debtor had been using for years. This cancellation of insurance has
23 significant impact on the Estate in that the Estate would have to get a new policy with other
24 insurance companies, which are significantly higher and required non-refundable premiums. As
25 of the drafting of this Sale Motion, that premium for insurance on the Flamingo Property is
26 \$14,828.69. The Trustee must pay this amount by June 14, 2009 when the insurance policy with
27 Caspian Insurance Services will expire.

18 **H. Notice to All Interested Parties of the Bidding Procedures**

19 The Trustee has determined that it would benefit the Estate by permitting all interested
20 parties to receive information and bid the for the Vista Lane Property instead of selling the
21 property to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best
22 offer for the benefit of the creditors of this Estate, the Trustee is utilizing the following bidding
23 procedures ("Bidding Procedures") and requests that Court order approving the sale transaction
24 for the Vista Lane Property also provides for approval of the following Bidding Procedures:

25 a. Competing offers to acquire the Vista Lane Property shall be submitted in writing
26 to the Trustee and his counsel Shulman Hodges & Bastian LLP on or before 4:00 p.m. (Pacific
27 Time) the day prior to the hearing on the Sale Motion.

28 b. Competing offers shall provide for an all-cash purchase price to be paid to the
Trustee that exceeds the Purchase Price herein by at least Ten Thousand Dollars (\$10,000).

c. Competing offers shall be accompanied by a purchase agreement in form and
substance substantially identical to the Purchase Agreement agreed to by the Buyer, together
with a redlined, marked copy showing all changes to the Purchase Agreement (the "Competing
Agreement").

d. Competing offers must not be subject to due diligence contingencies or other
conditions; any bidder shall have an opportunity to view the Vista Lane Property prior to the

1 hearing on the Sale Motion (notwithstanding the foregoing, all due diligence must be completed
2 by all qualified bidders prior to the hearing on the Sale Motion).

3 c. All competing bids must remain open until the conclusion of the hearing on the
4 Sale Motion.

5 f. All competing bids shall contain terms and conditions no less favorable to Trustee
6 than the terms and conditions of the Purchase Agreement.

7 g. **ALL COMPETING BIDS MUST ACKNOWLEDGE THAT THAT VISTA
8 LANE PROPERTY IS BEING SOLD ON AN "AS-IS AND WHERE-IS" BASIS WITH
9 ALL FAULTS AND CONDITIONS THEN EXISTING AT THE VISTA LANE
10 PROPERTY, AND THE COMPETING BIDDER SHALL AGREE THAT (1) THE
11 TRUSTEE IS NOT MAKING ANY REPRESENTATIONS, WARRANTIES, EITHER
12 EXPRESS OR IMPLIED, AS TO THE CONDITION, USE (PRIOR, PRESENT AND
13 FUTURE), OR OTHERWISE OF THE VISTA LANE; AND (2) THE TRUSTEE SHALL
14 NOT PROVIDE THE WINNING BIDDER WITH ANY REPORTS AS TO THE
15 CONDITIONS OR USES FOR THE VISTA LANE PROPERTY. WITHOUT IN ANY
16 WAY LIMITING THE GENERALITY OF THE FOREGOING, THE COMPETING
17 BIDDER SHALL SPECIFICALLY ACKNOWLEDGE AND AGREE TO WAIVE,
18 RELEASE AND FOREVER DISCHARGE ANY CLAIM IT HAS, MIGHT HAVE IN
19 THE FUTURE, HAD OR MAY HAVE AGAINST THE TRUSTEE, THE ESTATE, THE
20 TRUSTEE (IN HIS OFFICIAL AND PERSONAL CAPACITY) (COLLECTIVELY FOR
21 THIS PURPOSES "SELLER") AND/OR SELLER'S AGENTS WITH RESPECT TO
22 THE CONDITION OF THE VISTA LANE PROPERTY, EITHER PATENT OR
23 LATENT. THE WINNING BIDDER SHALL HEREBY RELEASE, AND FOREVER
24 DISCHARGE THE SELLER, ITS EMPLOYEES, REPRESENTATIVES, AGENTS, SUB-
25 AGENTS, SUCCESSORS, ASSIGNS AND ATTORNEYS FROM ANY AND ALL
26 CLAIMS FOR DAMAGES AND OTHER CAUSES OF ACTION AT LAW OR EQUITY
27 FOR INJURY, DESTRUCTION, LOSS OR DAMAGE OF ANY KIND OR
28 CHARACTER, TO THE PERSON OR PROPERTY OF WINNING BIDDER AND THE
WINNING BIDDER'S EMPLOYEES, AGENTS AND REPRESENTATIVES ARISING
OUT OF OR IN ANY WAY RELATING TO THE VISTA LANE PROPERTY.**

18 h. All competing bids must be accompanied by admissible evidence in the form of
19 affidavits or declarations establishing the bidder's good faith, within the meaning of Section
20 363(m) of the Bankruptcy Code.

21 i. All competing bids must be accompanied by admissible evidence in the form of
22 affidavits or declarations establishing that the bidder is capable and qualified, financially, legally,
23 and otherwise, of unconditionally performing all obligations under the Competing Agreement.

24 j. All competing bids must be accompanied by a cashier's check made payable to
25 the order of Trustee in an amount of Two Hundred Thousand Dollars (\$200,000) (the
26 "Overbidder's Deposit"), and further provide that (A) if the Bankruptcy Court approves a sale of
27 the Vista Lane Property to that bidder, the Trustee may retain the Overbidder's Deposit for
28 application as a non-refundable deposit to be applied against the Purchase Price at the closing of
the transaction, and (B) if the Bankruptcy Court does not approve a sale of the Vista Lane
Property to that bidder, the Trustee will promptly return the Overbidder's Deposit to Overbidder.

26 k. All competing bids must contain a proposed closing date that is not later than the
27 Closing Date set forth in the Purchase Agreement.

28 l. If any bidders have submitted a qualifying competing bid in accordance with
these Bidding Procedures (each such bid, a "Qualified Bid"), then a public auction of the Vista

1 Lane Property (the "Auction") shall be held at the hearing on the Sale Motion. The Auction shall
2 be governed by the following procedures:

3 i. All bidders shall be deemed to have consented to the core
4 jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in
5 connection with any disputes relating to the Auction or the sale of the Vista Lane
6 Property.

7 ii. Bidding will commence at the amount of the highest
8 Qualified Bid.

9 iii. Each subsequent bid shall be in increments of no less than
10 \$5,000, provided, however, Buyer shall have the right to match any competing
11 Qualified Bid and Buyer's bid shall be the winning bid if it matches the highest
12 Qualified Bid at the Auction.

13 iv. Any entity that fails to submit a timely, conforming
14 Qualified Bid, as set forth above, shall be disqualified from bidding for the Vista
15 Lane Property at the Auction or the hearing on the Sale Motion.

16 v. If no timely, conforming Qualified Bid is submitted, the
17 Trustee request at the hearing on the Sale Motion that the Court approve the
18 proposed sale of the Vista Lane Property to Buyer.

19 **I. Approval of the Sale Serves the Best Interests of the Estate and Creditors**

20 The Trustee believes that the proposed sale, subject to overbidding is the best available
21 alternative for maximizing the value of the Vista Lane Property for the Estate and creditors. The
22 alternative to the proposed orderly sale would be the potential loss of Vista Lane Property
23 through foreclosure sale by one of the secured lenders, which would not benefit any party with
24 allowed claims.

25 Given the present state of the real estate market in Southern California, the proposed sale
26 of the Vista Lane Property for a purchase price of \$3,600,000, all cash, is fair and reasonable. It
27 is also \$400,000 above the amount the Debtor claims is the fair market value of the Vista Lane
28 Property. Moreover, the Debtor is causing a substantial depletion of equity (at least \$145,000
from January 2009) in the Vista Lane Property, which will soon make it impossible for the
Trustee to administer if the Debtor further delays and does not pay all allowed claims in full
based on the terms of the Second Amended Stipulation. Given the history of this case and the
Debtor's legal maneuvering, the Trustee is very concerned that if he waits any longer that the
Debtor will continue to deplete equity out of assets of the Estate like the Vista Lane Property so
that by the time there is a final non-appellable order allowing the administrative claims, the
Trustee would be left with no assets to liquidate to satisfy the administrative claims.
Accordingly, and based on the above, the Trustee believes that sale serves the best interest of all
creditors, including administrative creditors who will be allowed some or all of their claims on or
about June 25, 2009.

For further information please see the CHAPTER 7 TRUSTEE'S MOTION FOR
ORDER: (1) APPROVING THE SALE OF REAL PROPERTY ASSET OF THE ESTATE
FREE AND CLEAR OF LIENS; (2) COMBINED WITH NOTICE OF BIDDING
PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES
UTILIZED. (3) APPROVING ASSET PURCHASE AGREEMENT IN CONNECTION WITH
THE SALE; (4) APPROVING PAYMENT OF REAL ESTATE COMMISSION AND OTHER
COSTS OF SALE; AND (5) GRANTING OTHER RELATED RELIEF; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATIONS OF JOHN M. WOLFE AND JOSEPH

1 GALOSIC IN SUPPORT THEREOF on file with the Clerk of the above-entitled Court which
2 may be reviewed on Monday through Friday from 9:00 A.M. to 4:00 P.M. A copy of the Sale
3 Motion may be obtained by written request to the Trustee's attorney at the address indicated
4 above.

5 **PLEASE TAKE FURTHER NOTICE** that any opposition or other responsive paper to
6 the Sale Motion must be filed with the Clerk of the above-entitled Court and a copy served on
7 Shulman Hodges & Bastian LLP to the attention of Lynda T. Bui at the address indicated above
8 and the San Fernando Valley, 21051 Warner Center Lane Suite 115, Woodland Hills, California
9 91367 at least fourteen days prior to the hearing in the form required by **Local Bankruptcy Rule**
10 **9013-1(f)**.

11 **PLEASE TAKE FURTHER NOTICE** that failure to file a timely response may be
12 deemed as consent to the relief requested in the Sale Motion. **SEE, LOCAL BANKRUPTCY**
13 **RULE 9013-1(h)**.

14 Dated: June 5, 2009

SHULMAN HODGES & BASTIAN LLP

/s/ Lynda T. Bui

Leonard M. Shulman
Lynda T. Bui
Attorneys for John M. Wolfe, the Chapter 7 Trustee
For the bankruptcy estate of Kaveh Lahijani

**NOTICE OF ERRATA
AND SUPPLEMENT**

COPY

1 Leonard M. Shulman - Bar No. 126349
Lynda T. Bui - Bar No. 201002
2 SHULMAN HODGES & BASTIAN LLP
26632 Towne Centre Drive, Suite 300
3 Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
4 Facsimile: (949) 340-3000
Email: lshulman@shblp.com; lbui@shblp.com

5 Attorneys for John M. Wolfe,
6 The Chapter 7 Bankruptcy Trustee

7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO DIVISION

10 In re
11
12 KAVEH LAHIJANI,
13
14 Debtor.

Case No. 1:98-bk-15561 GM
Chapter 7

NOTICE OF ERRATA AND SUPPLEMENT TO
THE CHAPTER 7 TRUSTEE'S MOTION FOR
ORDER:

- (1) APPROVING THE SALE OF REAL PROPERTY ASSET OF THE ESTATE FREE AND CLEAR OF LIENS;
- (2) COMBINED WITH NOTICE OF BIDDING PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES UTILIZED;
- (3) APPROVING ASSET PURCHASE AGREEMENT IN CONNECTION WITH THE SALE;
- (4) APPROVING PAYMENT OF REAL ESTATE COMMISSION AND OTHER COSTS OF SALE; AND
- (5) GRANTING OTHER RELATED RELIEF

[Property Located at:
630 Vista Lane, Laguna Beach, CA 92651]

Date: June 26, 2009
Time: 9:00 A.M.
Place: Courtroom 303
United States Bankruptcy Court
21041 Burbank Boulevard
Woodland Hills, CA 91367

1 TO THE HONORABLE GERALDINE MUND, UNITED STATES BANKRUPTCY
2 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR,
3 CREDITORS AND PARTIES-IN-INTEREST:

4 I. NOTICE OF ERRATA AND SUPPLEMENT TO THE SALE MOTION

5 John M. Wolfe, Chapter 7 Trustee for the bankruptcy estate (“Estate”) of Kaveh Lahijani,
6 the debtor herein (“Debtor”) file this Notice of Errata and Supplement to his Motion for Order
7 (1) Approving the Sale of Real Property Asset of the Estate Free and Clear of Liens, (2)
8 Combined With Notice of Bidding Procedures and Request for Approval of the Bidding
9 Procedures Utilized, (3) Approving Asset Purchase Agreement in Connection With the Sale, (4)
10 Approving Payment of Real Estate Commission and Other Costs of Sale; and (5) Granting Other
11 Related Relief (“Sale Motion”). Unless otherwise noted, capitalized terms herein have the
12 meaning as set forth in the Sale Motion.

13 The Notice of Errata and Supplement is being provided to correct scribing errors
14 regarding the Bidding Procedures and to provide information regarding a proposed break-up fee
15 to the Buyer in the event that the Buyer is not the winning bidder at the Auction. Following are
16 the updated Bidding Procedures in their entirety.

17 A. Notice to All Interested Parties of the Bidding Procedures

18 The Trustee has determined that it would benefit the Estate by permitting all interested
19 parties to receive information and bid the for the Vista Lane Property instead of selling the
20 property to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best
21 offer for the benefit of the creditors of this Estate, the Trustee is utilizing the following bidding
22 procedures (“Bidding Procedures”) and requests that Court order approving the sale transaction
23 for the Vista Lane Property also provides for approval of the following Bidding Procedures
24 (**emphasis is on the updates**):

25 a. Competing offers to acquire the Vista Lane Property shall be submitted in writing
26 to the Trustee and his counsel Shulman Hodges & Bastian LLP on or before 4:00 p.m. (Pacific
Time) the day prior to the hearing on the Sale Motion.

27 b. Competing offers shall provide for an all-cash purchase price to be paid to the
28 Trustee that exceeds the Purchase Price herein by at least **One Hundred Thousand Dollars (\$100,000)**.

1 c. Competing offers shall be accompanied by a purchase agreement in form and
2 substance substantially identical to the Purchase Agreement agreed to by the Buyer, together
3 with a redlined, marked copy showing all changes to the Purchase Agreement (the "Competing
4 Agreement").

5 d. Competing offers must not be subject to due diligence contingencies or other
6 conditions; any bidder shall have an opportunity to view the Vista Lane Property prior to the
7 hearing on the Sale Motion (notwithstanding the foregoing, all due diligence must be completed
8 by all qualified bidders prior to the hearing on the Sale Motion).

9 e. All competing bids must remain open until the conclusion of the hearing on the
10 Sale Motion.

11 f. All competing bids shall contain terms and conditions no less favorable to Trustee
12 than the terms and conditions of the Purchase Agreement.

13 g. ALL COMPETING BIDS MUST ACKNOWLEDGE THAT THAT VISTA
14 LANE PROPERTY IS BEING SOLD ON AN "AS-IS AND WHERE-IS" BASIS WITH ALL
15 FAULTS AND CONDITIONS THEN EXISTING AT THE VISTA LANE PROPERTY, AND
16 THE COMPETING BIDDER SHALL AGREE THAT (1) THE TRUSTEE IS NOT MAKING
17 ANY REPRESENTATIONS, WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE
18 CONDITION, USE (PRIOR, PRESENT AND FUTURE), OR OTHERWISE OF THE VISTA
19 LANE; AND (2) THE TRUSTEE SHALL NOT PROVIDE THE WINNING BIDDER WITH
20 ANY REPORTS AS TO THE CONDITIONS OR USES FOR THE VISTA LANE PROPERTY.
21 WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, THE
22 COMPETING BIDDER SHALL SPECIFICALLY ACKNOWLEDGE AND AGREE TO
23 WAIVE, RELEASE AND FOREVER DISCHARGE ANY CLAIM IT HAS, MIGHT HAVE IN
24 THE FUTURE, HAD OR MAY HAVE AGAINST THE TRUSTEE, THE ESTATE, THE
25 TRUSTEE (IN HIS OFFICIAL AND PERSONAL CAPACITY) (COLLECTIVELY FOR THIS
26 PURPOSES "SELLER") AND/OR SELLER'S AGENTS WITH RESPECT TO THE
27 CONDITION OF THE VISTA LANE PROPERTY, EITHER PATENT OR LATENT. THE
28 WINNING BIDDER SHALL HEREBY RELEASE, AND FOREVER DISCHARGE THE
SELLER, ITS EMPLOYEES, REPRESENTATIVES, AGENTS, SUB-AGENTS,
SUCCESSORS, ASSIGNS AND ATTORNEYS FROM ANY AND ALL CLAIMS FOR
DAMAGES AND OTHER CAUSES OF ACTION AT LAW OR EQUITY FOR INJURY,
DESTRUCTION, LOSS OR DAMAGE OF ANY KIND OR CHARACTER, TO THE PERSON
OR PROPERTY OF WINNING BIDDER AND THE WINNING BIDDER'S EMPLOYEES,
AGENTS AND REPRESENTATIVES ARISING OUT OF OR IN ANY WAY RELATING TO
THE VISTA LANE PROPERTY.

21 h. All competing bids must be accompanied by admissible evidence in the form of
22 affidavits or declarations establishing the bidder's good faith, within the meaning of Section
23 363(m) of the Bankruptcy Code.

24 i. All competing bids must be accompanied by admissible evidence in the form of
25 affidavits or declarations establishing that the bidder is capable and qualified, financially, legally,
26 and otherwise, of unconditionally performing all obligations under the Competing Agreement.

27 j. All competing bids must be accompanied by a cashier's check made payable to
28 the order of Trustee in an amount of Two Hundred Thousand Dollars (\$200,000) (the
"Overbidder's Deposit"), and further provide that (A) if the Bankruptcy Court approves a sale of
the Vista Lane Property to that bidder, the Trustee may retain the Overbidder's Deposit for
application as a non-refundable deposit to be applied against the Purchase Price at the closing of
the transaction, and (B) if the Bankruptcy Court does not approve a sale of the Vista Lane
Property to that bidder, the Trustee will promptly return the Overbidder's Deposit to Overbidder.

1 k. All competing bids must contain a proposed closing date that is not later than the
2 Closing Date set forth in the Purchase Agreement.

3 l. If any bidders have submitted a qualifying competing bid in accordance with
4 these Bidding Procedures (each such bid, a "Qualified Bid"), then a public auction of the Vista
Lane Property (the "Auction") shall be held at the hearing on the Sale Motion. The Auction shall
be governed by the following procedures:

5 i. All bidders shall be deemed to have consented to the core
6 jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in
7 connection with any disputes relating to the Auction or the sale of the Vista Lane
Property.

8 ii. Bidding will commence at the amount of the highest
Qualified Bid.

9 iii. Each subsequent bid shall be in increments of no less than
10 \$5,000, provided, however, Buyer shall have the right to match any competing
11 Qualified Bid and Buyer's bid shall be the winning bid if it matches the highest
Qualified Bid at the Auction.

12 iv. Any entity that fails to submit a timely, conforming
13 Qualified Bid, as set forth above, shall be disqualified from bidding for the Vista
Lane Property at the Auction or the hearing on the Sale Motion.

14 v. If no timely, conforming Qualified Bid is submitted, the
15 Trustee requests that the Court approve the proposed sale of the Vista Lane
Property to Buyer at the hearing on the Sale Motion.

16 **m. Clarification Regarding Debtor's Requirements Under the Bidding**
17 **Procedures in the Event Debtor Elects to Cure Defaults and Perform Under the Second**
18 **Amended Stipulation.** In the event that the Debtor elects to proceed with the funding
19 under the Second Amended Stipulation prior to the close of escrow on the Vista Lane
20 Property to the Buyer or a Winning Bidder (defined below), which would result in the
21 Trustee not consummating the sale of the Vista Lane Property and the canceling of escrow
22 with the Buyer or the Winning Bidder, as the case may be, the Debtor will be required to
23 (1) cure all defaults under the Second Amended Stipulation and (2) pay to the Trustee the
24 all allowed administrative expenses, including the additional administrative expenses to
25 cover the payment of the Buyer's Break-Up Fee (defined below). Furthermore, the cure of
26 defaults under the Second Amended Stipulation includes, but is not limited to, the payment
27 of all unpaid mortgage payments with respect to the Vista Lane Property and the Flamingo
28 Property. All cure payments under the Second Amended Stipulation, including all unpaid
administrative expenses, all unpaid mortgage payments with respect to the Vista Lane
Property and the Flamingo Property, and the Break-Up Fee (collectively the "Default Cure
Amount"), shall be in the form of "Good Funds" and deposited with the Trustee's counsel
by no later than July 15, 2009 (the "Default Cure Deadline". "Good Funds" means cash or
other immediately available, good funds.

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1 n. Break-up Fee. If the Debtor elects to pay the Default Cure Amount by the
2 Default Cure Deadline and escrow has been opened with the Buyer and the Buyer's
3 contingency period has expired, or in the event that an overbidder (who is not the Buyer) is
4 the winning bidder ("Winning Bidder") for the purchase of the Vista Lane Property, the
5 Trustee requests authorization to pay the Buyer's fees and costs associated with the sale in
6 an amount equal to \$50,000 ("Break-Up Fee"). The Break-Up Fee will only be payable in
7 one of two events: (1) if after escrow is opened with the Buyer and the Buyer's contingency
8 period has expired and the Trustee is unable to close on the sale of the Vista Lane Property
9 due to the Debtor's timely payment of the Default Cure Amount in Good Funds by the
10 Default Cure Deadline, or (2) escrow closes with a Winning Bidder that is not the Buyer.
11 In no event shall the Break-Up Fee exceed \$50,000.

7 II. MEMORANDUM OF POINTS AND AUTHORITIES

8 A. The Break-Up Fee is Reasonable

9 As a part of the proposed sale with the Buyer for the purchase of the Vista Lane Property,
10 the Buyer has required that it be paid the \$50,000 Break-Up Fee in the event that an overbid
11 situation occurs and the Buyer is not the Successful Bidder, or in the event that the Vista Lane
12 Property is sold to the Buyer.

13 The Break-Up Fee will be treated as an administrative expense of the Estate.

14 As stated by the court in In re Financial News Network, 126 B.R. 152 (D.C., S.D.N.Y.
15 1991) at 154, "A break_up fee is an incentive payment to an unsuccessful bidder who placed the
16 estate property in a sales configuration mode . . . to attract other bidders to the auction." In
17 addition, as stated by the District Court in In re Integrated Resources, Inc., 147 B.R. 650, at 659-
18 661 (D.C., S.D.N.Y. 1992).

19 Break-up fees are important tools to encourage bidding and to
20 maximize the value of the debtor's assets. The usual rule is that if
21 break-up fees encourage bidding, they are enforceable; if they
22 stifle bidding they are not enforceable. In fact, because the
23 directors of a corporation have a duty to encourage bidding, break-
24 up fees can be necessary to discharge the director's duties to
25 maximize value.

26 CRTF Corp. v. Federated Department Stores, Inc., 683 F.Supp. at 441.

27 "Outside bankruptcy, the business judgment rule normally applies
28 to the board's use of a defensive strategy, such as a break-up fee. . .
In assessing the incentive effect of the break-up fee, a court should
determine whether the dollar amount of the fee is so substantial
that it has a chilling affect on other prospective bidders. In making
this determination, the court should consider whether the proposed
acquiror attracted other bidders or simply received a potential

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windfall. Break-up fees and other strategies may be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking . . .

"A break up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, break up fees are generally permissible In re 999 Fifth Avenue Assocs., 96 B.R. at 29.

In this case, the Trustee readily acknowledges that a significant amount of time, effort and expense will have been incurred by the Buyer in performing its due diligence and negotiating the terms of the sale. In a transaction wherein the first overbid increment is anticipated to be at least \$3,700,000 (Buyer's purchase price of \$3,600,000 plus initial overbid of \$100,000), it is anticipated that the Break-Up Fee of \$50,000 represents less than three percent of the purchase price. More importantly, the Break-Up Fee will only be payable in one of two events:

(1) If after escrow is opened with the Buyer and the Buyer's contingency period has expired, the Trustee is unable to complete a sale of the Vista Lane Property due to the Debtor having timely paid the Default Cure Amount in Good Funds by the Default Cure Deadline. In such event, it would be unfair for the Buyer to be the "stalking horse" for the Debtor's compliance under the Second Amended Stipulation.

(2) If escrow closes with a Winner Bidder that is not the Buyer. In no event shall the Break-Up Fee exceed \$50,000. In such event, to the extent that competitive bidding increased the final sales price and a sale takes place beyond that amount, the "net" to the creditors of the Estate would rise dollar for dollar with every increment above the Buyer's offer and the Break-Up Fee would remain constant at \$50,000.

The Court should note that the Break-Up Fee is only payable in the event that the sale closes and the Buyer is not the purchaser of the Vista Lane Property, thereby distinguishing these facts from those presented in In re Hup Industries, Inc., 140 B.R. 191 (Bankr. N.D. Ohio 1992), wherein the court did not approve the break-up fee arrangement when the party proposed to

1 receive the break-up fee was to receive the same regardless of the outcome of the proposed sale
2 in the event overbidding took place. Thus, the Trustee requests the Court approve the Break-Up
3 fee component of the Bidding Procedures.

4 **III. CONCLUSION**

5 Based upon the Sale Motion and the foregoing, the Trustee respectfully submits that good
6 cause exists for granting the Sale Motion and the Trustee respectfully requests that the Court
7 enter an order as follows:

8 1. Approving the Bidding Procedures utilized by the Trustee in connection with the
9 proposed sale of the Vista Lane Property, including the payment of the Break-Up Fee payable in
10 one of two events: (1) if after escrow is opened with the Buyer and the Buyer's contingency
11 period has expired, the Trustee is unable to complete a sale of the Vista Lane Property due to the
12 Debtor's timely payment of the Default Cure Amount in Good Funds by the Default Cure
13 Deadline, or (2) if escrow closes with a Winner Bidder that is not the Buyer. In no event shall
14 the Break-Up Fee exceed \$50,000.

15 2. Approving the Purchase Agreement related to the Vista Lane Property attached as
16 **Exhibit 2** to the Wolfe Declaration and authorizing the Trustee to sell the Vista Lane Property to
17 the Buyer free and clear of all Liens and Encumbrances with Liens and Encumbrances.

18 3. A determination by the Court that the Buyer is in good faith with respect to each
19 of the sales pursuant to Bankruptcy Code Section 363(m).

20 4. Waiving the ten-day stay of the order approving the sale of the Anaheim Hills
21 Property under Federal Rules of Bankruptcy Procedure 6004(g).

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5. Authorizing the payment of the real estate commission and other costs of sale through escrow for the Vista Lane Property as provided in the Purchase Agreement.

6. And for such other and further relief as the Court deems just and proper under the circumstances of this case.

Dated: June 9, 2009

Respectfully submitted,

SHULMAN HODGES & BASTIAN LLP

/s/ Lynda T. Bui

Leonard M. Shulman
Lynda T. Bui
Attorneys for John M. Wolfe, the Chapter 7 Trustee
for the bankruptcy estate of Kaveh Lahijani