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9 Lisa E. Fernandez

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SANTA ANA DIVISION

12	In re:	)	Case No.: 8:07- bk-11503-TA
13)	
14	LISA E. FERNANDEZ,	)	CHAPTER 11
15)	
16	Debtor and Debtor-in-Possession	)	NOTICE OF MOTION FOR ORDER
17		)	AUTHORIZING DEBTOR AND
18		)	DEBTOR-IN-POSSESSION LISA E.
19		)	FERNANDEZ TO:
20		)	(1) SELL PROPERTY OF THE
21		)	ESTATE FREE AND CLEAR OF
22		)	LIENS AND INTEREST OF B&H
23		)	REAL ESTATE, INC. TO JASON
24		)	AND JOYCE KIM OR TO THE
25		)	HIGHEST BIDDER
26		)	(2) TO APPROVE OVERBID
27		)	PROCEDURES
28		)	(3) TO PAY THE REALTOR A
		)	COMMISSION THROUGH
		)	ESCROW

[4322 Hollow Tree Court, Yorba Linda,
California 92886]

Date: April 30, 2008
Time: 10:00 a.m.
Ctrm: 5B

1 PLEASE TAKE NOTICE that on April 30, 2008 at 10:00 a.m. in Courtroom 5B of the
2 United States Bankruptcy Court, located at 411 West Fourth Street, Santa Ana, California, 92701,
3 Lisa E. Fernandez, Debtor shall move this Court for an Order Authorizing Debtor to Sell Property of
4 the Estate. **You have an opportunity to overbid.**

5
6 **Pursuant to Local Bankruptcy Rule 9013-1(1), any response or opposition to the Motion**
7 **must be filed with the Clerk of the Court and served upon counsel for the Debtor Lisa E.**
8 **Fernandez no later than fourteen (14) days prior to the hearing on the Motion. Failure to**
9 **timely file and serve a response or opposition to the Motion may be deemed as consent to the**
10 **relief sought therein.**

11
12 **The Motion is available for review during regular business hours at the Clerk of the**
13 **Bankruptcy Court, located at Clerk of the Court, 411 West Fourth Street, Suite 2030**
14 **Santa Ana, CA 92701, or a copy thereof may be obtained upon written request from Annie**
15 **Verdries at Lewis Brisbois Bisgaard & Smith LLP, 650 Town Center Drive, Suite 1400, Costa**
16 **Mesa, California 92626, counsel for Debtor.**

17
18 **I.**

19 **INTRODUCTION**

20 The instant case was commenced by the filing of a Voluntary Chapter 11 Petition by Lisa E.
21 Fernandez on May 23, 2007 in the Central District of California, as Case No. 8:07- bk-11503-ES.

22 Debtor is a Debtor-in-Possession ("Debtor").

23
24 Among the assets which constitute property of Debtor's estate is an interest in single family
25 real property located at 4322 Hollow Tree Court, Yorba Linda, California 92886 (the "Property").

26 Debtor by this motion, seeks approval for the sale of the Property.

27 The proposed sales transaction of the Property will allow the Debtor to liquidate this asset of
28 Debtor's estate.

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approximately \$1,400,000, to be paid through escrow;

3. Deed of Trust of Active Mortgage, with a balance owing of approximately \$1,500,000.00 to be partially paid through escrow;

4. Disputed Deed of Trust of B&H which claims a balance due of approximately \$1,000,000.

Debtor further seeks permission to pay through escrow seller's ordinary and customary escrow fees, title changes and other incidental customary costs and fees, and the commission of the Realtor.

III.

1. Sound Business Justification

The proposed sale of the Property relieves the bankruptcy estate of the obligator to make monthly mortgage payments to the lien holders, to pay insurance and property taxes and to maintain the property. This will allow Debtor to accumulate more funds with which to fund a Chapter 11 plan.

The lien of Active Mortgage is cross collateralized by real property located at 22355 Starwood Drive, Yorba Linda, California 92889 ("Starwood Property").

Because Active's loan is also cross-collateralized by a pool of loans being administered by Richard Marshack, Trustee of Old Canal, Active may receive a substantial payment, if not payment in full from the proceeds of such pool, thereby freeing up more equity in the Starwood Property.

2. The Court Should Find That The Buyer Is A Good Faith Purchaser

The proposed sale transaction is the product of arms-length, good faith negotiations on behalf of the Debtor and the bankruptcy estate on the one hand, and the Buyer on the other. Debtor requests that the court makes a finding that the Buyer is a good faith purchaser within the meaning of 11 U.S.C. §363(m).

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IV.

OVERBIDDERS ARE WELCOME AT THE HEARING TO APPROVE THE SALE

As always, other potential purchasers may submit overbids at or before the hearing to approve the sale. Accordingly, the Debtor and Debtor-in-Possession requests that the court adopt certain overbid procedures.

Any party wishing to submit an overbid should appear at the hearing on this motion on April 30, 2008, at 10:00 a.m. in courtroom 5B of the United States Bankruptcy Court located at 411 West Fourth Street, Santa Ana, California 92701. At least three days prior to the hearing, each potential overbidder should contact counsel for the Debtor to tender a deposit in the amount of \$70,000 (“Deposit”) and provide Debtor’s counsel with (a) proof of a loan commitment or an independent ability to pay the balance of the purchase price.

The Deposit for the successful overbidder becomes non-refundable upon acceptance of the overbid by the Debtor.

The first overbid for the Property should be for at least \$10,000 over \$2,41,000 and subsequent overbids should be in increments of at least \$5,000. Finally, the overbidder must agree to pay in addition, through escrow, one-half of the customary escrow fees and costs and execute a purchase agreement.

The successful overbidder must complete the purchase of the Property and close escrow within twenty-five (25) days from the entry of the Order confirming the sale.

The Deposit of each non-successful bidder will be returned immediately. In the event the successful overbidder cannot consummate the sale timely, Debtor is authorized to accept the offer made by the next highest bidder and may retain the Deposit of the successful overbidder who does not timely close the sale through no fault of Debtor. For further information, please contact debtor’s realtor Darryl Jones, at (714) 529-8700 or at darryljns@aol.com.

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V.

**THE PROPERTY SHOULD BE SOLD FREE AND CLEAR
OF ALL LIENS AND INTERESTS**

The Debtor requests that the Court authorize the sale of the Property free and clear of any liens and interests. The lien of Washington Mutual will be paid in full through escrow and Debtor understands that Active consents to the sale.

The Sale Should Be Free And Clear Of The Alleged Lien Of B&H

The lien claim of B&H is subject to a bona fide dispute.

B&H will retain its lien on the Starwood Property pending the outcome of litigation.

VI.

**THE COURT SHOULD WAIVE THE PROVISIONS OF RULE 6004 (g)
AND AUTHORIZE AN IMMEDIATE SALE**

The Debtor requests that the court waive the ten day stay imposed by Rule 6004 (g) of the Federal Rules of Bankruptcy Procedure. The parties wish to complete the sale as quickly as possible and, therefore, the Debtor requests permission to proceed immediately with the sale.

VII.

**THE COURT SHOULD APPROVE THE COMPENSATION OF
REAL ESTATE BROKERS**

By order entered February 29, 2008, the court approved Debtor's application to employ a realtor. Pursuant to the employment application the Realtor will be paid a commission of 4% from the selling price from the sale proceeds. If the purchaser has a realtor, the realtor for the purchaser will receive a portion of the commission. Debtor is hereby seeking permission to pay the commission of the realtor through escrow.

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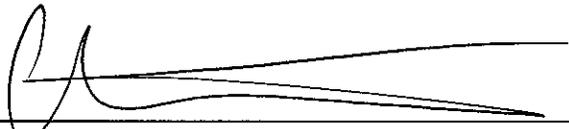
VIII.

CONCLUSION

For the reasons set forth above, Debtor respectfully requests the Court entered an order (1) approving the proposed sale of the Property to Renton or the highest overbidder, if any free and clear of the lien of B&H Real Estate, Inc.; free and clear of the lien of B&H Real Estate, Inc. (2) approving the proposed overbid procedures; and (3) authorize the payment of the realtor through escrow.

DATED: April 4, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

By 

Annie Verdries
Attorneys for Debtor and Debtor-in-Possession
Lisa E. Fernandez

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