

Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No. Leonard M. Shulman - Bar No. 126349 SHULMAN HODGES & BASTIAN LLP 26632 Towne Centre Drive, Suite 300 Foothill Ranch, California 92610 Telephone: (949) 340-3400 Facsimile: (949) 340-3000	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: ROBERT L. McWHIRK, <div style="text-align: right;">Debtor(s).</div>	CASE NO.: SA 05-19596 ES Chapter 7

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: Hearing Date: April 3, 2007	Time: 10:30 A.M.
Location: Courtroom 5A, U.S. Bankruptcy Court, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701	

Type of Sale: Public Private Last date to file objections: March 20, 2007

Description of Property to be Sold: **Real property located at 31562 Bluff Drive, Laguna Beach, CA – see the attached Notice of Motion and Chapter 7 Trustee’s Motion for Order: (1) Approving the Sale of Real Property Free and Clear of Certain Liens Pursuant to Bankruptcy Code 363(b)(1) and (f) and Subject to Overbid Procedures, Including Payment of a Break-Up Fee; (2) Approving Payment of Real Estate Commission; (3) Prohibiting Payment of the Debtor’s Homestead Exemption Claim Subject to Outcome of the Trustee’s Formal Objection to the Homestead Exemption Claim; (4) Approving Interim Distribution to Allowed Priority and General Unsecured Claims Pursuant to Bankruptcy Code Section 704(1); and (5) Granting Related Relief (“Motion”)**

Terms and Conditions of Sale: **See the attached Motion**

Proposed Sale Price: **See the attached Motion**

Overbid Procedure (If Any): **See the attached Motion**

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

April 3, 2007 at 10:30 A.M.

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

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

Date: March 7, 2007

ORIGINAL

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7 Attorneys for Richard A. Marshack, the
8 Chapter 7 Bankruptcy Trustee

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

12 In re

13 **ROBERT L. McWHIRK,**

14 Debtor.

Case No. SA 05-19596 ES
Chapter 7

**NOTICE OF MOTION AND CHAPTER 7 TRUSTEE'S
MOTION FOR ORDER:**

- 15 (1) APPROVING THE SALE OF REAL PROPERTY FREE
16 AND CLEAR OF CERTAIN LIENS PURSUANT TO
17 BANKRUPTCY CODE 363(b)(1) AND (f) AND
18 SUBJECT TO OVERBID PROCEDURES, INCLUDING
19 PAYMENT OF A BREAK-UP FEE;
- 20 (2) APPROVING PAYMENT OF REAL ESTATE
21 COMMISSION;
- 22 (3) PROHIBITING PAYMENT OF THE DEBTOR'S
23 HOMESTEAD EXEMPTION CLAIM SUBJECT TO
24 OUTCOME OF THE TRUSTEE'S FORMAL
25 OBJECTION TO THE HOMESTEAD EXEMPTION
26 CLAIM;
- 27 (4) APPROVING INTERIM DISTRIBUTION TO
28 ALLOWED PRIORITY AND GENERAL UNSECURED
CLAIMS PURSUANT TO BANKRUPTCY CODE
SECTION 704(1); AND
- (5) GRANTING RELATED RELIEF;

**MEMORANDUM OF POINTS AND AUTHORITIES AND
DECLARATION OF RICHARD A. MARSHACK IN SUPPORT
THEREOF**

[Property Location: 31562 Bluff Dr, Laguna Beach, CA 92651]

Date: April 3, 2007
Time: 10:30 A.M
Place: Courtroom 5A
411 West Fourth Street
Santa Ana, California 92701

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1 TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE;
2 OFFICE OF THE UNITED STATES TRUSTEE; DEBTOR; AND ALL INTERESTED
3 PARTIES:

4 NOTICE

5 PLEASE TAKE NOTICE that on April 3, 2007 at 10:30 A.M. in Courtroom 5A of the
6 above-entitled Court located at Ronald Reagan Federal Building and United States Courthouse,
7 411 West Fourth Street, Santa Ana, California 92701, Richard A. Marshack, the Chapter 7
8 Trustee ("Trustee") for the bankruptcy estate ("Estate") of Robert L. McWhirk ("Debtor"), will
9 bring this Motion for Order: (1) Approving the Sale of Real Property Free and Clear of Certain
10 Liens Pursuant to Bankruptcy Code 363(b)(1) and (f) and Subject to Overbid Procedures,
11 Including Payment of a Break-Up Fee; (2) Approving Payment of Real Estate Commission; (3)
12 Prohibiting Payment of the Debtor's Homestead Exemption Claim Subject to Outcome of the
13 Trustee's Formal Objection to the Homestead Exemption Claim; (4) Approving Interim
14 Distribution to Allowed Priority and General Unsecured Claims Pursuant to Bankruptcy Code
15 Section 704(1); and (5) Granting Related Relief ("Sale Motion").

16 The Sale Motion is based upon this Notice of the Sale Motion, the Sale Motion and
17 Memorandum of Points and Authorities in Support thereof, the Declaration of Richard A.
18 Marshack, the pleadings and files in the Debtor's bankruptcy case, and upon such further oral
19 and documentary evidence as may be presented to the Court in support of the Sale Motion.

20 PLEASE TAKE FURTHER NOTICE that objections, if any, shall be filed with the
21 Clerk of the above Court and a copy served upon Shulman Hodges & Bastian LLP to the
22 attention of Leonard M. Shulman, 26632 Towne Centre Drive, Suite 300, Foothill Ranch,
23 California 92610 and the Office of the United States Trustee, Ronald Reagan Federal Building
24 and United States Courthouse, 411 West Fourth Street, #9041, Santa Ana, California 92701-8000
25 no later than fourteen days prior to the scheduled hearing.

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PLEASE TAKE FURTHER NOTICE that failure to file a timely response may be deemed as consent to the relief requested in the Motion. **SEE, LOCAL BANKRUPTCY RULE 9013-1(a)(7) and (11).**

Dated: March ____, 2007

SHULMAN HODGES & BASTIAN LLP



Leonard M. Shulman
Attorneys for Richard A. Marshack, the Chapter 7 Trustee
for the bankruptcy estate Robert L. McWhirk

1 SALE MOTION INTRODUCTION

2 As set forth below, the Trustee believes the Buyer's¹ offer for the purchase of the
3 Property at \$2,900,000, subject to overbids, is in the best interest of the Estate and its creditors.
4 Through the sale, it is anticipated that the Estate will generate no less than \$1,700,000 (amounts
5 are estimated) in net proceeds. The estimated net proceeds will increase in the event the
6 purchase price is increased by a successful overbid.

7 The Court's PACER claims register indicates that other than the claim of CHFA, the total
8 priority and unsecured claims filed in this case are less than approximately \$22,000. Through
9 this Sale Motion, the Trustee also proposes to make an interim distribution to pay all priority and
10 all general unsecured claims, other than the claim of CHFA, in full. As to the claim of CHFA
11 arising from a State Court Judgment that is currently under appeal, the Trustee proposes the
12 following:

13 • The Trustee will segregate funds in an account to be held for a potential interim
14 distribution to CHFA in the amount of \$1,100,000 plus an additional \$150,000 if the Trustee's
15 Objection to Homestead Exemption Claim is sustained ("CHFA Segregated Funds").

16 • The alleged lien of CHFA against the Laguna Beach Property shall attach to
17 CHFA Segregated Funds in the same validity and priority as prior the close of escrow pending
18 the final outcome of the Fourth District Court of Appeals ruling on the State Court Judgment.

19 • If and when the Fourth District Court of Appeals affirms the State Court
20 Judgment, the CHFA Segregated Funds, including all interest accrued thereon, shall be paid to
21 CHFA on account of its claim against the Estate. However, in the event the Debtor files an
22 appeal of any order of the Fourth District Court of Appeals affirming the State Court Judgment,
23 and such ruling is later reversed, abridged, amended or otherwise altered, the CHFA Segregated
24 Funds paid on account of the claim of CHFA will be subject to disgorgement such that all CHFA
25 Segregated Funds paid to CHFA, including all accrued interest, shall be immediately returned to
26 the Estate to the extent the amount received by CHFA exceeds the amount of the claim that is
27 ultimately allowed.

28 ¹ Capitalized terms are defined below.

1 After the proposed interim distribution, the Trustee estimates that the remaining Estate
2 funds will be more than sufficient to ensure future payment of all administrative claims incurred
3 by this Estate.

4 The proposed interim distribution to the creditors does not harm the unsecured creditors
5 of the Estate who except for CHFA will be paid in full. Although CHFA will not be paid in full,
6 CHFA has advised the Trustee that it has no objection to the proposed interim distribution
7 procedures. Accordingly, the Trustee believes it is in the best interests of the Estate and its
8 creditors to make the interim distribution immediately upon the closing of the sale of the
9 Property.

10 Thus, good cause exists to grant the Sale Motion so that the Trustee does not lose this
11 favorable business opportunity.

12 In support of the Sale Motion, the Trustee respectfully represents as follows:

13 **BACKGROUND INFORMATION**

14 **A. Case Commencement**

15 The Debtor filed a petition under Chapter 7 of the Bankruptcy Code on October 12, 2005
16 ("Petition Date").

17 Richard A. Marshack is a qualified, acting and duly appointed Chapter 7 trustee for the
18 Debtor's Estate.

19 **B. The Property**

20 Among the assets of the Estate is the residential real property located at 31562 Bluff
21 Drive, Laguna Beach, California, 92651 ("Property"), Assessor Parcel No. 658-092-09. The
22 Property is legally described as follows²:

23 Lot 15 of Tract No. 702 "Coast Royal", in the City of Laguna
24 Beach, County of Orange, State of California, as shown on a map
25 recorded in Book 21, Pages 1, 2 and 3 of Miscellaneous Maps, in
26 the office of the County Recorder of said county together with that
27 portion of the Southwesterly half of Bluff Drive bounded
28 Northwesterly by the Southwesterly prolongation of the
Southwesterly line of said Lot and Southeasterly by the
Southwesterly prolongation of the Southeasterly line of said lot as

² The legal description is believed to be accurate but may be corrected or updated by the title company in the transfer documents as necessary to complete the sale of the Property.

1 abandoned by the board of supervisors by Instrument No. 23417
2 recorded August 11, 1926.

3 In his Bankruptcy Schedule A, the Debtor valued the Property at \$3,500,000.

4 The following is a summary of the transfers of the title to the Property prior to the
5 Petition Date:

- 6 • The Debtor purchased the Property in 1997.
- 7 • In 1999, the Debtor caused a deed to be recorded that purports to transfer the
8 Property to the Robert. L. McWhirk Living Trust.
- 9 • In 2003, the Debtor caused a grant deed to be recorded that purports to transfer
10 the Property to James Machkoff and Southpac Trust International as Trustees of the Amended
11 and Restated RLM Family Trust dated January 14, 2003. The Debtor is a beneficiary of the
12 family trust.

13 On March 8, 2004, the Debtor caused a grant deed to be recorded that purports to transfer
14 the Property to RLM Family Holdings LLC, a Nevada Limited Liability Company ("RLM
15 Family Holdings LLC"). The Debtor is the sole member and manager of RLM Family Holdings
16 LLC.

17 Based on the foregoing, the Debtor did not hold title to the Property as of the Petition
18 Date.

19 **C. The Property Disposition Stipulation**

20 On or about April 6, 2006, the Court entered an order approving that certain Stipulation
21 Between Debtor, RLM Family Holdings LLC and Trustee Re: Title to Residence Located at
22 31562 Bluff Drive, Laguna Beach, California ("Property Disposition Stipulation"), a true and
23 correct copy of which is attached to the Declaration of Richard A. Marshack ("Marshack
24 Declaration") as **Exhibit A**. The principal terms of the Property Disposition Stipulation provide
25 as follows:

- 26 1. Title to the Property has been transferred to the Trustee on behalf of the Estate.
- 27 2. Pursuant to the Property Disposition Stipulation, the Trustee and the Debtor
28 reserved their respective rights to argue whether the Debtor's claimed homestead exemption

1 claim in the Property is proper. As set forth below, the Trustee has filed a motion objecting to
2 the homestead exemption claim

3 3. The Trustee agreed not close on the sale of the Property until the earlier of
4 January 1, 2007 or the date of the Clerk of the District Court of Appeals docket or serves the
5 ruling of the District Court of Appeals for Case No. G034967. (This is Debtor's Appeal of the
6 State Court Judgment procured by CHFA prior to the Petition Date which is described below).

7 4. The Debtor agreed to obtain a notarized statement from Michael Misita that he is
8 owed no more than \$252,000 by the Debtor or the Estate and to obtain a Modification of Trust
9 Agreement. This has been accomplished. Attached as **Exhibit B** to the Marshack Declaration
10 is a true and correct copy of the notarized statement from Michael Misita.

11 5. The Debtor, the Amended RLM Family Trust and the RLM Holding LLC agreed
12 by March 30, 2006, to cause payment in full of the loan by Capital Mortgage Limited against the
13 Property and to obtain a recorded deed of reconveyance that effectively removes lien against the
14 Property in favor of Capital Mortgage Limited. This has been accomplished.

15 **D. The Trustee's Objection to the Debtor's Homestead Exemption Claim**

16 In his Bankruptcy Schedule C, the Debtor claimed a homestead exemption in the
17 Property in the amount of \$150,000 pursuant to CCP 704.730(a)(3).

18 The Trustee disputes the Debtor's homestead exemption claim, based on, among other
19 things, that the Debtor did not hold title to the Property as of the Petition Date and because the
20 Trustee asserts that the Debtor fraudulently transferred the Property.

21 As set forth above, pursuant to the Property Disposition Stipulation, the Trustee and the
22 Debtor reserved their respective rights to argue whether the Debtor's claimed homestead
23 exemption is proper. As the parties have been unable to resolve this issue without Court
24 intervention, the Trustee has filed a Motion Objecting to the Debtor's Claimed Homestead
25 Exemption ("Objection to Homestead Exemption Claim"). A hearing on the Objection to
26 Homestead Exemption Claim is scheduled for May 8, 2007.

27 Thus, through this Sale Motion, the Trustee requests that the Court enter an order
28 prohibiting payment of the Debtor's homestead exemption claim in the Property subject to the

1 outcome of the Trustee's Objection to Homestead Exemption Claim. There will be sufficient
2 funds in reserve to pay such homestead exemption claim if the Debtor successfully defends the
3 Trustee's objection.

4 **E. Employment of Real Estate Agent**

5 Pursuant to Court order entered on October 31, 2006, the Trustee was authorized to
6 employ Brian Johnson of Coldwell Banker Previews and Clarence Yoshikane of Prudential
7 California Realty (collectively the "Agents") as his real estate professionals to assist in the
8 marketing of the Property. The Agents listed the Property for sale at \$3,850,000.

9 The Court order approving the employment of the Agents provides that subject to further
10 application and Court order the Agents may receive a real estate commission in the amount of
11 five percent of the purchase price of the Property.

12 **F. Liens and Encumbrances Against the Property and Their Proposed Treatment**
13 **Through the Sale**

14 Attached to the Marshack Declaration as **Exhibit C** is a true and correct copy of a
15 Preliminary Title Report on the Property dated February 5, 2007 ("Title Report"). The following
16 chart sets forth the liens and encumbrances against the Property as indicated in the Title Report
17 and of which the Trustee has become aware of during this case along with the Trustee's proposed
18 treatment of the liens and encumbrances through the sale of the Property:

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment Through the Sale</u>
21 Orange County 22 Treasurer and Tax 23 Collector	24 Real property taxes 25 1st installment and 26 2nd installments 2006-2007 – total of \$12,926 Defaulted real property taxes 2005- 2006 – total of \$15,664.79 if paid by March 31, 2007	\$28,590.79	All outstanding real property taxes will be paid through escrow on the sale transaction. As such, the Property will be sold free and clear of any liens and encumbrances of the Orange County Treasurer and Tax Collector.

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owning</u>	<u>Treatment Through the Sale</u>
<p>1 Michael J. Misita, 2 Trustee of the Michael 3 J. Misita Trust u/a/d/ 4 August 5, 1999 5 ("Misita Lien")</p>	<p>6 First deed of trust in 7 the original amount 8 of \$427,920 dated 9 January 14, 2003, 10 recorded on January 11 16, 2003, Instrument 12 No. 62038 (Misita 13 Deed of Trust")</p>	<p>14 In his 15 Bankruptcy 16 Schedule D, the 17 Debtor listed the 18 amount owing 19 on the Misita 20 Lien as 21 \$427,920. 22 However, the 23 Trustee has 24 received the 25 notarized 26 statement from 27 Mr. Misita 28 stating that the amount owed is no more than \$252,000</p>	<p>The Misita Lien is the subject of a bona fide dispute. The Trustee believes that transfer of an interest in the Property represented by the the Misita Lien was given with the intent to hinder, delay or defraud the Debtor's creditors, the Trustee and the Estate. (See the further discussion below regarding the Misita Lien.) The Trustee believes that the Misita Lien constitutes a transfer of the Property that may be avoided by the Trustee under his powers under Bankruptcy Code including Section 548, and the Unfair Fraudulent Conveyances Act, sections 3439 et seq. of the California Civil Code. The Trustee anticipates that if this creditor does not voluntarily release the lien from the sale proceeds, the Trustee will commence an adversary proceeding to avoid the lien under applicable sections of the Bankruptcy Code, including Sections 548 and 550 and the the Unfair Fraudulent Conveyances Act, sections 3439 et seq. of the California Civil Code.</p> <p>As the Misita Lien is the subject of a bona fide dispute, no funds will be disbursed through escrow on the sale of the Property on account of the Misita Lien. The Trustee seeks to sell Property free and clear of the Misita Lien, with such lien to attach to the proceeds of the sale in the priority and validity as prior to the closing of the sale pending agreement with the creditor or further Court order. The Trustee will segregate \$378,000 pending resolution of the disputed Misita Lien (one and one-half times the amount set forth in the notarized statement from Mr. Misita attached as Exhibit B)</p>
<p>23 City of Laguna Beach 24 Attn Joe Chiquete 25 505 Forest Avenue 26 Laguna Beach, CA 27 92651</p>	<p>23 City of Laguna Beach 24 Underground Utility 25 Assessment District 26 No. 99-4, recorded 27 December 22, 2004, 28 Instrument No. 2004001135412</p>	<p>\$25,514.34</p>	<p>To the extent that this lien has not been paid, the lien shall be paid in full through escrow on the sale of the Property and shall not run with the Property. As such, the Property will be sold free and clear of any liens and encumbrances of the City of Laguna Beach Underground Utility Assessment District No. 99-4.</p>

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owed</u>	<u>Treatment Through the Sale</u>
California Housing Finance Agency	Court Order Not to Dissipate Assets Recorded November 16, 2004, Instrument No. 2004001024099	Not Applicable	<p>See the discussion below regarding the claim of the California Housing Finance Agency and proposed interim distribution on claims.</p> <p>The Property will be sold free and clear of this encumbrance and such encumbrance shall not attach to the proceeds of the sale.</p> <p>The Trustee is advised that the California Housing Finance Agency has no objection to the sale of the Property and the treatment of its liens and encumbrances as proposed herein.</p>
California Housing Finance Agency	Abstract of Judgment evidencing the State Court Judgment in favor of the California Housing Finance Agency, recorded on or about January 7, 2005, Instrument No. 2005000016287	\$13,264,844.00	<p>See the discussion below regarding the claim of the California Housing Finance Agency and proposed interim distribution on claims.</p> <p>The Property will be sold free and clear of this lien and such lien will not attach to the proceeds of the sale.</p> <p>The Trustee is advised that the California Housing Finance Agency has no objection to the sale of the Property and the treatment of its liens and encumbrances as proposed herein.</p>

1. Further Discussion Regarding the Misita Lien.

Although the Debtor affirmatively scheduled Mr. Misita as holding a secured claim against the Estate in the amount of \$427,920 in his Bankruptcy Schedule D, the Trustee believes that the Misita Lien is avoidable and the underlying obligation is unenforceable for several reasons, including but not limited to the following.

First, the Trustee contends that the Misita Deed of Trust is void as part of the Debtor's complex asset protection plan improperly designed to hinder creditors under which title to the Laguna Beach Property was transferred among RLM Family Holdings LLC, the Amended and Restated RLM Family Trust, the Robert L. McWhirk Trust, and Robert L. McWhirk.

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Second, while Debtor testified at his Section 341(a) Meeting of Creditors that the underlying obligation due Mr. Misita is based on a largely oral agreement for the Debtor to share with Mr. Misita appreciation in jointly owned properties, the "Trustor" under the Misita Deed of Trust is the "Robert L McWhirk Trust" not the Debtor.

Third, the Debtor has admitted under oath that there is no "promissory note in the principal sum of \$427,920", so the debt which the Misita Deed of Trust purportedly secures does not exist.

Fourth, even if the Misita Deed of Trust is determined to secure the Debtor's obligations under the "appreciation splitting arrangement", the Trustee does not believe Mr. Misita will be able to prove an enforceable agreement as there is no writing to memorialize it.

Fifth, it appears that execution and recordation of the Misita Deed of Trust was done without the Debtor receiving reasonably equivalent value in exchange and with the actual intent to hinder and defraud creditors.

Although the Trustee is not aware of any other liens or encumbrances, out of an abundance of caution, the Trustee seeks to the sell the Property free and clear of liens with liens and encumbrance not satisfied through the sale to attach to the proceeds of the sale in the same validity and priority as prior to the closing of the sale, pending agreement with the creditor or further Court Order.

G. The Offer for the Purchase of the Property

The Trustee has received an offer through the Agents from Lazzlo and Clara Dorna (collectively the "Buyer") to purchase the Property for \$2,900,000. The purchase price includes a deposit of \$100,000. Attached as **Exhibit D** to the Marshack Declaration is a true and correct copy of the Purchase Agreement with all addendums (collectively the "Agreement").

A summary of the Agreement's terms and highlights are discussed below, but the summary and discussion are not meant to be a complete review of every provision of the Agreement. The Agreement itself is the legally binding documents the Trustee seeks approval of and, in the event of any inconsistency between the terms, provisions or effect of the Agreement

1 and the description of it in these pleadings, the Agreement alone shall govern and not these
2 pleadings or the descriptions herein.

3 In summary, the principal terms of the sale of the Property shall be as follows (the
4 Trustee is referred to at times as the "Seller" in the following summary):

5 • Purchase Price. The purchase price for the Property shall be \$2,900,000, subject
6 to the bidding procedures set forth below.

7 • Deposit. The Buyer shall provide a deposit of \$100,000 which is refundable only
8 if an overbid is accepted and the Buyer is not the Successful Bidder.

9 • Closing. Closing is to occur within ten (10) days from the Escrow Holder's
10 receipt of the Court order approving this Sale Motion and the Agreement.

11 • Termite Report and Repairs. A structural pest control report and repair work is
12 not a condition of the sale.

13 • Escrow Holder. The escrow holder shall be the Trustee's choice.

14 • Escrow and Title Costs. The Estate and the Buyer shall each pay fifty percent of
15 escrow fees and title costs.

16 • Homeowners Associations Fees. The Estate and the Buyer shall each pay fifty
17 percent of the Homeowners Association transfer fees and document preparation fees.

18 • Other Costs. The Estate shall pay for County and City transfer taxes or transfer
19 fees, recording of the deed or other conveyance fees, and an Owner's Title Insurance policy
20 (ALTA-R) of the Trustee's choice. The Buyer shall pay for any Lender's Title Insurance Policy.

21 • Real Estate Agent Commission. Through escrow on the sale of the Property, and
22 subject to Bankruptcy Court approval, the Trustee shall pay compensation to the Trustee's Agent
23 for real estate broker services to in the total amount not to exceed five percent of the gross selling
24 (\$145,000).

25 • No Assignment: The Agreement is between Buyer and Trustee. Buyer shall have
26 no right to assign the Escrow, the Agreement, or transfer the Property concurrent with closing
27 without consent of Seller.

28 • Title Insurance: The title insurance policy shall be subject only to liens,

1 encumbrances, clouds and other matters as may appear on the preliminary title report, that are
2 not to be removed at the close of Escrow, and have not been objected to by Buyer. Should Seller
3 be unwilling or unable to eliminate those title matters disapproved by Buyer as above, the Seller
4 may terminate the Agreement or; should Seller fail to deliver good and marketable title as
5 provided above, Seller and Buyer may terminate the Agreement. In either case, the Buyer's
6 deposit shall be returned to Buyer, and Buyer shall have no recourse against Seller, Richard A.
7 Marshack, as Trustee, individually, or the Law Offices of Shulman, Hodges & Bastian, LLP, the
8 Estate or the Debtor, or any real estate agent, broker or attorney involved in the transaction.

9 • Limitations of Sale: The parties acknowledge that the operation of the law has
10 placed the Trustee in a unique role as the Seller of the Property. Due to the nature of the
11 Trustee's role in administering the Estate, there are limitations as to the extent, type and character
12 of the Agreement under which the Trustee can convey the Property. The Trustee proposes to sell
13 Property to certain limitations. The parties acknowledge that they understand the terms under
14 which the Property is to be conveyed may vary substantially from the normal customs and trade
15 within the real estate industry. Except where expressly mandated by operation of law, the Buyer
16 consents to any such modifications and amendments.

17 • Purchase without Warranties: Buyers acknowledge that they are purchasing the
18 Property from the Seller "AS IS" without warranties of any kind, expressed or implied, being
19 given by the Seller, concerning the condition of the property or the quality of the title thereto, or
20 any other matters relating to the Property. Buyer represents and warrants that they are
21 purchasing the Property as a result of their own investigations and are not buying the Property
22 pursuant to any representation made by any broker, agent, accountant, attorney or employee
23 acting at the direction, or on the behalf of the Seller. Buyer acknowledges that Buyer has
24 inspected the Property, and upon closing of Escrow governed by this Agreement, Buyer forever
25 waives, for himself, his heirs, successors and assigns, and all claims against the Debtor, his
26 attorneys, agents and employees, the Debtor's Estate, Richard A. Marshack, as Trustee and
27 individually, and his attorneys, agents and employees, arising or which might otherwise arise in
28 the future concerning the Property.

1 • Trustee's Liability: Buyer acknowledges that the Trustee is acting in his official
2 capacity only. No personal liability shall be sought or enforced against the Trustee with regard
3 to the Agreement, including the Addendum, the assets, the sale of the Property, or the physical
4 condition of the Property. In the event that the Trustee fails or refuses to complete the
5 transaction for any reason, then the limit of the Trustee's liability is only to return any money
6 paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the
7 United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the
8 Property and the Agreement; and all disputes arising before and after closing shall be resolved in
9 said Court.

10 • Hold Harmless:

11 a. Buyer understands the terms and conditions of the entire purchase contract and
12 holds the Estate and the realtors, brokers, agents, Richard A. Marshack, Trustee, and his
13 attorneys including Shulman, Hodges & Bastian, LLP, agents and employees harmless from any
14 liabilities arising from the contact.

15 b. All parties further agree, jointly and severally, to pay on demand as well as to
16 indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys'
17 fees, expenses, obligations and liabilities of any kind or nature which in good faith, Escrow may
18 incur or sustain in connection with or arising out of this Escrow and Escrow is hereby given a
19 lien upon all the rights, titles and interest of each of the undersigned in all escrow papers and
20 other property and monies deposited in this escrow, to protect the rights of escrow and to
21 indemnify and reimburse Escrow under this Agreement. In the event this Escrow is not
22 completed for any reason, Escrow is authorized to deduct and pay its fee, plus costs incurred
23 from any funds on deposit.

24 • Jurisdiction of the Bankruptcy Court. Any and all disputes which involve in any
25 manner the Estate or Richard A. Marshack, Trustee, arising from the Agreement and/or its
26 Addendums or relating in any manner to the Property, shall be resolved only in the United States
27 Bankruptcy Court, Central District of California.

28 • No Contingencies. Buyer is aware that this offer is contingent upon Trustee

1 approval, Bankruptcy Court confirmation and is subject to overbid. After removal/waiver of all
2 contingencies, Buyer's Deposit is refundable only if overbid is accepted by Bankruptcy Court.
3 Except as otherwise provided herein, Buyer has NO CONTINGENCIES in this transaction.

4 • Sale Subject to Overbidding. The sale of the Property is subject to the bidding
5 procedures described below, including the payment of a break-up fee in the event that Property is
6 sold to a successful overbidder that is not the buyer.

7 **H. Notice of Bidding Procedures**

8 Trustee has determined that it would benefit the Estate by permitting all interested parties
9 to receive information and bid for the Property instead of selling to the Property to the Buyer on
10 an exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of
11 the creditors of this Estate, the Trustee also seeks Court approval of the following bidding
12 procedures (the Notice of this Sale Motion will include notice of the following bidding
13 procedures):

14 1. The potential overbidders must bid an initial amount of at least \$25,000 over the
15 price offered for the Property by the Buyer. Minimum bid increments thereafter shall be
16 \$10,000.

17 2. Overbids must be in writing and be received by Trustee's counsel, Shulman
18 Hodges & Bastian LLP to the attention of Leonard M. Shulman by no later than the time of
19 hearing on the Sale Motion.

20 3. Overbids must be accompanied by certified funds in an amount equal to ten
21 percent of the overbid purchase price.

22 4. The overbidder must also provide evidence of having sufficient specifically
23 committed funds to complete the transaction or a lending commitment for the bid amount and
24 such other documentation relevant to the bidder's ability to qualify as the purchaser of Property
25 and ability to close the sale and immediately and unconditionally pay the winning bid purchase
26 price at closing.

27 5. The overbidder must seek to acquire the Property on terms and conditions not less
28 favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase

1 the Property, including closing on the sale of the Property in the same time parameters as the
2 Buyer and agreeing that there will be no buyer contingencies.

3 6. If overbids are received, the final bidding round for the Property shall be held at
4 the hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid
5 and purchase the Property.

6 7. Pursuant to the terms of the Agreement with the Buyer, in the event that an
7 overbidder (and not the Buyer) is the successful bidder for the purchase of the Property, the
8 Trustee requests authorization to pay the Buyer's fees and costs associated with the sale of the
9 Property ("break-up fee"). The break-up fee will only be payable in the event that that the sale of
10 the Property closes to an overbidder that is not the Buyer. In no event shall the break-up fee
11 exceed \$2,500.

12 The foregoing procedures will provide for an orderly completion of the sale of the
13 Property and insures that potential overbidders are provided with full disclosure as to the overbid
14 procedures and the specific Property to be sold. By having all bidders compete on similar terms,
15 the interested parties and the Court may compare competing bids in order to realize the highest
16 benefit for the Estate. Thus, the Trustee is requesting that the Court approve the overbid
17 procedures as a fair and reasonable method of realizing the highest and best price for the
18 Property for the benefit of this estate's creditors.

19 **I. Request For Payment Of Real Estate Commission**

20 Through this Sale Motion, as provided in the Agreement, the Trustee seeks authorization
21 to pay a real estate broker commission to the Trustee's Agent in the total amount not to exceed
22 five percent of the gross selling price (or \$145,000).

23 **J. Estimated Net Sale Proceeds**

24 The Trustee is advised by his accountant that based on a tax basis of \$900,000 for the
25 Property, the estimated capital gains taxes from the sale of the Property will be no more than
26 \$311,040.

27 In order to show that there are sufficient funds for payment of the Debtor's homestead
28 exemption claim and the Misita Lien in the event that the Trustee does not prevail on the

1 Objection to Homestead Exemption Claim and/or the avoidance of the Misita Lien, the following
 2 chart provides the estimated net proceeds from the sale of the Property in two scenarios:

- 3 • The first where the Debtor's homestead exemption claim and the Misita Lien are
 4 paid or held in reserve.
- 5 • The second where the Debtor's homestead exemption claim and the Misita Lien
 6 are not paid and no reserves are held.

8 Sale Price	\$2,900,000.00	\$2,900,000.00
9 Less real estate commission (5%) and costs of sale (estimated at 2.5%) (total of 7.5%)	\$217,500.00	\$217,500.00
10 Less estimated real property taxes	\$28,590.79	\$28,590.79
11 Less estimated payment to the City of Laguna Beach	\$25,514.34	\$25,514.34
12 Less estimated capital gains taxes	\$311,040.00	\$311,040.00
13 Less payment of Debtors' Homestead Exemption	\$150,000.00	\$0.00
14 Less \$378,000 reserve on account of the Misita Lien	\$378,000.00	\$0.00
15 Estimated Net Proceeds	\$1,789,354.87	\$2,317,354.87

16 Thus, through the proposed sale, the Trustee anticipates generating net proceeds of
 17 approximately \$1,789,354.87 to \$2,317,354.87 (amounts are estimated). The estimated net
 18 proceeds will increase in the event the purchase price is increased by a successful overbid.

19 **K. The Status of Claims Against the Estate**

20 The following chart reflects the status of the claims against the Estate:

21 <u>Claim</u> <u>No.</u>	<u>Creditor</u>	<u>Secured Filed</u> <u>Claim Amount</u>	<u>Unsecured Priority</u> <u>Claim Amount</u>	<u>General Unsecured</u> <u>Filed Claim Amount</u>
22 1	23 Department Of The Treasury Internal Revenue Service M/S 5503 24 24000 Avila Rd Laguna Niguel, Ca 92677		Amended - See Claim Below	
25 2	26 Orange County Treasurer-Tax Collector P O Box 1438 27 Santa Ana, CA 92702	\$13,297.05		

Claim No.	Creditor	Secured Filed Claim Amount	Unsecured Priority Claim Amount	General Unsecured Filed Claim Amount
3	Franchise Tax Board Attn Bankruptcy POB 2952 Sacramento, CA 95812-2952		\$3,863.08	\$782.47
4	Internal Revenue Service Mailstop 5503 24000 Avila Road Laguna Niguel, CA 92677 Amends Claim No. 1		\$9,030.49	\$1,113.09
5	Chase Bank USA NA P O Box 15145 Wilmington De 19850-5145			\$4,047.83
6	Calif Housing Finance Agency c/o Paul Salvaty Esq. 400 S Hope St Los Angeles, CA 90071	\$13,264,844.00		
7	State of Nevada Department of Taxation – Revenue Division 555E Washington Ave Suite 1300 Las Vegas, NV 89101-1041		\$2,274.51	\$191.69
	Totals	\$13,278,141.05	\$15,168.08	\$6,135.08

2. Summary of the CHFA Claim.

On or about November 19, 2004, the California Housing Finance Agency (“CHFA”) obtained a judgment against the Debtor (“State Court Judgment”) in the state court action entitled California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc., John G. Schienle, an individual, Robert L. McWhirk, an individual and Robert L. McWhirk, a Professional Corporation., Orange County Case No. 02CC10634 (“CHFA State Court Action”).

On or about January 7, 2005, CHFA caused an Abstract of Judgment evidencing the State Court Judgment to be recorded with the Orange County Recorder’s Office.

The Debtor filed a notice of appeal (“Appeal”) of the State Court Judgment (Case No. G034968). Although the Fourth District Court of Appeals affirmed the State Court Judgment, such opinion was withdrawn and the Appeal deemed resubmitted in the response to the request of CHFA for publication of the opinion.

1 The Trustee disputes whether the CHFA Abstract of Judgment attaches to the Property.
2 As of December 2004 a grant deed was recorded stating that title to the Property was held in the
3 name of RLM Family Holdings, LLC. The Trustee contends that the CHFA Abstract of
4 Judgment did not attach to the Property, as on the date it was recorded, RLM Family Holdings
5 LLC, and not the Debtor, was the record title owner of the Property.

6 Attached as **Exhibit E** to the Marshack Declaration is a true and correct copy of the
7 Stipulation for Surcharge of Disputed Secured Claim to Permit Payment of Certain
8 Administrative Expenses; Order Thereon entered by the Court on May 4, 2006 ("CHFA
9 Stipulation"). The CHFA Stipulation provides, among other things, as follows:

10 • To the extent CHFA has a valid lien against the Property and the claim of CHFA
11 is determined to be an allowed secured claim under Bankruptcy Code section 506 (a) CHFA
12 consents to recovery by the Trustee pursuant to Bankruptcy Code section 506 (c) from any
13 proceeds of the Property for (i) all reasonable and necessary fees, costs and expenses of the
14 Trustee and professionals employed by the Trustee in connection with administration of the
15 Estate without regard to whether the services of the Trustee and his professionals benefited
16 CHFA as the holder of the CHFA Abstract of Judgment, (ii) any income taxes and all other
17 reasonable expenses incurred by the Estate as a direct consequence of sale or liquidation of the
18 Property by the Trustee and (iii) all fees for escrow services, title insurance and real estate agents
19 and brokers related to the sale or liquidation of the Property.

20 • . Notwithstanding any other provisions of the CHFA Stipulation (i) CHFA does
21 not consent to the surcharge of its secured claim for fees, costs or expenses incurred in objecting
22 to the claim of, or otherwise prosecuting actions against, CHFA and (ii) absent further agreement
23 or Court order for good cause shown the maximum amount under the preceding paragraph,
24 subsection (i) above of reasonable fees, expenses and costs covered by the consent to surcharge
25 shall not exceed \$420,000 exclusive of any fees and expenses of Felderstein, Fitzgerald,
26 Willoughby & Pascuzzi or O'Melveny & Myers and the maximum amount of income taxes
27 under, subsection (ii) above covered by the consent to surcharge shall not exceed \$850,000.

28 ////

1 **L. The Proposed Interim Distribution**

2 In light of the fact that it will take several months to close the case due to time it will take
3 to resolve the Misita Lien, hearings on the Objection to Homestead Exemption Claim, the
4 procedural requirements to file tax returns and the procedural requirements to file the Trustee's
5 final report and account and to have the hearing on the Trustee's final report and account, in
6 order to stop the accrual of interest on certain claims, the Trustee seeks authority to make a total
7 interim distribution not to exceed \$1,300,000 as follow:

8

9

<u>Claim No.</u>	<u>Creditor</u>	<u>Proposed Distribution</u>
10 1	Department Of The Treasury Internal Revenue Service M/S 5503 24000 Avila Rd Laguna Niguel, CA 92677	\$0.00 Amended – See Claim Below
11 2	Orange County Treasurer-Tax Collector P O Box 1438 Santa Ana, CA 92702	\$0.00 to be paid through Escrow on the sale of the Property
12 3	Franchise Tax Board Attn Bankruptcy POB 2952 Sacramento, CA 95812-2952	\$4,645.55 – plus any allowed accrued interest on the priority portion of the claim. Thus, this claim will be paid in full.
13 4	Internal Revenue Service Mailstop 5503 24000 Avila Road Laguna Niguel, CA 92677 Amends Claim No. 1	\$10,143.58 – plus any allowed accrued interest on the priority portion of the claim. Thus, this claim will be paid in full.
14 5	Chase Bank USA NA P O Box 15145 Wilmington De 19850-5145	\$4,047.83. Thus, this claim will be paid in full.
15 6	Calif Housing Finance Agency c/o Paul Salvaty Esq. 400 S Hope St Los Angeles, CA 90071	Up to \$1,250,000 consisting of an initial payment of \$1,100,000 plus an additional \$150,000 if the Trustee's Objection to Homestead Exemption Claim is sustained subject to the CHFA Disbursement Procedures set forth below.

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<u>Claim No.</u>	<u>Creditor</u>	<u>Proposed Distribution</u>
7	State of Nevada Department of Taxation ~ Revenue Division 555E Washington Ave Suite 1300 Las Vegas, NV 89101-1041	\$2,466.20 – plus any allowed accrued interest on the priority portion of the claim. Thus, this claim will be paid in full.
	Totals	\$1,271,303.16 plus any allowed accrued interest on the priority portion of the claims of the Franchise Tax Board, the Internal Revenue Service and the State of Nevada Department of Taxation ~ Revenue

1. CHFA Disbursement Procedures

As to the claim of CHFA arising from a State Court Judgment that is currently the subject of the pending Appeal, the Trustee proposes the following distribution procedures:

- The Trustee will segregate funds in an account to be held for a potential interim distribution to CHFA in the amount of \$1,100,000 plus an additional \$150,000 if the Trustee's Objection to Homestead Exemption Claim is sustained ("CHFA Segregated Funds").

- The alleged lien of CHFA against the Laguna Beach Property shall attach to the CHFA Segregated Funds in the same validity and priority as prior the close of escrow pending the final outcome of the Fourth District Court of Appeals ruling on the State Court Judgment.

- If and when the Fourth District Court of Appeals affirms the State Court Judgment, the CHFA Segregated Funds, including all interest accrued thereon, shall be paid to CHFA on account of its claim against the Estate. However, in the event the Debtor files an appeal of any order of the Fourth District Court of Appeals affirming the State Court Judgment, and such ruling is later reversed, abridged, amended or otherwise altered, the CHFA Segregated Funds paid to CHFA will be subject to disgorgement such that amounts paid to CHFA from the CHFA Segregated Funds, including all accrued interest, shall be immediately returned to the Estate to the extent the amount received by CHFA exceeds the amount of the claim that is ultimately allowed.

The Trustee is advised that CHFA has no objection to the proposed disbursement procedures for the CHFA claim.

1 2. Summary of Funds Remaining After the Interim Distributions

2 After payment of the interim distribution, the only remaining prepetition claims against
3 the Estate will be the balance of the CHFA Claim estimated at \$12,014,844³, the administrative
4 claims of the Estate of the Trustee and his professionals and whatever claim Mr. Misita is
5 entitled to.

6 After the proposed interim distribution, in addition to the \$378,000 reserve to be held on
7 account of the Misita Lien, the Trustee will have remaining Estate funds in the amount of
8 approximately \$659,354.87 for payment of the administrative claims of Estate, as follows:

9

10 Estimated proceeds from the sale of the Property (for illustration purposes only, the lesser of the estimated sale proceeds set forth above has been used)	\$1,789,354.87
11 Less Interim Distribution (estimated at \$1,130,000 to allow for payment in the amount of \$1,100,000 to CHFA, approximately \$20,000 for other prepetition claims and to allow for payment of accrued interest on the priority portion of the claims of the Franchise Tax Board, the Internal Revenue Service and the State of Nevada Department of Taxation – Revenue Division). This number will increase to the extent the Debtor’s homestead exemption claim is reduced.	\$1,130,000.00
14 Funds Remaining	\$659,354.87

15 The amount of funds on hand will increase to the extent that the reserve of \$378,000 held
16 on account of the Misita Lien is released to the Estate free and clear of the Misita Lien. Thus, the
17 Trustee believes that the amount remaining on hand in the Estate after the interim distribution is
18 more than sufficient to ensure future payment of all remaining administrative claims against this
19 Estate. The Trustee is advised that CHFA has no objection to the proposed interim distribution.

20 The proposed interim distribution to the creditors does not harm the unsecured creditors
21 of the Estate who except for CHFA will be paid in full. Although CHFA will not be paid in full,
22 it will receive a substantial distribution when and if the State Court Judgment is affirmed and
23 CHFA has advised the Trustee that it has no objection to the proposed interim distribution.

24 Accordingly, the Trustee believes it is in the best interests of the Estate and its creditors
25 to make the interim distribution immediately upon the entry of the Court's order approving this
26 Sale Motion and the closing of escrow on the sale of the Property.

27

28 ³ Claim of \$13,264,844 less interim distribution of \$1,250,000 = \$12,014,844.

1 **M. Approval of the Sale Motion Serves the Best Interests of the Estate and Its Creditors**

2 Considering that the sale of the Property shall be subject to the overbid procedures, the
3 Trustee believes the Buyer's offer for the purchase of the Property to be in the best interest of the
4 Estate and its creditors and that proposed purchase price of \$2,900,000 subject to overbids is fair
5 and reasonable under the circumstances of this case. The Trustee has received no higher offers
6 for the Property.

7 Furthermore, if the Court does not approve the sale, the Trustee will incur additional
8 costs associated with locating another buyer for the Property, which may be difficult given the
9 current "soft" real estate market in Orange County. In the last year, it has been the Trustee's
10 experience that real property is not moving very fast and locating a buyer for a higher end home
11 such as the Estate's Property may be difficult.

12 The sale of the Property provides a great benefit to the Estate. Once escrow closes on the
13 sale, except for the CHFA Claim which will receive a substantial distribution when and if the
14 State Court Judgment is affirmed, the sale will allow the Trustee to pay all other allowed claims
15 in full.

16 In summary, through the proposed sale, the Trustee will preserve a benefit for creditors
17 which may be lost if the Sale Motion is not granted. Thus, good cause exists to grant the Sale
18 Motion so that the Trustee does not lose this favorable business opportunity.

19 **WHEREFORE**, the Trustee prays that the Court enter an order which provides:

- 20 1. Approving the overbid procedures set forth above for the sale of the Property,
- 21 2. Approving the Agreement related to and authorizing the Trustee to sell the
22 Property of the Estate to the Buyer free and clear of all liens and encumbrances with liens and
23 encumbrances not satisfied through the sale to attach to the proceeds of the sale in the same
24 validity and priority as prior to the close of the sale.
- 25 3. Approving payment of the real estate commission in the amount not to exceed six
26 percent of the Property's gross selling price.
- 27 4. A determination by the Court that the Buyer is in good faith pursuant to
28 Bankruptcy Code Section 363(m).

1 5. Waiving the ten-day stay of the order approving the sale of the Property under
2 Federal Rules of Bankruptcy Procedure 6004(g).

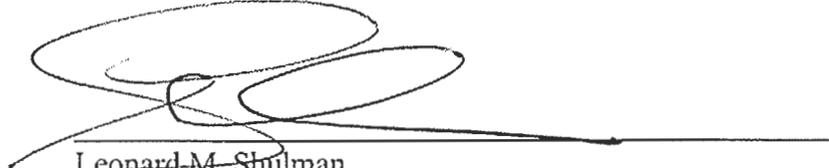
3 6. Prohibiting payment of the Debtor's homestead exemption claim in the Property
4 subject to the outcome of the Trustee's Objection to Homestead Exemption Claim.

5 7. Once escrow on the sale of the Property closes, authorizing the Trustee to make
6 the interim distribution to allowed priority and general unsecured claims as set forth above.

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

9
10 Dated: March 5, 2007

SHULMAN HODGES & BASTIAN LLP

11
12 

13 Leonard M. Shulman
14 Attorneys for Richard A. Marshack, the Chapter 7 Trustee
15 for the bankruptcy estate Robert L. McWhirk

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 II. COURT MAY AUTHORIZE THE SALE OF THE PROPERTY WHEN THERE IS
3 A GOOD FAITH PURCHASER

4 The Trustee, after notice and hearing, may sell property of the estate. Bankruptcy Code
5 Section 363(b). The standards to establish are that there is a sound business purpose for the sale,
6 that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price,
7 that there is accurate and reasonable notice to creditors and that the sale is made in good faith. In
8 re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); In re Lionel Corp.,
9 722 F.2d 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale
10 to one of very few serious bidders where an asset has been shopped and a delay could jeopardize
11 the transaction. See, e.g., In re Crowthers McCall Pattner, Inc., 114 B.R. 877, 885 (Bankr.
12 S.D.N.Y. 1990) (extreme difficulty finding a buyer justified merger when buyer found). The
13 Trustee's proposed sale of Property meets the foregoing criteria.

14 A. Sound Business Purpose

15 The Ninth Circuit in In re Walter, 83 B.R. 14 (Bankr. 9th Cir. 1988) has adopted a
16 flexible, case by case test to determine whether the business purpose for a proposed sale justifies
17 disposition of property of the estate under Section 363(b). In Walter, the Ninth Circuit, adopting
18 the reasoning of the Fifth Circuit in In re Continental Air Lines, Inc., 780 F.2d 1223 (5th Cir.
19 1986), and the Second Circuit in In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983), set forth the
20 following standard to be applied under Bankruptcy Code Section 363(b).

21
22 Whether the proffered business justification is sufficient depends
23 on the case. As the Second Circuit held in Lionel, the bankruptcy
24 judge should consider all salient factors pertaining to the
25 proceeding and, accordingly, act to further the diverse interests of
26 the debtor, creditors and equity holders, alike. He might, for
27 example, look to such relevant factors as the proportionate value of
28 the assets to the estate as a whole, the amount of lapsed time since
the filing, the likelihood that a plan of reorganization will be
proposed and confirmed in the near future, the effect of the
proposed disposition on future plans of reorganization, the
proceeds to be obtained from the disposition vis-a-vis any
appraisals of the property, which of the alternatives of use, sale or
lease the proposal envisions and, most importantly perhaps,
whether the asset is increasingly or decreasing in value. This list is

1 not intended to be exclusive, but merely to provide guidance to the
2 bankruptcy judge.

3 Walter, supra, at 19-20 [quoting In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir.
4 1986)].

5 Here, the facts surrounding the sale of the Property support the Trustee's business
6 decision that the proposed sale is in the best interests of the estate and its creditors.

7 Considering that the sale of the Property shall be subject to the overbid procedures, the
8 Trustee believes the Buyer's offer for the purchase of the Property to be in the best interest of the
9 Estate and its creditors and that proposed purchase price of \$2,900,000 subject to overbids is fair
10 and reasonable under the circumstances of this case. The Trustee has received no higher offers
11 for the Property.

12 Furthermore, if the Court does not approve the sale, the Trustee will incur additional
13 costs associated with locating another buyer for the Property, which may be difficult given the
14 current "soft" real estate market in Orange County. In the last year, it has been the Trustee's
15 experience that real property is not moving very fast and locating a buyer for a higher end home
16 such as the Estate's Property may be difficult.

17 Therefore, the Trustee respectfully submits that, if this Court applies the good business
18 reason standard suggested by the Second Circuit in Lionel, the sale should be approved.

19 **B. The Sale Serves The Best Interests Of the Estate and Creditors**

20 The benefits to the Estate, as set forth above, are tremendous due to the funds to be
21 generated from the sale that are anticipated to pay all unsecured claims in full except for the
22 CHFA Claim which will receive a substantial distribution when and if the State Court Judgment
23 is affirmed. The Trustee does not want to lose this beneficial business opportunity.

24 Thus, the Trustee has made a business decision that it is in the best interest of the
25 creditors of this Estate that this Sale Motion be approved.

26 **C. Accurate and Reasonable Notice**

27 It is expected that notice of this Sale Motion will satisfy the requirements for accurate
28 and reasonable notice and will be appropriate under the emergency circumstances.

1 The Trustee shall provide notice of the proposed sale of the Property to creditors and
2 parties in interest. The Notice of this Sale Motion will include a summary of the terms and
3 conditions of the proposed sale, the time fixed for filing objections, and a general description of
4 the Property. The Trustee submits that the notice requirements will have been satisfied, thereby
5 allowing creditors and parties in interest an opportunity to object to the sale. Hence, no further
6 notice should be necessary.

7 **D. The Sale is Made In Good Faith**

8 The proposed sale has been brought in good faith and has been negotiated on an "arms
9 length" basis.

10 The court, in Wilde Horse Enterprises, set forth the factors in considering whether a
11 transaction is in good faith. The court stated:

12 'Good faith' encompasses fair value, and further speaks to the
13 integrity of the transaction. Typical 'bad faith' or misconduct,
14 would include collusion between the seller and buyer, or any
15 attempt to take unfair advantage of other potential purchasers. . . .
16 And, with respect to making such determinations, the court and
creditors must be provided with sufficient information to allow
them to take a position on the proposed sale. (citations omitted)

17 Id. at 842.

18 In the present case, the negotiation of the proposed sale was an arms-length transaction.
19 The negotiations with the Buyer has resulted in an offer to sell the Property that will have
20 substantial benefit. As set forth in the Notice of the Sale Motion, the creditors will have been
21 provided with sufficient notice of the sale under the circumstances of this case. Accordingly, the
22 sale is in good faith and should be approved. The Trustee shall request such a finding pursuant
23 to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

24 **III. SALE OF THE PROPERTY FREE AND CLEAR OF LIENS AND**
25 **ENCUMBRANCES SHOULD BE PERMITTED**

26 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
27 "free and clear of any interest in such property of an entity," if any one of the following five
28 conditions is met:

1 (1) applicable non-bankruptcy law permits a sale of
2 such property free and clear of such interest;

3 (2) such entity consents;

4 (3) such interest is a lien and the price at which such
5 property is to be sold is greater than the aggregate value of all liens
6 on such property;

6 (4) such interest is in bona fide dispute; or

7 (5) such entity could be compelled, in a legal or
8 equitable proceeding, to accept money satisfaction of such interest.

8 Bankruptcy Code Section 363(f).

9 Section 363(f) is written in the disjunctive and thus only one of the enumerated
10 conditions needs to be satisfied for Court approval to be appropriate. The Trustee believes that
11 several of these factors are satisfied by the proposed sale.

12 **A. Section 363(f)(2)- Consent**

13 The sale of the Property is proper pursuant to Section 363(f)(2). The Trustee believes that
14 secured creditors the Orange County Treasurer/Tax Collector and the City of Laguna Beach will
15 have no objection to the sale under the terms set forth herein as their liens will be satisfied.

16 In addition, the California Housing Finance Housing Agency has advised the Trustee that
17 is consents to the proposed sale of the Property and the treatment of its lien as provided in the
18 Sale Motion.

19 **B. Section 363(f)(4)- Bona Fide Dispute**

20 The Trustee believes that the sale of the Property is also proper under §363(f)(4) because
21 a bona fide dispute exists with regard to the Misita Lien.

22 In light of the dispute regarding the Misita Lien, the Trustee seeks to sell the Property
23 free and clear of such lien, with any interest asserted by the Misita Lien to attach to the proceeds
24 of sale pending agreement between the parties or further Court order. Any claims that Michael
25 Misita may have against the Estate are the subject of a bona fide dispute and therefore the sale of
26 the Property may go free and clear of such claims pursuant to Section 363(f)(4). A bona fide
27 dispute has been defined by In re Atwood, 124 B.R. 402 (Bankr. S.D. Ga. 1991) as a “genuine
28

1 issue of material fact that bears upon the debtor's liability, or meritorious contention as to the
2 application of law to undisputed facts." *Id.* at 407. In *In re Milford Group, Inc.*, 150 B.R. 904
3 (Bankr. M.D. Pa. 1992), the court stated it need not resolve a bona fide dispute, but must
4 determine whether the issues presented are genuine as to the existence of a bona fide dispute. In
5 doing so, the *Milford* Court found that the debtor had met its burden to establish cause for the
6 Court to allow for the sale of the property, free and clear of liens. In the instant case, the
7 proposed sale of the Property conforms with the requirements of Section 363(f)(4) as the Trustee
8 has established the existence of a bona fide dispute with respect to the Misita Lien.

9 Courts have approved sales under Bankruptcy Code Section 363(f) even where the sale
10 price did not exceed the value of the liens asserted on the property so long as the sale is for fair
11 market value. *In re Terrace Gardens Park Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989); *In*
12 *re Beker Indus. Corp.*, 63 B.R. 474, 477 (Bankr. S.D.N.Y. 1986). Here, given the overbid
13 procedures, the Trustee believes that the Property will be sold for its maximum fair market value.

14 **IV. THE COURT HAS AUTHORITY TO WAIVE THE TEN-DAY STAY OF SALE**

15 Federal Rule of Bankruptcy Procedure 6004(g) provides that "[a]n order authorizing the
16 use, sale or lease of property other than cash collateral is stayed until the expiration of 10 days
17 after entry of the order, unless the Court orders otherwise."

18 The Trustee desires to close the sale of the Property as soon as practicable after entry of
19 an order approving the sale due to the pending foreclosure sale. Accordingly, the Trustee
20 requests that the Court in the discretion provided it under Federal Rule of Bankruptcy Procedure
21 6004(g), waive the ten-day of the order approving the sale of the Property to the Buyer.

22 **V. THE COURT HAS AUTHORITY TO APPROVE THE BIDDING PROCEDURES**

23 Implementation of the bidding procedures is an action outside of the ordinary course of
24 the business. Bankruptcy Code Section 363(b)(1) provides that a trustee "after notice and
25 hearing, may use, sell or lease, other than in the ordinary course of business, property of the
26 estate." Furthermore, under Bankruptcy Code Section 105(a), "[t]he court may issue any order,
27 process, or judgment that is necessary or appropriate to carry out the provisions of this title."
28

1 Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this Court may authorize the
2 implementation of overbidding procedures.

3 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a
4 bankruptcy court to issue orders determining the terms and conditions for overbids with respect
5 to a sale of estate assets. In re Crown Corporation, 679 F.2d 774 (9th Cir. 1982). The Crown
6 Corporation court entered an order specifying the minimum consideration required for an
7 overbid as well as the particular contractual terms required to be offered by overbidders. Id. at
8 777. The Crown Corporation decision also approves an order requiring and setting the amount
9 of potential overbidder's deposits and authorized courts to determine the disposition of such
10 deposits. Id. While the discussion is not extensive, the Crown Corporation decision recognizes
11 the authority of bankruptcy courts to order the implementation of bidding procedures such as
12 those proposed in the present case.

13 **A. The Overbid Procedures Are Untainted by Self-Dealing**

14 The overbid procedures have been proposed in good faith and have been negotiated on an
15 "arms length" basis. Therefore, there is no prospective taint in dealings between Trustee and any
16 potential bidders.

17 **B. The Overbid Procedures Encourage Bidding And Are Fair In Amount**

18 The bidding procedures are designed to encourage, not hamper bidding and are
19 reasonable under the circumstances. The bidding procedures are intended to provide potential
20 overbidders with adequate information to make an informed decision as to the amount of their
21 bid and the validity of their bid.

22 **C. The Overbid Procedures Are Fair, Reasonable And Serve The Best Interests Of The**
23 **Estate**

24 The proposed bidding procedures serve the Estate in several ways. First, the procedures
25 themselves are fair, reasonable and productive; they will permit the Trustee to conduct an orderly
26 sale and obtain the best possible price on the best possible terms for the Property.

27

28

1 The bidding procedures will ensure that all bids will be comparable. The Trustee will
2 determine which bid is the highest and best for the Estate. The comparability requirement of the
3 bidding procedures will make it possible to accomplish this task.

4 The bidding procedures will help the Trustee to obtain the highest and best possible price
5 for the Property. The bidding procedures institutes minimum overbid increments which the
6 Trustee believes are reasonable. Thus, Trustee will be able to obtain substantial benefit for this
7 Estate from the sale of the Property from competing bids.

8 The bidding procedure requires that potential bidders demonstrate their capacity to
9 complete the transaction. It would be a serious loss to the Estate if it surrendered its opportunity
10 to sell Property to one buyer in favor of a competing bidder only to discover the successful
11 bidder incapable of consummating the transaction. Thus, requiring bidders to qualify as
12 qualified bidders will protect the Estate from such a loss.

13 The most important benefit of the bidding procedures to the Estate is that their
14 implementation will enable the consummation of the proposed sale. The proposed sale will be
15 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
16 Implementation of the bidding procedures is an essential component of consummating the sale of
17 the Property and maximizing the value of the Property for the Estate and creditors.

18 The bidding procedures proposed by the Trustee are fair and provide for a "level playing
19 field" for all prospective bidders with respect to the Property. The proposed bidding procedures
20 establish a reasonable but expeditious timeline for allowing the Trustee to give notice of the
21 proposed sale and qualified bidders to conduct reasonable due diligence and submit competing
22 offers for the Property, thereby potentially generating additional value for the Property.
23 Furthermore, the notice that the Trustee proposes to provide to creditors and parties in interest in
24 connection with the bidding procedures and Sale Motion is designed to attract the most interest
25 in the acquisition of the Property and is sufficient under the circumstances of this case. The
26 alternative to the proposed orderly sale and bidding procedures would be the loss of the Property
27 through a foreclosure sale, which would be detrimental to unsecured creditors of the Estate.

28

1 Thus, approval of this bidding procedures would serve the best interests of the Estate and its
2 creditors.

3 **VI. THE BREAK-UP FEE IS REASONABLE**

4 As stated by the court in In re Financial News Network, 126 B.R. 152 (D.C., S.D.N.Y.
5 1991) at 154, "A break-up fee is an incentive payment to an unsuccessful bidder who placed the
6 estate property in a sales configuration mode . . . to attract other bidders to the auction." In
7 addition, as stated by the District Court in In re Integrated Resources, Inc., 147 B.R. 650, at 659-
8 661 (D.C., S.D.N.Y. 1992).

9 Break-up fees are important tools to encourage bidding and to
10 maximize the value of the debtor's assets. The usual rule is that if
11 break-up fees encourage bidding, they are enforceable; if they
12 stifle bidding they are not enforceable. In fact, because the
13 directors of a corporation have a duty to encourage bidding, break-
14 up fees can be necessary to discharge the director's duties to
15 maximize value.

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

17 "Outside bankruptcy, the business judgment rule normally applies
18 to the board's use of a defensive strategy, such as a break-up fee. . .
19 In assessing the incentive effect of the break-up fee, a court should
20 determine whether the dollar amount of the fee is so substantial
21 that it has a chilling affect on other prospective bidders. In making
22 this determination, the court should consider whether the proposed
23 acquiror attracted other bidders or simply received a potential
24 windfall. Break-up fees and other strategies may be legitimately
25 necessary to convince a white knight to enter the bidding by
26 providing some form of compensation for the risks it is
27 undertaking . . .

28 "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.

25 In this case, the Trustee readily acknowledges that a significant amount of time, effort
26 and expense will have been incurred by the Buyer in performing its due diligence and
27 negotiating the terms of the sale of Property. In a transaction wherein the first overbid increment
28 is anticipated to be at least \$2,925,000 (Buyer's purchase price of \$2,900,000 plus initial overbid

1 of \$25,000), it is anticipated that the break-up fee of up to \$2,500 represents less than one
2 percent of the purchase price. More importantly, the break-up fee is only payable in the event
3 that there is a successful overbid. To the extent that competitive bidding increased the final sales
4 price and a sale takes place beyond that amount, the "net" to the creditors of the Estate would rise
5 dollar for dollar with every increment above the Buyer's offer and the break-up fee would
6 remain constant at an amount not to exceed \$2,500.

7 The Court should note that the break-up fee is only payable in the event that the sale
8 closes and the Buyer is not the successful bidder, thereby distinguishing these facts from those
9 presented in In re Hup Industries, Inc., 140 B.R. 191 (Bankr. N.D. Ohio 1992), wherein the court
10 did not approve the break-up fee arrangement when the party proposed to receive the break-up
11 fee was to receive the same regardless of the outcome of the proposed sale in the event
12 overbidding took place. Thus, the Trustee requests the Court approve the break-up fee proposed
13 to be paid to the Buyer in the event the sale closes and the Buyer is not the purchaser of the
14 Property.

15 **VII. DISTRIBUTION TO CREDITORS IS PROPER AT THIS TIME**

16 The Trustee's duties are set forth in 11 U.S.C. Section 704 which provides in relevant
17 part:

18 The trustee shall --

19 collect and reduce to money the property of the estate for which such
20 trustee serves, and close such estate as expeditiously as is compatible with
the best interests of parties in interest; . . .

21 Thus, pursuant to section 704(1) of the Bankruptcy Code, it is incumbent upon the
22 Trustee to close a bankruptcy estate as expeditiously as is compatible with the best interests of
23 parties in interest.

24 As set forth above, once escrow on the sale of the Property closes, it is anticipated that
25 there will be sufficient funds on hand to make the proposed interim distribution. After the
26 proposed interim distribution, in addition to the \$378,000 reserve to be held on account of the
27 Misita Lien, the Trustee will have remaining Estate funds in the amount of no less than
28 \$659,354.87 for payment of the administrative claims of the Trustee and his professionals.

1 Although the CHFA Claim will not be paid in full, the Trustee is advised that CHFA has no
2 objection to the proposed interim distribution procedures.

3 The proposed interim distribution to the creditors does not harm the unsecured creditors
4 that are paid in full and although it will not be paid in full, CHFA has no objection to the
5 proposed interim distribution. Accordingly, the Trustee believes it is in the best interests of the
6 Estate and its creditors to make the interim distribution immediately upon the closing of the sale
7 of the Property.

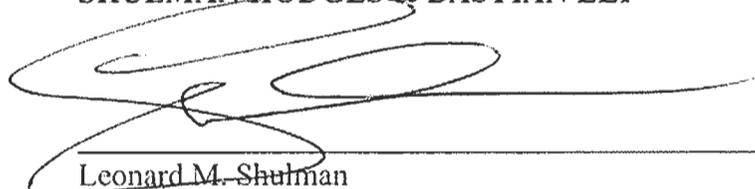
8 **VIII. CONCLUSION**

9 Based upon the foregoing, the Trustee respectfully submits that good cause exists for
10 granting the Sale Motion and granting to the Trustee such other and further relief as may be just
11 and appropriate under the circumstances of this case.

12
13 Dated: March 5, 2007

Respectfully submitted,

14
15 **SHULMAN HODGES & BASTIAN LLP**

16 

17
18 Leonard M. Shulman
19 Attorneys for Richard A. Marshack, the
20 Chapter 7 Trustee for the bankruptcy estate
21 Robert L. McWhirk

1 **DECLARATION OF RICHARD A. MARSHACK**

2 I, Richard A. Marshack, declare:

3 1. I am the Chapter 7 Trustee for the bankruptcy estate ("Estate") of In re Robert L.
4 McWhirk, ("Debtor) Case No. SA 05-19596 ES. If called upon as witness, I could and would
5 competently testify to the following of my own personal knowledge, information and belief.

6 2. I make this Declaration in support of Motion for Order: (1) Approving the Sale of
7 Real Property Free and Clear of Certain Liens Pursuant to Bankruptcy Code 363(b)(1) and (f)
8 and Subject to Overbid Procedures, Including Payment of a Break-Up Fee; (2) Approving
9 Payment of Real Estate Commission; (3) Prohibiting Payment of the Debtor's Homestead
10 Exemption Claim Subject to Outcome of the Trustee's Formal Objection to the Homestead
11 Exemption Claim; (4) Approving Interim Distribution to Allowed Priority and General
12 Unsecured Claims Pursuant to Bankruptcy Code Section 704(1); and (5) Granting Related Relief
13 ("Sale Motion").

14 3. The Court's PACER docket indicates that the Debtor filed a petition under
15 Chapter 7 of the Bankruptcy Code on October 12, 2005 ("Petition Date").

16 4. Among the assets of the Estate is the residential real property located at 31562
17 Bluff Drive, Laguna Beach, California, 92651 ("Property"), Assessor Parcel No. 658-092-09.
18 The Property is legally described as follows⁴:

19 Lot 15 of Tract No. 702 "Coast Royal", in the City of Laguna
20 Beach, County of Orange, State of California, as shown on a map
21 recorded in Book 21, Pages 1, 2 and 3 of Miscellaneous Maps, in
22 the office of the County Recorder of said county together with that
23 portion of the Southwesterly half of Bluff Drive bounded
24 Northwesterly by the Southwesterly prolongation of the
25 Northwesterly line of said Lot and Southeasterly by the
26 Southwesterly prolongation of the Southeasterly line of said lot as
27 abandoned by the board of supervisors by Instrument No. 23417
28 recorded August 11, 1926.

5. In his Bankruptcy Schedule A, the Debtor valued the Property at \$3,500,000.

4 The legal description is believed to be accurate but may be corrected or updated by the title company in the transfer documents as necessary to complete the sale of the Property.

1 6. I am advised that prior to the Petition Date, the Property was subject to the
2 following transfers of the title:

- 3 • The Debtor purchased the Property in 1997.
- 4 • In 1999, the Debtor caused a deed to be recorded that purports to transfer the
5 Property to the Robert. L. McWhirk Living Trust.
- 6 • In 2003, the Debtor caused a grant deed to be recorded that purports to transfer
7 the Property to James Machkoff and Southpac Trust International as Trustees of the Amended
8 and Restated RLM Family Trust dated January 14, 2003. The Debtor is a beneficiary of the
9 family trust.

10 On March 8, 2004, the Debtor caused a grant deed to be recorded that purports to transfer
11 the Property to RLM Family Holdings LLC, a Nevada Limited Liability Company ("RLM
12 Family Holdings LLC"). The Debtor is the sole member and manager of RLM Family Holdings
13 LLC.

14 7. Based on the foregoing, I believe that the the Debtor did not hold title to the
15 Property as of the Petition Date.

16 8. On or about April 6, 2006, the Court entered an order approving that certain
17 Stipulation Between Debtor, RLM Family Holdings LLC and Trustee Re: Title to Residence
18 Located at 31562 Bluff Drive, Laguna Beach, California ("Property Disposition Stipulation"), a
19 true and correct copy of which is attached hereto as **Exhibit A**. The principal terms of the
20 Property Disposition Stipulation provide as follows:

- 21 a. Title to the Property has been transferred to me on behalf of the Estate.
- 22 b. Pursuant to the Property Disposition Stipulation, the Debtor and I reserved
23 our respective rights to argue whether the Debtor's claimed homestead exemption claim in the
24 Property is proper. As set forth below, I have filed a motion objecting to the homestead
25 exemption claim.
- 26 c. I agreed not close on the sale of the Property until the earlier of January 1,
27 2007 or the date of the Clerk of the District Court of Appeals docketed or serves the ruling of the
28

1 District Court of Appeals for Case No. G034967. (This is Debtor's Appeal of the State Court
2 Judgment procured by CHFA prior to the Petition Date which is described below).

3 d. The Debtor agreed to obtain a notarized statement from Michael Misita
4 that he is owed no more than \$252,000 by the Debtor or the Estate and to obtain a Modification
5 of Trust Agreement. This has been accomplished. Attached hereto as **Exhibit B** is a true and
6 correct copy of the notarized statement from Michael Misita

7 e. The Debtor, the Amended RLM Family Trust and the RLM Holding LLC
8 agreed by March 30, 2006, to cause payment in full of the loan by Capital Mortgage Limited
9 against the Property and to obtain a recorded deed of reconveyance that effectively removes lien
10 against the Property in favor of Capital Mortgage Limited. This has been accomplished.

11 9. In his Bankruptcy Schedule C, the Debtor claimed a homestead exemption in the
12 Property in the amount of \$150,000 pursuant to CCP 704.730(a)(3).

13 10. I dispute the Debtor's homestead exemption claim, based on, among other things,
14 that the Debtor did not hold title to the Property as of the Petition Date and because I assert that
15 the Debtor fraudulently transferred the Property.

16 11. As set forth above, pursuant to the Property Disposition Stipulation, the Debtor
17 and I reserved our respective rights to argue whether the Debtor's claimed homestead exemption
18 is proper. As we have been unable to resolve this issue without Court intervention, with the
19 assistance of counsel I have filed a Motion Objecting to the Debtor's Claimed Homestead
20 Exemption ("Objection to Homestead Exemption Claim"). A hearing on the Objection to
21 Homestead Exemption Claim is scheduled for May 8, 2007.

22 12. Thus, through my Sale Motion, I request that the Court enter an order prohibiting
23 payment of the Debtor's homestead exemption claim in the Property subject to the outcome of
24 the Objection to Homestead Exemption Claim. There will be sufficient funds in reserve to pay
25 such homestead exemption claim if the Debtor successfully defends the my objection.

26 13. Pursuant to Court order entered on October 31, 2006, I was authorized to employ
27 Brian Johnson of Coldwell Banker Previews and Clarence Yoshikane of Prudential California
28

1 Realty (collectively the "Agents") as my real estate professionals to assist in the marketing of the
2 Property. The Agents listed the Property for sale at \$3,850,000.

3 14. The Court order approving the employment of the Agents provides that subject to
4 further application and Court order the Agents may receive a real estate commission in the
5 amount of five percent of the purchase price of the Property.

6 15. Attached hereto as **Exhibit C** is a true and correct copy of a Preliminary Title
7 Report on the Property dated February 5, 2007 ("Title Report"). The Sale Motion contains a
8 chart setting forth the liens and encumbrances against the Property as indicated in the Title
9 Report and of which I have become aware of during this case along with my proposed treatment
10 of the liens and encumbrances through the sale of the Property.

11 16. Although Debtor affirmatively scheduled Mr. Misita as holding a secured claim
12 against the Estate in the amount of \$427,920 in his Bankruptcy Schedule D, I believe that the
13 Misita Lien is avoidable and the underlying obligation is unenforceable for several reasons,
14 including but not limited to the following.

15 a. First, I contend that the Misita Deed of Trust is void as part of the Debtor's
16 complex asset protection plan improperly designed to hinder creditors under which title to the
17 Laguna Beach Property was transferred among RLM Family Holdings LLC, the Amended and
18 Restated RLM Family Trust, the Robert L. McWhirk Trust, and Robert L. McWhirk.

19 b. Second, while the Debtor testified at his Section 341(a) Meeting of Creditors
20 that the underlying obligation due Mr. Misita is based on a largely oral agreement for the Debtor
21 to share with Mr. Misita appreciation in jointly owned properties, the "Trustor" under the Misita
22 Deed of Trust is the "Robert L McWhirk Trust" not the Debtor.

23 c. Third, the Debtor has admitted under oath that there is no "promissory note in
24 the principal sum of \$427,920", so the debt which the Misita Deed of Trust purportedly secures
25 does not exist.

26 d. Fourth, even if the Misita Deed of Trust is determined to secure the Debtor's
27 obligations under the "appreciation splitting arrangement", I do not believe Mr. Misita will be
28 able to prove an enforceable agreement as there is no writing to memorialize it.

1 e. Fifth, it appears that execution and recordation of the Misita Deed of Trust
2 was done without the Debtor receiving reasonably equivalent value in exchange and with the
3 actual intent to hinder and defraud creditors.

4 17. Although I am not aware of any other liens or encumbrances, out of an abundance
5 of caution, I seeks to the sell the Property free and clear of liens with liens and encumbrance not
6 satisfied through the sale to attach to the proceeds of the sale in the same validity and priority as
7 prior to the closing of the sale, pending agreement with the creditor or further Court Order.

8 18. I have has received an offer through the Agents from Lazzlo and Clara Dorna
9 (collectively the "Buyer") to purchase the Property for \$2,900,000. The purchase price includes
10 a deposit of \$100,000. Attached hereto as **Exhibit D** is a true and correct copy of the Purchase
11 Agreement with all addendums (collectively the "Agreement").

12 19. A summary of the Agreement's terms and highlights are discussed in the Sale
13 Motion, but the summary and discussion are not meant to be a complete review of every
14 provision of the Agreement. The Agreement itself is the legally binding documents I seek
15 approval of and, in the event of any inconsistency between the terms, provisions or effect of the
16 Agreement and the description of it in these pleadings, the Agreement alone shall govern and not
17 these pleadings or the descriptions herein.

18 20. I have determined that it would benefit the Estate by permitting all interested
19 parties to receive information and bid for the Property instead of selling to the Property to the
20 Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the
21 benefit of the creditors of this Estate, I also seek Court approval of the bidding procedures set
22 forth in the Sale Motion.

23 21. The procedures set forth in the Sale Motion will provide for an orderly
24 completion of the sale of the Property and insures that potential overbidders are provided with
25 full disclosure as to the overbid procedures and the specific Property to be sold. By having all
26 bidders compete on similar terms, the interested parties and the Court may compare competing
27 bids in order to realize the highest benefit for the Estate. Thus, I am requesting that the Court
28

1 approve the overbid procedures as a fair and reasonable method of realizing the highest and best
2 price for the Property for the benefit of this estate's creditors.

3 22. Through Sale Motion, as provided in the Agreement, I seek authorization to pay a
4 real estate broker commission to the Agent in the total amount not to exceed five percent of the
5 gross selling price (or \$145,000).

6 23. I am advised by my accountant that based on a tax basis of \$900,000 for the
7 Property, the estimated capital gains taxes from the sale of the Property will be no more than
8 \$311,040.

9 24. In order to show that there are sufficient funds for payment of the Debtor's
10 homestead exemption claim and the Misita Lien in the event that I do not prevail on the
11 Objection to Homestead Exemption Claim and/or the avoidance of the Misita Lien, the following
12 chart provides the estimated net proceeds from the sale of the Property in two scenarios:

- 13 • The first where the Debtor's homestead exemption claim and the Misita Lien are
14 paid or held in reserve.
15 • The second where the Debtor's homestead exemption claim and the Misita Lien
16 are not paid and no reserves are held.

17

Sale Price	\$2,900,000.00	\$2,900,000.00
Less real estate commission (5%) and costs of sale (estimated at 2.5%) (total of 7.5%)	\$217,500.00	\$217,500.00
Less estimated real property taxes	\$28,590.79	\$28,590.79
Less estimated payment to the City of Laguna Beach	\$25,514.34	\$25,514.34
Less estimated capital gains taxes	\$311,040.00	\$311,040.00
Less payment of Debtors' Homestead Exemption	\$150,000.00	\$0.00
Less \$378,000 reserve on account of the Misita Lien	\$378,000.00	\$0.00
Estimated Net Proceeds	\$1,789,354.87	\$2,317,354.87

18
19
20
21
22
23

24 25. Thus, through the proposed sale, I anticipates generating net proceeds of
25 approximately \$1,789,354.87 to \$2,317,354.87 (amounts are estimated). The estimated net
26 proceeds will increase in the event the purchase price is increased by a successful overbid.

27 26. The Sale Motion contains a chart which reflects the status of the claims against
28 the Estate.

1 27. I am advised that on or about November 19, 2004, the California Housing Finance
2 Agency ("CHFA") obtained a judgment against the Debtor ("State Court Judgment") in the state
3 court action entitled California Housing Finance Agency v. Hanover/California Management and
4 Accounting Center, Inc., John G. Schienle, an individual, Robert L. McWhirk, an individual and
5 Robert L. McWhirk, a Professional Corporation., Orange County Case No. 02CC10634 ("CHFA
6 State Court Action").

7 28. I am advised that on or about January 7, 2005, CHFA caused an Abstract of
8 Judgment evidencing the State Court Judgment to be recorded with the Orange County
9 Recorder's Office.

10 29. I am advised that the Debtor filed a notice of appeal ("Appeal") of the State Court
11 Judgment (Case No. G034968). Although the Fourth District Court of Appeals affirmed the
12 State Court Judgment, such opinion was withdrawn and the Appeal deemed resubmitted in the
13 response to the request of CHFA for publication of the opinion

14 30. I dispute whether the CHFA Abstract of Judgment attaches to the Property. As of
15 December 2004 a grant deed was recorded stating that title to the Property was held in the name
16 of RLM Family Holdings, LLC. I contend that the CHFA Abstract of Judgment did not attach to
17 the Property, as on the date it was recorded, RLM Family Holdings LLC, and not the Debtor,
18 was the record title owner of the Property.

19 31. Attached hereto as **Exhibit E** is a true and correct copy of the Stipulation for
20 Surcharge of Disputed Secured Claim to Permit Payment of Certain Administrative Expenses;
21 Order Thereon entered by the Court on May 4, 2006 ("CHFA Stipulation").

22 32. In light of the fact that it will take several months to close the case due to time it
23 will take to resolve the Misita Lien, hearings on the Objection to Homestead Exemption Claim,
24 the procedural requirements to file tax returns and the procedural requirements to file my final
25 report and account and to have the hearing on the my final report and account, in order to stop
26 the accrual of interest on certain claims, I seek authority to make a total interim distribution not
27 to exceed \$1,300,000 as follow:
28

<u>Claim No.</u>	<u>Creditor</u>	<u>Proposed Distribution</u>
1	Department Of The Treasury Internal Revenue Service M/S 5503 24000 Avila Rd Laguna Niguel, Ca 92677	\$.00 Amended – See Claim Below
2	Orange County Treasurer-Tax Collector P O Box 1438 Santa Ana, CA 92702	\$.00 to be paid through Escrow on the sale of the Property
3	Franchise Tax Board Attn Bankruptcy POB 2952 Sacramento, CA 95812-2952	\$4,645.55 – plus any allowed accrued interest on the priority portion of the claim. Thus, this claim will be paid in full.
4	Internal Revenue Service Mailstop 5503 24000 Avila Road Laguna Niguel, CA 92677 Amends Claim No. 1	\$10,143.58 – plus any allowed accrued interest on the priority portion of the claim. Thus, this claim will be paid in full.
5	Chase Bank USA NA P O Box 15145 Wilmington De 19850-5145	\$4,047.83. Thus, this claim will be paid in full.
6	Calif Housing Finance Agency c/o Paul Salvaty Esq. 400 S Hope St Los Angeles, CA 90071	Up to \$1,250,000 consisting of an initial payment of \$1,100,000 plus an additional \$150,000 if the Objection to Homestead Exemption Claim is sustained subject to the CHFA Disbursement Procedures set forth below
7	State of Nevada Department of Taxation – Revenue Division 555E Washington Ave Suite 1300 Las Vegas, NV 89101-1041	\$2,466.20 – plus any allowed accrued interest on the priority portion of the claim. Thus, this claim will be paid in full.
	Totals	\$1,271,303.16 plus any allowed accrued interest on the priority portion of the claims of the Franchise Tax Board, the Internal Revenue Service and the State of Nevada Department of Taxation – Revenue

33. As to the claim of CHFA arising from a State Court Judgment that is currently the subject of the pending Appeal, I propose the following distribution procedures:

- I will segregate funds in an account to be held for a potential interim distribution to CHFA in the amount of \$1,100,000 plus an additional \$150,000 if the Objection to Homestead Exemption Claim is sustained (“CHFA Segregated Funds”).

- The alleged lien of CHFA against the Laguna Beach Property shall attach to the CHFA Segregated Funds in the same validity and priority as prior the close of escrow pending

1 the final outcome of the Fourth District Court of Appeals ruling on the State Court Judgment.

2 • If and when the Fourth District Court of Appeals affirms the State Court
3 Judgment, the CHFA Segregated Funds, including all interest accrued thereon, shall be paid to
4 CHFA on account of its claim against the Estate. However, in the event the Debtor files an
5 appeal of any order of the Fourth District Court of Appeals affirming the State Court Judgment,
6 and such ruling is later reversed, abridged, amended or otherwise altered, the CHFA Segregated
7 Funds paid to CHFA will be subject to disgorgement such that amounts paid to CHFA from the
8 CHFA Segregated Funds, including all accrued interest, shall be immediately returned to the
9 Estate to the extent the amount received by CHFA exceeds the amount of the claim that is
10 ultimately allowed.

11 34. I am advised that CHFA has no objection to the proposed disbursement
12 procedures for the CHFA claim.

13 35. After payment of the interim distribution, the only remaining prepetition claims
14 against the Estate will be the balance of the CHFA Claim estimated at \$12,014,844⁵, the
15 administrative claims of the Estate of my professionals and I and whatever claim Mr. Misita is
16 entitled to.

17 36. After the proposed interim distribution, in addition to the \$378,000 reserve to be
18 held on account of the Misita Lien, the Estate will have remaining funds in the amount of
19 approximately \$659,354.87 for payment of the administrative claims of Estate, as follows:

21 Estimated proceeds from the sale of the Property (for illustration purposes only, the lesser of the estimated sale proceeds has been used)	\$1,789,354.87
22 Less Interim Distribution (estimated at \$1,130,000 to allow for payment in the 23 amount of \$1,100,000 to CHFA, approximately \$20,000 for other prepetition 24 claims and to allow for payment of accrued interest on the priority portion of the 25 claims of the Franchise Tax Board, the Internal Revenue Service and the State of Nevada Department of Taxation – Revenue Division). This number will increase to the extent the Debtor’s homestead exemption claim is reduced.	\$1,130,000.00
26 Funds Remaining	\$659,354.87

27
28 ⁵ Claim of \$13,264,844 less interim distribution of \$1,250,000 = \$12,014,844.

1 37. The amount of funds on hand will increase to the extent that the reserve of
2 \$378,000 held on account of the Misita Lien is released to the Estate free and clear of the Misita
3 Lien. Thus, I believe that the amount remaining on hand in the Estate after the interim
4 distribution is more than sufficient to ensure future payment of all remaining administrative
5 claims against this Estate. I am advised that CHFA has no objection to the proposed interim
6 distribution.

7 38. The proposed interim distribution to the creditors does not harm the unsecured
8 creditors of the Estate who except for CHFA will be paid in full. Although CHFA will not be
9 paid in full, CHFA has advised me that it has no objection to the proposed interim distribution
10 procedures.

11 39. Accordingly, I believe it is in the best interests of the Estate and its creditors to
12 make the interim distribution immediately upon the entry of the Court's order approving the Sale
13 Motion and the closing of escrow on the sale of the Property.

14 40. Considering that the sale of the Property shall be subject to the overbid
15 procedures, I believe the Buyer's offer for the purchase of the Property to be in the best interest
16 of the Estate and its creditors and that proposed purchase price of \$2,900,000 subject to overbids
17 is fair and reasonable under the circumstances of this case. I have received no higher offers for
18 the Property.

19 41. Furthermore, if the Court does not approve the sale, the Estate will incur
20 additional costs associated with locating another buyer for the Property, which may be difficult
21 given the current "soft" real estate market in Orange County. In the last year, it has been my
22 experience that real property is not moving very fast and locating a buyer for a higher end home
23 such as the Estate's Property may be difficult.

24 ////

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EXHIBIT A

Property Disposition Stipulation

ORIGINAL

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BOHM, MATSEN, KEGEL & AGUILERA, LLP
James G. Bohm, Esq. (Bar No. 132430)
Jacob E. Godard, Esq. (Bar No. 238668)
695 Town Center Drive, Ste. 700
Costa Mesa, CA 92626
Telephone: (714) 384-6500
Fax: (714) 384-6501

FILED
APR - 5 2008
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

ENTERED
APR 6 2008
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

Attorneys for Defendant ROBERT L. McWHIRK AND
RLM FAMILY HOLDINGS LLC and
AMENDED AND REDACTED RLM FAMILY TRUST

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA- SANTA ANA DIVISION

LOGGED AT
APR - 4 2008
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

In re:

ROBERT L. McWHIRK,

Debtor,

) Case No. 8:05-bk-19596-ES
) Chapter 7
)
)
) **STIPULATION BETWEEN DEBTOR,**
) **RLM FAMILY HOLDINGS LLC AND**
) **AMENDED AND REDACTED RLM**
) **FAMILY TRUST AND TRUSTEE RE:**
) **TITLE TO RESIDENCE LOCATED AT**
) **31562 BLUFF DRIVE, LAGUNA BEACH,**
) **CALIFORNIA; AND ORDER THEREON**
)
)

Richard A. Marshack, Chapter 7 Trustee ("Trustee") for the Bankruptcy Estate of Robert L. McWhirk ("Debtor"), by and through his attorneys of record, Leonard Shulman, of Shulman Hodges & Bastian LLP and Robert L. McWhirk, individually and as the managing member and trustee of the sole member of RLM Family Holdings, LLC, A Nevada Limited Liability Company, and as trustee for and on behalf of the Amended and Restated RLM Family Trust dated July 14, 2003 by and through his attorneys of record, Jacob E. Godard, of Bohm, Matsen, Kegel & Aguilera LLP (collective the "Parties"), hereby agree and stipulate based on the following recitals:

Bohm, Matsen, Kegel & Aguilera, LLP
695 Town Center Drive, Ste. 700
Costa Mesa, CA 92626
(714) 384-6500

EXHIBIT A

STIPULATION

1 BACKGROUND INFORMATION

2 In November 2004, the California Housing Finance Agency obtained a judgment in the
3 Orange County Superior Court against Robert L. McWhirk for the sum of \$6,744,602. Mr.
4 McWhirk subsequently filed a notice of appeal. Oral argument is expected to take place in the
5 Fourth District Court of Appeals in the summer of 2006.

6 In 1997, Mr. McWhirk purchased Residential Property located at 31562 Bluff Drive,
7 Laguna Beach, California, and legally described in Exhibit "A" (the "Residence"). In 1999, Mr.
8 McWhirk caused a deed to be recorded that purports to transfer the Residence to the Robert L.
9 McWhirk Living Trust.

10 In 2003, Mr. McWhirk caused a grant deed to be recorded that purports to transfer the
11 Residence to James Machkoff and Southpac Trust International as Trustees of the Amended and
12 Restated RLM Family Trust dated January 14, 2003.

13 In 2004, Mr. McWhirk caused a grant deed to be recorded that purports to transfer the
14 Residence to RLM Family Holdings LLC, a Nevada Limited Liability Company ("RLM Family
15 Holdings LLC.")

16 On October 12, 2005, the Debtor filed a voluntary petition for relief under Chapter 7 of the
17 Bankruptcy Code (the "Petition Date"). Richard A. Marshack is the duly appointed, qualified and
18 acting Chapter 7 Trustee for the Debtor's bankruptcy estate.

19 Investigation of the Debtor's affairs has revealed that title to the Residence apparently held
20 or may be held by RLM Family Holdings, LLC, of which Debtor is (i) the trustee of the sole
21 member, the Amended and Restated RLM Family Trust ("Amended RLM Family Trust") pursuant
22 to the Modification of Trust Agreement attached hereto as Exhibit "B" and (ii) the manager,
23 pursuant to appointment by the Amended RLM Family Trust. Trustee contends that the transfer of
24 the Residence from the Amended and Restated RLM Family Trust to RLM Family Holdings LLC
25 appears to be the result of a complex asset protection plan. The parties seek to place title to the
26 Residence in the name of the Trustee for purposes of administrating Debtor's Bankruptcy Estate.

1 AGREEMENT

2 WHEREFORE, the Trustee, Debtor, the Amended RLM Family Trust and RLM Holdings
3 LLC agree, subject to Court approval, as follows:

- 4 1. Title to the Residence, located 31562 Bluff Drive, Laguna Beach, CA 92651, and
5 legally described in Exhibit "A" shall and is hereby transferred to Richard A.
6 Marshack, as the Chapter 7 Trustee of the Debtor's bankruptcy estate. Robert
7 McWhirk hereby represents and warrants that he is authorized to transfer the
8 property on behalf of RLM Family Holdings, LLC and on behalf of the Amended
9 and Restated RLM Family Trust. In addition to signing this stipulation, Robert
10 McWhirk agrees to sign any and all documents on his behalf and on behalf of RLM
11 Family Holdings, LLC and on behalf of Amended RLM Family Trust as trustee to
12 transfer the Residence including signing and delivering the quit claim deed(s)
13 attached hereto as exhibit "C".
- 14 2. The transfers of the Residence to RLM Holdings, LLC and to the Amended RLM
15 Family Trust are avoided and said transfers are preserved for the benefit of the
16 Bankruptcy Estate. By signing this agreement and transferring title to the
17 Residence, it is the Debtor's, the Amended and Restated RLM Family Trust's and
18 RLM Holdings LLC's intent to cause the Residence to be Property of the McWhirk
19 Bankruptcy Estate. Debtor does not admit that the original transfer of the
20 Residence from the Amended RLM Family Trust to RLM Family Holdings, LLC
21 was valid in any respect and hereby reserves the right to allege that the deed
22 transferring title in the Residence from the Amended RLM Family Trust to RLM
23 Family Holdings, LLC was void *ab initio*. Debtor, Amended RLM Family Trust and
24 RLM Holdings, LLC is reserving this right solely for the purpose of establishing
25 that the Residence was held by the Debtor so as to entitle the Debtor to receive a
26 homestead exemption. Trustee reserves all rights including the right to argue that
27 the property was not held or owned by the debtor as of the petition date and
28 therefore the debtor is not entitled to a homestead exemption.

- 1 3. Trustee agrees not to close on a sale of the Residence until the earlier of January 1,
2 2007 or the date the Clerk of the District Court of Appeals docket or serves the
3 ruling of the District Court of Appeals for case no. G034968. For good cause shown
4 by way of noticed motion, the Court may shorten the dates set forth in this
5 paragraph. In the interim, Trustee has the right to market the property.
- 6 4. The Trustee's obligations under paragraph 3 herein will terminate upon the
7 happening of any of the following events:
- 8 a. Any breach of the covenants set forth in paragraphs 1, 2, 5 and 8 of the
9 Stipulation;
- 10 b. The filing of any proceeding challenging the transfers set forth in this
11 Stipulation or the attachments to this; or
- 12 c. The Debtor files or causes to be filed a motion to dismiss or convert the
13 bankruptcy case.
- 14 d. If the Court grants relief from the automatic stay to permit any creditor other
15 than the California Housing Finance Agency to start or continue proceedings
16 to sell the Residence. If good cause exists, the Trustee will oppose any
17 motion for relief from stay.
- 18 5. Debtor covenants to:
- 19 a. To keep the Residence in the current condition or better at his own expense;
- 20 b. Pay all interest that accrues post-petition on all debts secured by the Real
21 Property;
- 22 c. Repair the Residence at his own expense;
- 23 d. Turnover funds referred to in the document entitled "Stipulation for Turnover
24 of Tax Refund" by March 10, 2006;
- 25 e. Not to amend the Amended RLM Family Trust without written consent of
26 the Chapter 7 Trustee;
- 27 f. Complete and timely fulfill all obligations set forth in all paragraphs of this
28 Stipulation;

- 1 g. Obtain by March 20, 2006 a notarized Quit Claim Deed transferring any
2 ownership interest Michael Misita has in the Residence to Trustee and obtain
3 a signed and notarized statement by Michael Misita stating that he is owed no
4 more than \$252,000.00 by the Debtor or the Estate. Attached hereto as
5 Exhibit "D" is a copy of the Quit Claim Deed, on which Debtor will obtain
6 Michael Misita's notarized signature and return to Trustee on or before
7 March 20, 2006; and
- 8 h. Obtain all notarized signatures on all the documents attached hereto as
9 Exhibit "C" and the document entitled "Modification of Trust Agreement"
10 attached hereto as Exhibit "B" by March 20, 2006.
- 11 i. Cause by March 30, 2006 insurable (by Fidelity National Title) fee title in
12 the Residence to vest in the name of Richard A. Marshack, Chapter 7
13 Trustee.

- 14 6. If the State Court judgment is reversed Debtor will probably seek to dismiss his
15 bankruptcy proceeding. If Debtor seeks to have the Chapter 7 case or any
16 bankruptcy proceeding under any chapter dismissed or if the Chapter 7 case or any
17 bankruptcy proceeding under any chapter is dismissed or converted, Debtor agrees
18 to pay all reasonable fees, expenses and claims of the Estate, Trustee's professionals
19 and Trustee. Trustee's compensation shall be all hours spent multiplied by the
20 Trustee's customary hourly rate he charges as an attorney. During the pendency of
21 the appeal Trustee will need to continue to fulfill his responsibilities. Where
22 appropriate, Trustee will advise Debtor's counsel of significant projects and seek
23 their input on completion on a cost savings basis. For example, Trustee needs to
24 conclude his analysis of Debtor's Pension Plan. Debtor can save the estate money
25 by obtaining all documents requested by the Trustee.
- 26 7. Debtor hereby agrees to extend the time for the Trustee and any party in interest to
27 object to the Debtor's claim of exemptions and to file an objection to discharge
28 under 11 U.S.C. Section 727 to the later of March 1, 2007 or sixty (60) days from

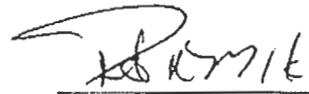
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the date the Clerk of the District Court of Appeals docket the final ruling of the District Court of Appeals on appeal no. G034968.

8. Debtor, the Amended RLM Family Trust and the RLM Family Holding LLC shall by March 30, 2006: 1) cause payment in full of the loan by Capital Mortgage Limited by applying the \$1,000,000.00 certificate of deposit with Capital Security Bank Limited; and 2) obtain and record a deed of reconveyance that effectively (so that Fidelity National Title will issue a Title Policy that insures the lien to Capital Mortgage Limited has been removed from title) removes the Capital Mortgage lien from the Residence.

SO AGREED:

Dated: March 9, 2006



Richard A. Marshack, Bankruptcy Trustee

Dated:

Robert L. McWhirk

Dated:

Robert L. McWhirk, on behalf of and as the Managing Member and Trustee of the sole Member of RLM Family Holdings, LLC, A Nevada Limited Liability Company

Dated:

Robert L. McWhirk, on behalf of and as the Trustee of the Amended and Restated RLM Family Trust dated July 14, 2003

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the date the Clerk of the District Court of Appeals docket the final ruling of the District Court of Appeals on appeal no. G034968.

8. Debtor, the Amended RLM Family Trust and the RLM Family Holding LLC shall by March 30, 2006: 1) cause payment in full of the loan by Capital Mortgage Limited by applying the \$1,000,000.00 certificate of deposit with Capital Security Bank Limited; and 2) obtain and record a deed of reconveyance that effectively (so that Fidelity National Title will issue a Title Policy that insures the lien to Capital Mortgage Limited has been removed from title) removes the Capital Mortgage lien from the Residence.

SO AGREED:

Dated:

Richard A. Marshack, Bankruptcy Trustee

Dated: *March 9, 2006*

Robert L. McWhirk
Robert L. McWhirk

Dated: *March 9, 2006*

Robert L. McWhirk
Robert L. McWhirk, on behalf of and as the Managing Member and Trustee of the sole Member of RLM Family Holdings, LLC, A Nevada Limited Liability Company

Dated: *March 9, 2006*

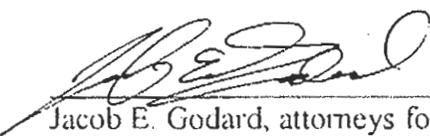
Robert L. McWhirk
Robert L. McWhirk, on behalf of and as the Trustee of the Amended and Restated RLM Family Trust dated July-14, 2003
January 30 2007

1 APPROVED AS TO FORM AND CONTENT:

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Dated: March 13, 2006

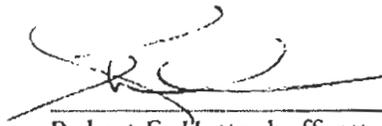
BOHM, MATSEN, KEGEL & AGUILERA, LLP
James G. Bohm
Jacob E. Godard

By: 

Jacob E. Godard, attorneys for ROBERT L.
McWHIRK

Dated: March 13, 2006

SHULMAN HODGES & BASTIAN LLP

By: 

Robert E. Fluttenhoff, attorneys for Richard A.
Marshack, Chapter 7 Trustee for the bankruptcy estate
of Robert L. McWhirk

NO OBJECTION TO THE ABOVE:

Dated:

CALIFORNIA HOUSING FINANCE AGENCY

By: _____
Don Fitzgerald, attorneys for California Housing
Finance Agency

///

1 APPROVED AS TO FORM AND CONTENT:

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Dated: BOHM, MATSEN, KEGEL & AGUILERA, LLP
James G. Bohm
Jacob E. Godard

By: _____
Jacob E. Godard, attorneys for ROBERT L.
McWHIRK

Dated: SHULMAN HODGES & BASTIAN LLP

By: _____
Robert E. Huttenhoff, attorneys for Richard A.
Marshack, Chapter 7 Trustee for the bankruptcy estate
of Robert L. McWhirk

NO OBJECTION TO THE ABOVE:

Dated: *March 14, 2006* CALIFORNIA HOUSING FINANCE AGENCY

By: *Donald W. Fitzgerald*
Don Fitzgerald, attorneys for California Housing
Finance Agency

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ORDER

Based on the foregoing Stipulation and the Court finding good cause:

IT IS HEREBY ORDERED that the stipulation is approved and title to Residence located 31562 Bluff Drive, Laguna Beach, CA 92651, and legally described in Exhibit "A" is hereby transferred to Richard A. Marshack, as the Chapter 7 Trustee of the Robert L. McWhirk Estate.

IT IS FURTHER ORDERED that the time for the Trustee and all parties in interest to object to Defendant's claims of exemption and to object to discharge is extended as set forth in paragraph 7.

DATED: 4/5/06



THE HONORABLE ERITHE SMITH
UNITED STATES BANKRUPTCY JUDGE

LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

LOT 15 OF TRACT NO. 702, COAST ROYAL, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGES 1, 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY HALF OF BLUFF DRIVE ADJACENT TO SAID LOT 15, BOUNDED NORTHWESTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT AND BOUNDED SOUTHEASTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LOT, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 11, 1926, INSTRUMENT NO. 23417, IN BOOK 28, PAGE 295 OF RECORDS OF SAID ORANGE COUNTY.

EXHIBIT **A** PAGE **9**

MODIFICATION OF TRUST AGREEMENT

This MODIFICATION OF TRUST Agreement ("Modification Agreement") is made this _____ day of _____, 2006 by and among Robert L. McWhirk, settlor ("Settlor") of the Amended and Restated RLM Family Trust dated January 14, 2003 (the "Trust"), Robert L. McWhirk as successor trustee of the Trust ("Trustee"), Jeffrey Machkoff and Beverly E. McWhirk as Co- Protectors ("Protectors") of the Trust and the beneficiaries of the Trust ("Beneficiaries").

RECITALS

WHEREAS, James Machkoff and Southpac Trust International, Inc. were originally named as Co-Trustees of the Trust;

WHEREAS, James Machkoff subsequently resigned as Co-Trustee pursuant to that certain Resignation of Trustee effective January 1, 2004, and Southpac Trust International, Inc. now serves as sole trustee of the Trust;

WHEREAS, the Settlor, the Beneficiaries and the Protectors now desire that Southpac Trust International, Inc. be removed as Trustee and Robert L. McWhirk be appointed as successor sole Trustee;

WHEREAS, Settlor and the Beneficiaries desire to amend the Trust without the time and expense involved with obtaining a court order. Settlor and Beneficiaries acknowledge that California Probate Code Section 15404 authorizes the amendment of the Trust without court order, provided that the consent of Settlor and all of the Beneficiaries is obtained;

WHEREAS, Settlor has agreed to serve as successor sole Trustee ("Trustee") of the Trust as hereby amended; and

WHEREAS, Protectors have consented to modification of the Trust as hereby amended, have agreed to remove Southpac Trust International, Inc. as Trustee, have agreed to appoint Robert L. McWhirk as successor sole Trustee, and have agreed to exercise their irrevocable power of attorney to transfer title of any Trust asset to Robert L. Mc Whirk as successor sole Trustee.

NOW THEREFORE, in light of the foregoing, and for good and valuable consideration the receipt of which is hereby acknowledged, the parties to the Modification Agreement hereby agree to the following:

MODIFICATION OF TRUST

1.1 Modification of Trust. The Trust is hereby amended as follows:

Page 1

The fourth paragraph of page 1 of the Trust which provides:

“WHEREAS, upon amending and restating the ROBERT L. McWHIRK TRUST, w/a/d August 5, 1999 it will no longer be appropriate for the Settlor to serve as Trustee;”

is deleted in its entirety.

The last paragraph of page 1 of the Trust is modified by adding a clause such that the last three clauses of such paragraph shall read as follows:

“and the Settlor, effective upon execution of this Deed by the Trustees named in Schedule I, hereby resigns as Trustee until such time as Settlor accepts an appointment as a successor Trustee.”

Article VII

Paragraph A.3 of Article VII of the Trust, Resignation of Trustees, which begins on page 56 of the Trust, is modified by adding the following sentence to the end of such Paragraph:

“Notwithstanding anything in this Instrument to the contrary, upon the amendment of this Trust and appointment of a new Trustee, the prior Trustee or Trustees shall be deemed to have resigned or to have been removed without notice and such resignation or removal shall be deemed effective upon acceptance by the new individual or entity of the position of Trustee.”

Article VIII

Paragraph B.1.c.I. of Article VIII of the Trust, LIMITATION ON APPOINTMENT, which begins on page 63 of the Trust, is deleted in its entirety, through and including subparagraph (iii) thereof.

Paragraph B.4.a.(ii) of Article VIII of the Trust, Exercise of Power, which begins on page 67 of the Trust, is amended in its entirety and restated to read as follows:

EXHIBIT A

EXHIBIT B PAGE 11

Page 65

“ii. Exercise of Power. The Protector may exercise such power without notice to the Trustee.”

Paragraph B.4.a.(iii) of Article VIII of the Trust, Reliance By Third Parties, which begins on page 68 of the Trust, is amended in its entirety and restated to read as follows:

“iii. Reliance By Third Parties. The authority of the Protector to exercise the power of attorney granted under this ARTICLE VIII B 4 a, and the ability of any person to rely and act upon same without incurring liability to any person howsoever interested in this Settlement or in any accounts, securities, properties and/or assets held hereunder, shall be evidenced by a writing, signed by the Protector indicating Protector’s exercise of this power of attorney.”

Paragraph B.4.e. of Article VIII of the Trust, Expenses of Succession: Security, which begins on page 71 of the Trust, is deleted in its entirety.

Paragraph I. 1. of Article VIII of the Trust, Reimbursement/Indemnification, which begins on page 78 of the Trust, is deleted in its entirety.

1.2 Successor Trustee Appointment and Acceptance By signing below, Robert L. McWhirk hereby acknowledges the request by Settlor and Beneficiaries to amend the Trust, hereby accepts the position of Trustee and hereby accepts delivery of the Trust instrument, as amended.

1.3 Protector Removal of Trustee, Appointment of New Trustee and Exercise of Power of Attorney to Transfer Title to New Trustee. By signing below, Jeffrey Machkoff and Beverly E. McWhirk, as Protectors, hereby acknowledge the request by Settlor and Beneficiaries to amend the Trust, hereby remove Southpac Trust International, Inc. as Trustee, hereby appoint and accept Robert L. McWhirk as successor sole Trustee, and hereby accept delivery of the Trust instrument, as amended. Further, by signing below, Jeffrey Machkoff and Beverly E. McWhirk, as Protectors, hereby exercise their irrevocable power of attorney as set forth in Paragraph B.4.a.(i) of Article VIII of the Trust, beginning on page 66, and agree to execute any and all additional documents necessary to effectively transfer title of any Trust asset from Southpac Trust International, Inc. as Trustee to Robert L. McWhirk as successor sole Trustee.

1.4 Trustee Obligations. Upon the execution of this Modification Agreement, Robert L. McWhirk as Trustee shall take such further action as may be necessary to carry out the terms of this Modification Agreement.

EXHIBIT A

EXHIBIT 6 PAGE 12

MISCELLANEOUS

2.1 Successors and Assigns. This Modification Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. This Modification Agreement shall be binding upon any presently unborn persons.

2.2 Representation of Counsel. The Settlor, the Trustee, the Protectors and each Beneficiary hereby acknowledges that they are not represented by the law firm of Shulman, Hodges & Bastian and that they have agreed to either retain their own separate counsel in connection with this Modification Agreement, or have waived their right to such independent counsel.

2.3 Counterparts. This Modification Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

EXECUTION

IN WITNESS WHEREOF, the parties herein below have duly executed this Modification of Trust Agreement effective as of and on the first date set forth hereon.

TRUSTEE:

_____	_____	_____	_____
Robert L. McWhirk	Dated	Witness	Dated

PROTECTORS:

_____	_____	_____	_____
Jeffrey Machkoff	Dated	Witness	Dated

_____	_____	_____	_____
SOUTHPAC TRUST INTER- NATIONAL, INC. BY: Jeffrey Machkoff, Attorney-in-fact	Dated	Witness	Dated

_____	_____	_____	_____
Beverly E. McWhirk	Dated	Witness	Dated

EXHIBIT A
EXHIBIT B PAGE 13

SOUTHPAC TRUST INTER- Dated Witness Dated
NATIONAL, INC.
BY: Beverly Machkoff,
Attorney-in-fact

SETTLOR:

Robert L. McWhirk Dated Witness Dated

BENEFICIARIES:

Robert L. McWhirk Dated Witness Dated

Michael J Misita Dated Witness Dated

Beverly E. McWhirk Dated Witness Dated

Rebecca J. Munson Dated Witness Dated

Rebecca J. Munson as Dated Witness Dated
Guardian for the children
of Rebecca J. Munson

Kristofer R. Munson Dated Witness Dated

Kristofer R. Munson as Dated Witness Dated
Guardian for the children
of Kristofer R. Munson

EXHIBIT A **8** PAGE **14**

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 2006 before me, _____,
Notary Public, personally appeared BEVERLY McWHIRK, /___/ personally known to
me or /___/ proved to me on the basis of satisfactory evidence to be the person whose
name is subscribed to the within instrument and acknowledged to me that she executed
the same in her authorized capacity, and that by her signature on the instrument the
person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Name (Typed or Printed)

CAPACITY CLAIMED BY SIGNER:

individual signing for oneself (Protector and beneficiary).
 corporate officer(s) _____ (Titles)
 partner(s) _____ Limited

_____ attorney-in-fact _____ General
_____ trustee(s)/trustor(s)
_____ guardian/conservator
 other: attorney-in-fact

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies)

SOUTHPAC TRUST INTERNATIONAL, INC.

EXHIBIT

EXHIBIT B PAGE 12

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 2006 before me, _____,
Notary Public, personally appeared REBECCA J. MUNSON, /___/ personally known to
me or /___/ proved to me on the basis of satisfactory evidence to be the person whose
name is subscribed to the within instrument and acknowledged to me that she executed
the same in her authorized capacity, and that by her signature on the instrument the
person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Name (Typed or Printed)

CAPACITY CLAIMED BY SIGNER:

individual signing for oneself (beneficiary).
 corporate officer(s) _____ (Titles)
 partner(s) _____ Limited

attorney-in-fact _____ General
 trustee(s)/trustor(s)
 guardian for the children of REBECCA J. MUNSON (beneficiaries)
 other: _____

SIGNER IS REPRESENTING:
Name of Person(s) or Entity(ies)

EXHIBIT A
EXHIBIT B PAGE 19

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 2006 before me, _____,
Notary Public, personally appeared KRISTOFER R. MUNSON, /___/ personally known
to me or /___/ proved to me on the basis of satisfactory evidence to be the person whose
name is subscribed to the within instrument and acknowledged to me that he executed the
same in his authorized capacity, and that by his signature on the instrument the person, or
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Name (Typed or Printed)

CAPACITY CLAIMED BY SIGNER:

individual signing for oneself (beneficiary).
 corporate officer(s) _____ (Titles)
 partner(s) _____ Limited
_____ General
 attorney-in-fact
 trustee(s)/trustor(s)
 guardian for the children of KRISTOFER R. MUNSON (beneficiaries)
 other: _____

SIGNER IS REPRESENTING:
Name of Person(s) or Entity(ies)

WHEN RECORDED MAIL TO:
Michael J. Petersen
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive
Suite 300
Foothill Range, CA 92610

THE UNDERSIGNED GRANTOR(s) DECLARE(s)
DOCUMENTARY TRANSFER TAX IS \$ NONE
Transfer results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property

Quitclaim Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Robert L. McWhirk does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to
Richard A. Marshack, Trustee of the Robert L. McWhirk Bankruptcy Estate

the real property in the City of Laguna Beach, County of Orange State of California described as

**SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE FOR LEGAL DESCRIPTION.**

Dated: _____, 20__

Robert L. McWhirk

STATE OF CALIFORNIA } ss
COUNTY OF ORANGE }

On _____, 20__ before me, personally appeared Robert L. McWhirk, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

EXHIBIT C PAGE 21

LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

LOT 15 OF TRACT NO. 702, COAST ROYAL, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGES 1, 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY HALF OF BLUFF DRIVE ADJACENT TO SAID LOT 15, BOUNDED NORTHWESTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT AND BOUNDED SOUTHEASTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LOT, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 11, 1926, INSTRUMENT NO. 23417, IN BOOK 28, PAGE 295 OF RECORDS OF SAID ORANGE COUNTY.

EXHIBIT *l* PAGE *22*

WHEN RECORDED MAIL TO:
Michael J. Petersen
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive
Suite 300
Foothill Range, CA 92610

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$ NONE
Transfer results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property

Quitclaim Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Robert L. McWhirk, Trustee of the Robert L McWhirk Living Trust established August 5, 1999 does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

Richard A. Marshack, Trustee of the Robert L. McWhirk Bankruptcy Estate

the real property in the City of Laguna Beach, County of Orange State of California described as

**SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE FOR LEGAL DESCRIPTION.**

Dated: _____, 20__

Robert L McWhirk Living Trust

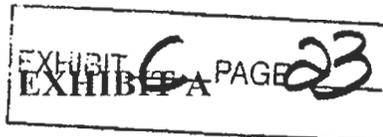
BY: _____
Robert L. McWhirk, trustee

STATE OF CALIFORNIA } ss
COUNTY OF ORANGE }

On _____, 20__ before me, personally appeared Robert L. McWhirk known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature



LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

LOT 15 OF TRACT NO. 702, COAST ROYAL, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGES 1, 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY HALF OF BLUFF DRIVE ADJACENT TO SAID LOT 15, BOUNDED NORTHWESTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT AND BOUNDED SOUTHEASTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LOT, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 11, 1926, INSTRUMENT NO. 23417, IN BOOK 28, PAGE 295 OF RECORDS OF SAID ORANGE COUNTY.

EXHIBIT A PAGE 24

WHEN RECORDED MAIL TO:
Michael J. Petersen
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive
Suite 300
Foothill Range, CA 92610

THE UNDERSIGNED GRANTOR(s) DECLARE(s)
DOCUMENTARY TRANSFER TAX IS \$ NONE
Transfer results in a change in the method of holding title to the real property
transferred without changing the proportional interests of the coowners in that
real property

Quitclaim Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

AMENDED AND RESTATED RLM FAMILY TRUST u/a/d January 14, 2003 does hereby REMISE,
RELEASE AND FOREVER QUITCLAIM to

Richard A. Marshack, Trustee of the Robert L. McWhirk Bankruptcy Estate

the real property in the City of Laguna Beach, County of Orange State of California described as

**SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE FOR LEGAL DESCRIPTION.**

Dated: _____, 20__

AMENDED AND RESTATED RLM FAMILY TRUST

BY: _____

Robert L. McWhirk, trustee

STATE OF CALIFORNIA } ss
COUNTY OF ORANGE }

On _____, 20__ before me, personally appeared Robert L.
McWhirk, trustee known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is
subscribed to the within instrument and acknowledged to me
that he executed the same in his authorized capacity, and that by
his signature on the instrument the person or the entity upon
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

EXHIBIT C PAGE 25
EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

LOT 15 OF TRACT NO. 702, COAST ROYAL, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGES 1, 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY HALF OF BLUFF DRIVE ADJACENT TO SAID LOT 15, BOUNDED NORTHWESTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT AND BOUNDED SOUTHEASTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LOT, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 11, 1926, INSTRUMENT NO. 23417, IN BOOK 28, PAGE 295 OF RECORDS OF SAID ORANGE COUNTY.

EXHIBIT C PAGE 26

WHEN RECORDED MAIL TO:
Michael J. Petersen
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive
Suite 300
Foothill Range, CA 92610

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$ NONE
Transfer results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property

Quitclaim Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

RLM FAMILY HOLDINGS LLC does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to
Richard A. Marshack, Trustee of the Robert L. McWhirk Bankruptcy Estate

the real property in the City of Laguna Beach, County of Orange State of California described as

**SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE FOR LEGAL DESCRIPTION.**

Dated: _____, 20__

RLM FAMILY HOLDINGS LLC

By Amended and Restated RLM FAMILY TRUST, sole
member

STATE OF CALIFORNIA } ss
COUNTY OF ORANGE }

BY: _____
Robert L. McWhirk, trustee

BY: _____
Robert L. McWhirk, manager

On _____, 20__ before me, personally appeared Robert L. McWhirk known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

EXHIBIT A
EXHIBIT PAGE 27

LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

LOT 15 OF TRACT NO. 702, COAST ROYAL, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGES 1, 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY HALF OF BLUFF DRIVE ADJACENT TO SAID LOT 15, BOUNDED NORTHWESTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT AND BOUNDED SOUTHEASTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LOT, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 11, 1926, INSTRUMENT NO. 23417, IN BOOK 28, PAGE 295 OF RECORDS OF SAID ORANGE COUNTY.

EXHIBIT PAGE 28

WHEN RECORDED MAIL TO:
Michael J. Petersen
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive
Suite 300
Foothill Range, CA 92610

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$ NONE
Transfer is without consideration to correct possible title matters

Quitclaim Deed

FOR A SUFFICIENT CONSIDERATION, receipt of which is hereby acknowledged,

Michael J. Misita individually and as the Trustee of the Michael J. Misita Trust w/a/d August 5, 1999 does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to
Richard A. Marshack, Trustee of the Robert L. McWhirk Bankruptcy Estate

the real property in the City of Laguna Beach, County of Orange State of California described as

**SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE FOR LEGAL DESCRIPTION.**

Excluded from this conveyance is all right and interest of Grantor pursuant to that certain Deed of Trust dated January 14, 2003 and recorded January 16, 2003 in Orange County State of California as Instrument No. 03-62038

Dated: _____, 20__

STATE OF CALIFORNIA } ss
COUNTY OF ORANGE }

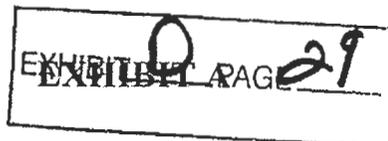
Michael J. Misita, individually

Michael J. Misita Trustee of the Michael
J. Misita Trust

On _____, 20__ before me, personally appeared Michael J. Misita known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and his individual capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature



LEGAL DESCRIPTION

Real property in the City of Laguna Beach, County of Orange, State of California, described as follows:

LOT 15 OF TRACT NO. 702, COAST ROYAL, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGES 1, 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY HALF OF BLUFF DRIVE ADJACENT TO SAID LOT 15, BOUNDED NORTHWESTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT AND BOUNDED SOUTHEASTERLY BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID LOT, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 11, 1926, INSTRUMENT NO. 23417, IN BOOK 28, PAGE 295 OF RECORDS OF SAID ORANGE COUNTY.

EXHIBIT D PAGE 30
EXHIBIT A

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610.

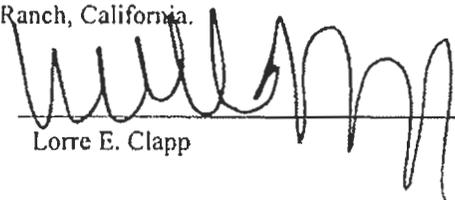
On March 14, 2006, I served the documents named below on the parties as follows:

DOCUMENT(S) SERVED: **STIPULATION BETWEEN THE DEBTOR, RLM FAMILY HOLDINGS LLC AND AMENDED AND RESTATED RLM FAMILY TRUST AND TRUSTEE RE TITLE TO RESIDENCE LOCATED AT 31562 BLUFF DRIVE, LAGUNA BEACH, CALIFORNIA**

SERVED UPON: **SEE THE ATTACHED SERVICE LIST**

- (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of 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.
- (BY FACSIMILE) Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list. The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error.
- (BY FEDERAL EXPRESS OR AIRBORNE EXPRESS) I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by such overnight delivery company for overnight delivery.
- (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by ASAP Corporate Service to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.
- (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 this service was made.

Executed on **March 14, 2006**, at Foothill Ranch, California.



Lorre E. Clapp

SERVICE LIST

Interested Party

United States Trustee
Ronald Reagan Federal Building
and United States Court House
411 West Fourth Street Suite 9041
Santa Ana, CA 92701-8000

Debtor

Robert L Mcwhirk
31562 Bluff Drive
Laguna Beach, CA 92651

Attorney for Debtor

Uzzi O Raanan, Esq.
Daning Gill Diamond & Kollitz LLP
2029 Century Park East, Third Floor
Los Angeles, CA 90067

**Attorneys for Robert L. McWhirk and
RLM Family Holdings LLC and Amended and Restated RLM Family Trust**

James G. Bobhm, Esq
Jacob E. Godard, Esq
Bohm, Matsen, Kegel & Aguilera, LLP
695 Town Center Drive, Ste. 700
Costa Mesa, CA 92626

Attorneys for California Housing Finance Agency

Paul Salvaty Esq.
O'Melveny & Meyers LP
400 S Hope St
Los Angeles, CA 90071

Attorneys for California Housing Finance Agency

Donald W. Fitzgerald, Esq.
Felderstein Fitzgerald Willoughby & Pascuzzi LLP
400 Capitol Mall Suite 1450
Sacramento CA 95814

California Housing Finance Agency

Thomas C Hughes, Esq
California Housing Finance Agency
1121 L Street Suite 300
Sacramento, CA 95814

In re (SHORT TITLE) ROBERT L. McWHIRK, Debtor.	CHAPTER 7 CASE NUMBER: SA 05-19596 ES
---	---

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

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

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

STIPULATION BETWEEN THE DEBTOR, RLM FAMILY HOLDINGS LLC AND AMENDED AND RESTATED RLM FAMILY TRUST AND TRUSTEE RE TITLE TO RESIDENCE LOCATED AT 31562 BLUFF DRIVE, LAGUNA BEACH, CALIFORNIA; AND ORDER THEREON

was entered on (*specify date*): APR 6 2006

2. 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*): APR 6 2006

Dated: **APR 6 2006**

**JON D. CERETTO
CLERK OF THE BANKRUPTCY COURT**

By: 
Deputy Clerk

SERVICE LIST

Interested Party

United States Trustee
Ronald Reagan Federal Building
and United States Court House
411 West Fourth Street Suite 9041
Santa Ana, CA 92701-8000

Attorneys for the Trustee

Leonard M. Shulman Esq.
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive Suite 300
Foothill Ranch, CA 92610-2808

Debtor

Robert L Mcwhirk
31562 Bluff Drive
Laguna Beach, CA 92651

Attorney for Debtor

Uzzi O Raanan, Esq.
Daning Gill Diamond & Kollitz LLP
2029 Century Park East, Third Floor
Los Angeles, CA 90067

Attorneys for Robert L McWhirk and

RLM Family Holdings LLC and Amended and Restated RLM Family Trust

James G. Bobhm, Esq
Jacob E. Godard, Esq
Bohm, Matsen, Kegel & Aguilera, LLP
695 Town Center Drive, Ste. 700
Costa Mesa, CA 92626

Attorneys for California Housing Finance Agency

Paul Salvaty Esq.
O'Melveny & Meyers LP
400 S Hope St
Los Angeles, CA 90071

Attorneys for California Housing Finance Agency

Donald W. Fitzgerald, Esq.
Felderstein Fitzgerald Willoughby & Pascuzzi LLP
400 Capitol Mall Suite 1450
Sacramento CA 95814

California Housing Finance Agency

Thomas C Hughes, Esq
California Housing Finance Agency
1121 L Street Suite 300
Sacramento, CA 95814

EXHIBIT B

Notarized Statement from Michael Misita

ESTOPPEL CERTIFICATE
From Michael J. Misita

This Estoppel Certificate made by the undersigned, Michael J. Misita, is made with reference to the following facts:

A. I assert that I am the holder of a debt in the original amount of \$427,920 (the "Obligation") payable by Robert L. McWhirk, Trustee of the Robert L. McWhirk Trust, and that the Obligation is secured by a Deed of Trust recorded January 16, 2003 against real property located in Orange County, California, commonly known as 31562 Bluff Drive, Laguna Beach.

B. I am informed that an agreement entitled Stipulation Between Debtor, RLM Family Holdings LLC and Amended and Restated RLM Family Trust and Trustee re Title to Residence Located at 31562 Bluff Drive, Laguna Beach, California (the "Stipulation") has been entered into by, among others, Robert L. McWhirk ("McWhirk") and Richard A. Marshack, Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Robert L. McWhirk ("Estate").

C. The Stipulation requires that McWhirk obtain from me a signed and notarized statement stating that I am owed no more than \$252,000 by McWhirk or the Estate. This Estoppel Certificate is intended to be that signed and notarized statement.

CERTIFICATION

I, Michael J. Misita, declare and certify as follows:

1. The only claim I hold against the Debtor, the Estate or any property of the Estate is the Obligation;

2. As of the date of this Certificate, the amount of the Obligation does not exceed \$252,000 due to my actions, subsequent to the creation of the Obligation, in using \$172,000 of my interest in the real property commonly known as 31562 Bluff Drive, Laguna Beach to make personal investments;

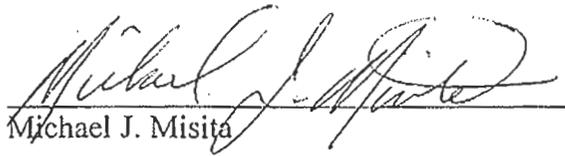
3. I acknowledge that this Certificate does not constitute, and is not intended to be, a Proof of Claim;

4. I acknowledge that the Trustee and other parties in interest retain the right to object to and seek to declare void or invalid in any and all respects, any claim represented by the Obligation, even as limited by this Certificate, and the Deed of Trust; and

5. I acknowledge that the Trustee and other parties in interest in the Chapter 7 case, including but not limited to the California Housing Finance Agency, are relying on this Estoppel Certificate and I execute and issue this Estoppel Certificate with the intent that they so rely.

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

Executed this 9 day of MAY, 2006 in RIVERSIDE, California.


Michael J. Misita

The California Housing Finance Agency hereby acknowledges that subsequent to the creation of the Obligation, Michael J. Misita withdrew \$172,000 of his interest in the real property commonly known 31562 Bluff Drive, Laguna Beach, thus reducing the amount owed to him by the Debtor or the Estate as explained above. The California Housing Agency will not assert any claim on the \$172,000 withdrawn by Michael J. Misita and used by him for personal investments.

California Housing Finance Agency

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On 5-9-2006 before me, J. Hartgraves, a Notary Public, personally appeared Michael J. Misita, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in (his)/her/their authorized capacity(ies), and that by (his)/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature J. Hartgraves
STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

(SEAL)



On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(SEAL)

EXHIBIT C

Title Report



Fidelity National Title Company

PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, **Fidelity National Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit A attached. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The Policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California Corporation.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Eric [Signature]
Countersigned



Fidelity National Title Company

BY *[Signature]* President

ATTEST *[Signature]* Secretary



Fidelity National Title Company

377 E. Chapman Suite 235 Placentia, CA 92870
(714) 577-5202 FAX (714) 996-2254

PRELIMINARY REPORT

ESCROW OFFICER: Marlene
TITLE OFFICER: Debbie Tognetti

ORDER NO.: 49036914

LOAN NO.:

TO: Real Escrow
660 Newport Center Drive #1250
Newport Beach, CA 92660

ATTN: Marlene
YOUR REFERENCE.: Real Escrow

SHORT TERM RATE: Yes

PROPERTY ADDRESS: 31562 Bluff Drive, Laguna Beach, California

EFFECTIVE DATE: February 5, 2007, 07:30 A.M.

The form of Policy or Policies of title insurance contemplated by this report is:

American Land Title Association Loan Policy (10-17-92) with A.L.T.A. Form 1 Coverage
American Land Title Association Homeowner's Policy of Title For a One-To-Four Family
Residence (10/22/03)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

Richard A. Marshack, Trustee of the Robert L. McWhirk Bankruptcy Estate

3. THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE CITY OF LAGUNA BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "ONE" ATTACHED HERETO AND MADE A PART HEREOF

LN\JP 09/29/2006

EXHIBIT "ONE"

Lot 15 of Tract No. 702 "Coast Royal", in the City of Laguna Beach, County of Orange, State of California, as shown on a map recorded in Book 21, Pages 1, 2 and 3 of Miscellaneous Maps, in the office of the County Recorder of said county together with that portion of the Southwesterly half of Bluff Drive bounded Northwesterly by the Southwesterly prolongation of the Northwesterly line of said Lot and Southeasterly by the Southwesterly prolongation of the Southeasterly line of said lot as abandoned by the board of supervisors by Instrument No. 23417 recorded August 11, 1926.

Assessor's Parcel No: 658-092-09

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

- 1. **Property taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2006-2007, Assessor's Parcel Number 658-092-09.**

Code Area Number: 05036
 1st Installment: \$6,463.00 Delinquent
 2nd Installment: \$6,463.00 Not Paid
 Land: \$686,768.00
 Improvements: \$250,685.00
 Exemption: \$None shown
 Personal Property: \$None shown
 Bill No.: None shown

- 2. **An assessment by the improvement district shown below**

Assessment
 (or Bond) No: Parcel
 Series: AD 99-4
 District: County of Orange
 For: Infrastructure (MA)
 Bond issued: July 1, 2005

Said assessment is collected with the county/city property taxes.

- 3. **Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2005-2006.**

APN: 658-092-09
 Default No.:
 Default Date: None Shown

Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:

Amount: \$15,474.84
 By: February 28, 2007
 Amount: \$15,664.79
 By: March 31, 2007

- 4. **Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2007-2008.**

- 5. **The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.**

- 6. **Easement(s) for the purpose(s) shown below and rights incidental thereto as disclosed by a document;**

Purpose: The use of pedestrians over said portion of abandoned Bluff Drive and a portion of said abandoned unnamed highway
 Recorded: August 12, 1926, Book 667, Page 281, of Deeds
 Affects: Southerly 15 feet of said land.

7. The right and easement of all owners and their grantees of a portion of the lots in said tract to use said portion of abandoned Bluff Drive and a portion of said abandoned unnamed highway for vehicular and pedestrian purposes in passing to and from their respective lots, and for ingress and egress to and from their lots as granted to said owners by deed recorded August 12, 1926 in Book 667, Page 281 of Deeds.
8. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document;
- Granted to: South Coast County Water District, a Corporation
 Purpose: Water pipe lines and water distribution system
 Recorded: Book 661, Page 164, of Official Records
 Affects: said land
9. The easement for ingress, egress and egress over said portion of vacated Bluff Drive for the benefit of Lots 1 to 32 of said Tract No. 702, and Lot 1, except the Northeasterly 100 feet thereof, as shown on a licensed surveyor's map filed in Book 3, Pages 16 and 17 of record of surveys, in the office of the County Recorder of said county, as reserved in the deed from Minnie A. Seamans and others to Violet M. Parkin, recorded September 16, 1944 in Book 1269, Page 192 of Official Records.
10. **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.
- Recorded: Book 1269, Page 192, of Official Records
- Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.
- If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing for older persons shall not be construed as restrictions based on familial status.
11. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document;
- Granted to: San Diego Gas & Electric Company, a Corporation
 Purpose: Underground electric facilities, and appurtenances for the transmission and distribution of electricity, and underground communication facilities and appurtenances
 Recorded: January 11, 2005, Instrument No. 24993, of Official Records
 Affects: Those portions of said land as described therein
12. **Matters** contained in that certain document entitled "Court Order Not To Dissipate Assets" dated November 15, 2004, recorded November 16, 2004, Instrument No. 1024099, of Official Records.

Reference is hereby made to said document for full particulars.

13. **Any easements not disclosed** by those public records which impart constructive notice as to matters affecting title to real property and which are not visible and apparent from an inspection of the surface of said land.
14. **A deed of trust** to secure an indebtedness in the amount shown below, and any other obligations secured thereby
- Amount: \$427,920.00
 Dated: January 14, 2003
 Trustor: Robert L. McWhirk, Trustee of the Robert L. McWhirk Trust
 Trustee: James Machkoff
 Beneficiary: Michael J. Misita, Trustee of the Michael J. Misita Trust u/a/d August 5, 1999
 Loan No.: None shown
 Recorded: January 16, 2003, Instrument No. 62038, of Official Records
15. **A Notice of Assessment**
- Recorded: December 22, 2004, Instrument No. 1135412, of Official Records.
- Reference is made to said document for full particulars.
16. **In order to complete this report**, this Company requires a Statement of Information to be completed by the following party,
- Party: All parties
- The Company reserves the right to add additional items or make further requirements after review of the requested Statement(s) of Information.
17. **Any invalidity or defect in the title of the vestees in the event that the trust referred to herein is invalid or fails to grant sufficient powers to the trustee(s) or in the event there is a lack of compliance with the terms and provisions of the trust instrument.**
- If title is to be insured in the trustee(s) of a trust, (or if their act is to be insured), this Company will require a **Trust Certification pursuant to California Probate Code Section 18100.5**. The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.
18. **Your application for title insurance was placed by reference to a street address only. Based on our records, we believe that the description in this report covers the parcel that you requested.**
- To prevent errors and to be certain that the proper parcel of land will appear on the documents and on the policy of title insurance, we require written approval of the legal description in this report be sent to this Company, signed by the parties to the transaction.

- 19.** This company will require a statement of information from the parties named below in order to complete this report, based on the effect of documents, proceedings, liens, decrees, or other matters which do not specifically describe said land, but which, if any do exist, may affect the title or impose liens or encumbrances thereon. After review of the requested Statement(s) of Information the Company may have additional requirements before the issuance of any policy of title insurance.

Parties: TBD

(Note: The statement of information is necessary to complete the search and examination of title under this order. Any title search includes matters that are indexed by name only, and having a completed statement of information assists the Company in the elimination of certain matters which appear to involve the parties but in fact affect another party with the same or similar name. Be assured that the statement of information is essential and will be kept strictly confidential to this file).

- 20.** NOTE: The policy of title insurance will include an arbitration provision. The Company or the Insured may demand arbitration. Arbitrable matters may include, but are limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with the issuance or the breach of a policy provision or other obligation. Please ask your Escrow or Title Officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

END OF ITEMS

- Note 1.** The office of Debbie Tognetti may be reached by phone at (714) 577-5200 or fax (714) 996-2296
- Note 2.** None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an Extended Coverage Loan Policy, when issued.
- Note 3.** The Company is not aware of any matters which would cause it to decline to attach the CLTA Endorsement Form 116 indicating that there is located on said land single family residence known as 31562 Bluff Drive, Laguna Beach, CA to an Extended Coverage Loan Policy.
- Note 4.** The only deeds affecting said land, which recorded within twenty-four (24) months of the date of this report, as are follows:

Grantor: Robert L. McWhirk
 Grantee: Richard A. Marshack, Trustee of the Robert L. McWhirk
 Bankruptcy Estate
 Recorded: April 17, 2006, Instrument No. 255694, of Official Records

and
 Grantor: Richard A. Marshack, Trustee of the Robert L. McWhirk Living
 Trust established August 5, 1999
 Grantee: Richard A. Marshack, Trustee of the Robert L. McWhirk
 Bankruptcy Estate
 Recorded: April 17, 2006, Instrument No. 255695, of Official Records

and
 Grantor: Amended and Restated RLM Family Trust u/a/d January 14, 2003
 Grantee: Richard A. Marshack, Trustee of the Robert L. McWhirk
 Bankruptcy Estate
 Recorded: April 17, 2006, Instrument No. 255696, of Official Records

and
 Grantor: RLM Family Holdings LLC
 Grantee: Richard A. Marshack, Trustee of the Robert L. McWhirk
 Bankruptcy Estate
 Recorded: April 17, 2006, Instrument No. 255697, of Official Records

and
 Grantor: Michael J. Misita individually and as the Trustee of the Michael J.
 Misita Trust u/a/d August 5, 1999
 Grantee: Richard A. Marshack, Trustee of the Robert L. McWhirk
 Bankruptcy Estate
 Recorded: April 17, 2006, Instrument No. 255698, of Official Records

Note 5. The charge for a policy of title insurance, when issued through this title order, will be based on the Short Term Rate.

Note 6. NOTE: Amended Civil Code Section 2941, which becomes effective on January 1, 2002, sets the fee for the processing and recordation of the reconveyance of each Deed of Trust being paid off through this transaction at \$45.00. The reconveyance fee MUST be clearly set forth in the Beneficiary's Payoff Demand Statement ("Demand"). In addition, an assignment or authorized release of that fee, from the Beneficiary to the Trustee of record, must be included. An example of the required language is as follows:

"The Beneficiary identified above hereby assigns, releases or transfers to the Trustee of record, the sum of \$45.00, included herein as "Reconveyance Fees", for the processing and recordation of the Reconveyance of the Deed of Trust securing the indebtedness covered hereby, and the Escrow Company or Title Company processing this pay-off is authorized to deduct the Reconveyance Fee from this Demand and forward said fee to the Trustee of record or the successor Trustee under the Deed of Trust to be paid in full."

Note 7. Wiring instructions for Fidelity National Title Company, Orange County, California are as follows:

Receiving Bank:

COMERICA BANK CALIFORNIA
 FINANCIAL SERVICES GROUP
 BEVERLY HILLS, CA 90301
 ABA ROUTING NO.: 121137522
 CREDIT ACCOUNT: 189-1964-288
 CREDIT ACCOUNT NAME: FIDELITY NATIONAL TITLE COMPANY - TRUST

Order Numbers must be referenced on all wiring.

These wiring instructions are for this specific transaction involving the Title Department of the Orange County office of Fidelity National Title. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

Note 8. The Note shown below, which recites: "California Revenue and Taxation Code Section 18668, effective January 1, 1991, requires that the buyer in all sales of California Real Estate, wherein the Seller shows an out of State Address, withhold 3-1/3% of the total sales price as California State Income Tax, subject to the various provisions of the law as therein contained."

is hereby deleted and replaced with the following:

California Revenue and Taxation Code Section 18662, effective January 1, 1994 and by amendment effective January 1, 2003, provides that the buyer in all sales of California Real Estate may be required to withhold 3 and 1/3% of the total sales price as California State Income Tax, subject to the various provisions of the law as therein contained.

Note 9. The current owner is entitled to receive 1 discount(s) of \$20.00 each (Total \$20.00) on escrow services OR title insurance pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs.

Note 10. Section 12413.1, California Insurance Code became effective January 1, 1990. This legislation deals with the disbursement of funds deposited with any title entity acting in an escrow or subescrow capacity. The law requires that all funds be deposited and collected by the title entity's escrow and/or subescrow account prior to disbursement of any funds. Some methods of funding may subject funds to a holding period which must expire before any funds may be disbursed. In order to avoid any such delays, all fundings should be done through wire transfer, certified check or checks drawn on California financial institutions.

Note 11. The charge where an order is cancelled after the issuance of the report of title, will be that amount which in the opinion of the Company is proper compensation for the services rendered or the purpose for which the report is used, but in no event shall said charge be less than the minimum amount required under Section 12404.1 of the Insurance Code of the State of California. If the report cannot be cancelled "no fee" pursuant to the provisions of said Insurance Code, then the minimum cancellation fee shall be that permitted by law.

Note 12. California Revenue and Taxation Code Section 18662, effective January 1, 1994 and by amendment effective January 1, 2003, provides that the buyer in all sales of California Real Estate may be required to withhold 3 and 1/3% of the total sales price as California State Income Tax, subject to the various provisions of the law as therein contained.

Notice

You may be entitled to receive a \$20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is the subject of your current transaction, you must inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount.

Effective through November 1, 2014

Fidelity National Financial Group of Companies' Privacy Statement

July 1, 2001

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

- to agents, brokers or representatives to provide you with services you have requested;
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
- to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability to Correct Errors or Request Changes or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address:

Privacy Compliance Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Multiple Products or Services

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

EXHIBIT D

Agreement

To the court appointed representative of the estate, conservatorship, or guardianship identified by the Superior Court case name as Richard A. Marshack Chapter 7, Bankruptcy Trustee ("Seller"), this is an offer from Laszlo & Clara Dome ("Buyer"), for the purchase of real property situated in: Laguna Beach, County of Orange, California, described as 31562 Bluff Drive ASSESSOR'S PARCEL NUMBER: 658-092-09 ("Property"), together with any personal property included in the sale under paragraph 21.

1. PROBATE SALE: The Property is sold subject to the requirements of the California Probate Code and court order. The Property is sold "AS IS" in its present condition as of the time of acceptance of the offer, without warranty as to condition, zoning, permitted use of the Property, or any other matter, unless otherwise agreed in writing.

2. PURCHASE PRICE: The sum of Two Million Nine Hundred Thousand and 00/100 - Dollars (\$2,900,000 -) in cash. Other credit or financing terms: _____

3. BUYER'S INITIAL DEPOSIT: Buyer has deposited \$100,000 - \$ 100,000 PAYABLE TO Richard A. Marshack, Ch. 7 Trustee the representative of the Estate, the Estate, Escrow Holder, Broker's trust account, or Trustee, by Personal Check (or, if checked, Cashier's Check, Cash, or _____ TO BE HELD UNCASHED until the next business day after acceptance of the offer, or Deposited with Trustee at time offer is presented Refundable only if overbid is accepted by court, or _____

4. BUYER'S INCREASED DEPOSIT: Buyer shall deposit, within _____ days from acceptance of the offer _____ per paragraph to addendum _____

5. BALANCE OF PURCHASE PRICE to be paid as follows: Cash at close of escrow \$ 2,800,000 -

6. ALLOCATION OF COSTS: Costs shall be paid as follows (check boxes which apply):

CLOSING COSTS:

A. Buyer, Seller, to pay Escrow fee. Each pays own fees Escrow Holder shall be Seller choice

B. Buyer, Seller, to pay Owner's Title Insurance policy: (CLTA or ALTA-R) Seller choice company, to be provided by Seller choice

C. Buyer, Seller, to pay Lender's Title Insurance policy.

D. Buyer, Seller, to pay County property transfer tax or fee.

E. Buyer, Seller, to pay City property transfer tax or fee.

F. Buyer, Seller, to pay Homeowners' Association transfer fee of approximately \$ Split 50/50

G. Buyer, Seller, to pay sub-escrow and reconveyance fees resulting from payoff of existing encumbrances.

H. Buyer, Seller, to pay for drawing and recording of the deed or other document of conveyance.

HOME WARRANTY COSTS:

I. 1. Buyer, Seller, shall pay the cost of a one-year home warranty plan, not to exceed \$ _____ to be issued by _____ with the following optional coverage: _____

OR 2. Buyer and Seller elect NOT to obtain this coverage.

FHA OR VA RELATED COSTS: (Applicable only if FHA or VA financing is indicated above)

J. 1. Seller shall pay all related loan costs which Buyer is not permitted to pay by VA or FHA financing regulations, including loan origination fee, if required.

2. Buyer, Seller, shall pay for VA funding fee, if applicable.

3. Buyer, Seller, shall pay for lender discount points, limited to _____ points.

4. If, based upon the completed lender's appraisal report, repair work is required, Seller shall pay for such work to a maximum amount of \$ _____ Buyer or Seller may cancel this transaction if Buyer is unwilling or unable to pay for costs of repair work exceeding this limit: _____

PEST CONTROL COSTS:

K. Structural pest control report and repair work is not a condition of this sale.

OR Buyer, Seller, to pay for the Pest Control Report which shall be prepared by _____ structural pest control company, covering the main building and attached structures and, if checked: detached garages or carports, decks, the following other structures on the Property: _____

If the Property is a unit in a condominium, planned development, or residential stock cooperative, the Report shall cover only the separate interest and any exclusive-use areas being transferred, and shall NOT cover common areas.

1. Buyer, Seller, to pay for work recommended to correct "Active Infestation," "Section 1" conditions.

2. Buyer, Seller, to pay for work recommended to correct "Preventative," "Section 2" conditions, if requested by Buyer.

PROVISIONS:

L. 1. Real property taxes and assessments, interest, rents, Homeowners' Association regular dues and regular assessments, premiums on insurance assumed by Buyer, and payments on bonds and assessments assumed by Buyer, shall be PAID CURRENT and prorated between Buyer and Seller as of the date of close of escrow; (or _____)

2. Payments on Mello-Roos and other Special Assessment District bonds and assessments which are now a lien, and payments on Homeowners' Association special assessments which are now a lien, shall be PAID CURRENT and prorated between Buyer and Seller as of the date of close of escrow, with payments that are not yet due assumed by Buyer WITHOUT CREDIT toward the purchase price, (or _____)

3. The Property is subject to reassessment upon change of ownership. This will affect the taxes to be paid. Any supplemental tax bills shall be paid as follows: (1) for periods after close of escrow, by Buyer (or by final acquiring party, if part of an exchange), and (2) for periods prior to close of escrow, by Seller. Tax bills issued after close of escrow shall be handled directly between Buyer and Seller.

M. Other: _____

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 1 of _____ Pages.

Buyer's Initials LD Seller's Initials RAM

7. DETERMINATION OF COURT CONFIRMATION (Check the option below that applies.)
 A. Court Confirmation Required: The sale is contingent upon court confirmation. This allows for open, competitive bidding at the court hearing. The minimum overbid shall be an amount equal to the accepted purchase price, plus five percent of that amount, plus \$500. The court shall determine any further incremental successive overbidding amounts. See paragraphs 8 and 9 for terms of court confirmation of the sale.
 B. Court Confirmation Not Required: Court confirmation of the sale may not be required, subject to notice of the terms of the sale to beneficiaries/heirs of the estate. If a beneficiary/their objects to the terms of sale, court confirmation of the sale shall be required. See paragraphs 8 and 9 for terms of court confirmation of the sale. Buyer shall have three days from receipt of notification of a beneficiary or heir's objection to elect to withdraw from the sale. If Buyer elects to withdraw, Seller shall refund deposit money held, less applicable costs.
 C. Court Confirmation Undetermined: Seller shall inform Buyer at the time of acceptance of this offer, or as soon as practicable thereafter, if court confirmation is required. If court confirmation is required, the sale will proceed under paragraph 7A. If court confirmation is not required, the sale shall proceed under paragraph 7B.

8. WHEN COURT CONFIRMATION OF SALE IS REQUIRED: Seller shall file a Petition to confirm the sale of the Property with the court. A court confirmation hearing is generally held approximately 30 to 45 days after the Petition is filed. Seller shall notify Buyer in writing of the court confirmation hearing date, time, and location. Broker strongly recommends that Buyer personally appear at the court confirmation hearing to protect Buyer's position in the event of overbidding.
 California Probate Code may require a local notice to be published in a local newspaper advertising the sale of the Property. If publication is required, Buyer understands that Seller is unable to accept Buyer's offer until after the expiration of the period set forth in the published notice. In such case, acceptance of this offer prior to publication is VOIDABLE.

If the court approves the sale to Buyer, all deposit money held on behalf of Seller shall be applied toward the purchase price. If the sale is not confirmed to Buyer due to an overbid, Buyer's deposit money, less applicable costs, shall be returned to Buyer. If the sale is confirmed by the court, an Order Confirming Sale to Buyer will be issued by the court. Buyer shall pay the balance of the purchase price within 10 (or) days from receipt of such Order by Escrow Holder or Buyer. Terms subject to footnote below and Addendum.
 The purchase price offer must be at least 90 percent of the probate referee's appraised or re-appraised value of the Property, unless exempt by law. If the purchase price is less than 90 percent of the probate referee's appraised value, Buyer may increase the purchase price to the minimum amount required, or may withdraw from the sale and receive a refund of Buyer's deposit, less applicable costs.

IF BUYER DEFAULTS AFTER COURT CONFIRMATION, ORDER CONFIRMING SALE MAY BE VACATED. THIS MAY RESULT IN BUYER'S FORFEITURE OF THE FULL DEPOSIT, OR ANY AMOUNT THE COURT MAY DETERMINE TO SATISFY ANY DEFICIENCY OF SALE PRICE, COSTS, OR OTHER LOSSES BY THE SELLER.

9. DELAYED FILING OF THE PETITION TO GET THE COURT SALE DATE: If this is a court confirmed sale, Seller will cause the petition to be filed with the court to confirm the sale when the contingencies checked below have been waived or removed by Buyer or when the contingency periods have lapsed as indicated in the applicable paragraph. (Check boxes which apply)

- A. Buyer's Investigation of Property Condition (paragraph 10)
- B. Review Of A Preliminary Title Report (paragraph 11)
- C. Financing Contingency (paragraph 12)
- D. Condominium Common Interest Subdivision (paragraph 13)

10. BUYER'S INVESTIGATION OF PROPERTY CONDITION: Except as provided in writing, this is an "AS IS" sale. Buyer's acceptance of the condition of the Property is a contingency of this Agreement. Buyer shall have the right to conduct inspections, investigations, tests, surveys, and other studies ("inspections") at Buyer's expense. Buyer shall, within 5 (or) days, complete these inspections and notify Seller in writing of any items disapproved. See paragraph 14 for disapproval terms. Buyer's inspection of the Property may include any geologic or soils testing, testing for other hazardous materials, including, but not limited to, asbestos, lead-based paint, and radon gas. Buyer accepts full responsibility for discovering whatever damage or problems may be present with the land or its improvements and any personal property included in the sale. Buyer is strongly advised to exercise these rights and to make Buyer's own selection of professionals with appropriate qualifications to conduct inspections of the entire Property.

BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS AND DEFECTS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY AND IMPROVEMENTS CONTAIN DEFECTS AND CONDITIONS WHICH ARE NOT READILY APPARENT AND WHICH MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE AND DO NOT ASSUME RESPONSIBILITY FOR THE CONDITION OF THE PROPERTY. BUYER IS ALSO AWARE BUYER HAS AN AFFIRMATIVE DUTY TO EXERCISE REASONABLE CARE TO PROTECT HIMSELF OR HERSELF, INCLUDING THOSE FACTS WHICH ARE KNOWN TO OR WITHIN THE DILIGENT ATTENTION AND OBSERVATION OF THE BUYER (CIVIL CODE §2079.5). BROKERS HAVE NOT AND WILL NOT VERIFY ANY ITEMS, UNLESS OTHERWISE AGREED IN WRITING.

Seller shall make the Property available for all inspections. Buyer shall keep the Property free and clear of liens; indemnify and hold Seller harmless from all liability, claims, demands, damages, and costs; and repair all damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior written consent of Seller, unless required by local law. Buyer shall provide to Seller, at no cost, upon request of Seller, complete copies of all inspection reports obtained by Buyer concerning the Property.

11. TITLE; REVIEW OF A PRELIMINARY (TITLE) REPORT: Title shall be subject to all liens, encumbrances, easements, covenants, conditions, restrictions, rights, and other matters shown in the preliminary (title) report, except those disapproved, or unless otherwise agreed in writing. Seller shall provide Buyer with a preliminary (title) report for the Property. Buyer shall have 5 (or) days from receipt of this report to notify Seller in writing of Buyer's disapproval of any reasonably objectionable items. See paragraph 14 for disapproval terms.

12. FINANCING CONTINGENCY: The obtaining of financing is a contingency of this Agreement. Buyer shall, within 30 (or) days from the date of acceptance: obtain formal loan approval; remove the financing contingency; and provide Seller with written evidence of loan approval. If loan approval has not been obtained, the financing contingency has not been removed, or written evidence of loan approval has not been provided to Seller, Seller may cancel this Agreement and return Buyer's deposit money, less applicable costs.

** Minimum overbid to be at least \$25,000 higher than original bid. Successful overbidder to match all terms & conditions of original bid.
 If a successful overbid is accepted & confirmed by the court, then the successful overbidder to reimburse original bidder up to: \$2,500 in costs incurred. Proof of monies spent to be given to overbidder.

Seller acknowledges receipt of copy of this page, which constitutes Page 2 of 8 Pages.
 Buyer's Initials (A.D.) (C.D.) Seller's Initials (S.M.)

OFFICE USE ONLY
 Reviewed by Broker or Designee _____
 Date _____



~~12. CONDOMINIUM/COMMON INTEREST SUBDIVISION: If the Property is a unit in a condominium, planned development, or other common interest subdivision:~~

- A. The Property has parking spaces assigned to it.
- B. The current regular Homeowners' Association (HOA) dues/assessments are \$ payable monthly or .
- C. Seller shall request within 5 (or) days, and provide to Buyer within 2 days of receipt, any known pending special assessments, claims, or litigation; copies of covenants, conditions, and restrictions; articles of incorporation; by-laws; other governing documents; most current financial statement distributed (Civil Code §1385); statement regarding limited enforceability of age restrictions, if applicable; current HOA statement showing any unpaid assessments (Civil Code §1360); any other documents required by law; and the most recent 12 months of HOA minutes, if available. Buyer shall, within 5 (or) days of receipt, provide written notice to Seller of any items disapproved. ~~Cost of obtaining these items shall be paid by Seller. See paragraph 14 for disapproval terms.~~
- D. No warranty is made regarding compliance with any governing document or HOA requirements, unless otherwise agreed in writing.
- E. Advance payment impounds, if any, shall be assigned and charged to Buyer and credited to Seller, or: .

~~14. REMOVAL OF CONTINGENCIES: (Check either A or B, do NOT check both.)~~

- A. ACTIVE REMOVAL: If Buyer's written notice removing the above contingencies is not delivered to Seller within the contingency periods specified in paragraphs 10, 11, 12, and 13, Seller has the right to cancel this transaction. If Seller cancels, deposit money less applicable costs will be refunded to Buyer.
- OR
- B. PASSIVE REMOVAL: If Buyer's written notice removing the above contingencies is not delivered to Seller within the contingency periods specified in paragraphs 10, 11, 12, and 13, Buyer shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures and removed all contingencies, including the contingency of obtaining loans if applicable; (b) elected to proceed with the transaction; and (c) assumed all liability, responsibility, and expense for repairs or corrections other than for items which Seller has agreed in writing to repair or correct.
- C. If Seller is unwilling or unable to correct any item reasonably disapproved by Buyer, Buyer may cancel this transaction and have the deposit, less applicable costs, refunded by delivering to Seller a written notice of cancellation.

15. SELLER EXEMPTIONS: Seller is exempt from providing Buyer with the following items which are applicable in many other residential sales. Buyer should conduct all inspections necessary to obtain the information covered by these items:

- A. Real Estate Transfer Disclosure Statement: This sale is exempt from State real estate disclosure requirements under California Civil Code §1102.2(b) for "transfers pursuant to court order" or §1102.2(d) for "transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust." No such disclosure statement will be provided to Buyer by Seller.
- B. Mello-Roos District: This sale is exempt from the obligation of Seller to obtain and deliver to Buyer a notice of whether the Property is subject to special tax pursuant to the Mello-Roos Community Facilities Act.
- C. Earthquake Safety: This sale is exempt from the obligation of Seller to complete and deliver to Buyer a "Homeowner's Guide to Earthquake Safety" or "Commercial Property Owner's Guide to Earthquake Safety" booklet.
- D. Smoke Detector(s): This sale is exempt from State requirements regarding smoke detectors. If required by local ordinance, a smoke detector installation shall be performed at Buyer's expense and direction.

~~16. OTHER PROPERTY DISCLOSURES: Seller shall provide Buyer with other disclosures related to Property, if applicable and required by law. These may include, but are not limited to: disclosures related to the Property's location in a geologic or seismic hazard zone, a special flood hazard area, a state fire responsibility area, compliance with any water heater bracing requirements; compliance with any other minimum mandatory government retrofit standards; and for residential property constructed prior to 1970, lead-based paint disclosure obligations.~~

7. AGENT'S DUTY TO INSPECT AND INFORM: For sales of residential property containing one-to-four dwelling units, the agents representing Seller and Buyer have a duty to perform a diligent visual inspection of the reasonably accessible areas of the Property, and to inform Buyer of any material facts revealed by such inspection affecting the value or desirability of the Property. This may be done in a written report dated and signed by each agent and delivered to Buyer; Agent shall make every effort to do so within the time frame of Buyer's investigation of Property Condition period (paragraph 10).

VESTING: THE MANNER OF TAKING TITLE MAY HAVE SERIOUS LEGAL AND TAX CONSEQUENCES. Buyer intends to take title as follows:

ESCROW, INSTRUCTIONS AND CLOSING PERIOD: If court confirmation of the sale is NOT REQUIRED, escrow shall close within days from acceptance of this offer. If court confirmation of the sale is REQUIRED, escrow shall close within 10 (or) days from Escrow Holder or Buyer's receipt of a copy of the court Order Confirming Sale. Seller shall not be obligated to sign escrow instructions or incur any escrow costs prior to court confirmation.

~~FIXTURES, EXISTING FIXTURES AND FITTINGS that are attached to the Property, or for which special openings have been made, are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, existing electrical, lighting, plumbing and heating fixtures, fireplace inserts, solar systems, built-in appliances, screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes and related equipment, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, water softeners (if owned by Seller), security systems/alarma (if owned by Seller), garage door opener/remote controls, attached fireplace equipment, mailbox, in-ground landscaping including trees/shrubs. ITEMS EXCLUDED:~~

~~PERSONAL PROPERTY: The following items of personal property, free of liens, in their present condition, and without warranty of condition or fitness for use, are included:~~

~~MAINTENANCE OF PROPERTY: The property, improvements and landscaping shall be maintained in the same general condition as of the date of acceptance of the offer.~~

SELLER'S RIGHT TO CONTINUE TO MARKET: Seller reserves the right to continue to market the Property and to accept back-up offers.
TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All agreements between the parties are incorporated in this agreement which constitutes the entire contract. Its terms are intended by the parties as a final, complete, and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The captions in this Agreement are for convenience of reference only, and are not intended as part of this Agreement. This Agreement may not be extended, amended, modified, altered, or changed in any respect whatsoever, except in writing signed by Buyer and Seller.

Seller acknowledges receipt of copy of this page, which constitutes Page 3 of 8 Pages.
Buyer's initials Seller's initials

OFFICE USE ONLY	
Reviewed by Broker or Designer	_____
Date	_____



25. OTHER TERMS: The other terms incorporated into this Agreement are as follows: Seller will not provide a Pest Control/Termite report nor pay for any corrective work. This offer is contingent upon Trustee approvals, Bankruptcy Court confirmation & overbid procedures. Subject property to be sold in it's "AS-IS" condition without any warranties, expressed or implied. Buyer has no contingencies in this transaction. (4 page addendum to purchase contract is hereby made a part of this agreement

26. AGENCY CONFIRMATION: The following agency relationships are hereby confirmed for this transaction: Listing Agent: Coldwell Banker Previews, Brian Johnson is the agent of (check one):

the Seller exclusively; or both the Buyer and Seller.

Selling Agent: _____ (if not same as Listing Agent) is the agent of (check one):

the Buyer exclusively; or the Seller exclusively; or both the Buyer and Seller.

Real Estate Brokers are not parties to the purchase and sale Agreement between Buyer and Seller. (IF THE PROPERTY CONTAINS 1-4 RESIDENTIAL DWELLING UNITS, BUYER AND SELLER MUST ALSO BE GIVEN ONE OR MORE DISCLOSURES REGARDING REAL ESTATE AGENCY RELATIONSHIPS (C.A.R. Form AD-14)).

27. CONTRACT PROVISIONS BINDING ON BUYERS: If this offer is made by more than one person, its provisions shall bind and inure to the benefit of each and all of the undersigned Buyers.

28. OFFER: This is an offer to purchase the Property. Unless acceptance is signed by Seller and a signed copy delivered in person, by mail, or facsimile, and personally received by Buyer or by _____, who is authorized to receive it, by _____, 10 _____, at _____ AM/PM, the offer shall be deemed revoked and the deposit shall be returned. Buyer and Seller acknowledge that Brokers are not parties to the purchase and sale Agreement. Buyer has read and acknowledges receipt of a copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' commission. This Agreement and any supplement, addendum, or modification, including any photocopy or facsimile, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

BUYER [Signature] BUYER [Signature]

ACCEPTANCE BY REPRESENTATIVE

The undersigned, representative of _____, accepts subject to the attached Counter Offer the foregoing bid (offer) by Buyer(s) as purchaser of all the rights, title, interest, and estate in the real property being sold on the above terms and conditions. Commissions shall be paid to Brokers as described herein; or in the event of court confirmation of the sale, as allowed by the court. The undersigned further acknowledges receipt of a check as a deposit in the amount of \$ _____.

Date 3/12/07
 By [Signature] Bankruptcy Trustee Chapter 7 Trustee
 Representative(s) of _____

ACKNOWLEDGMENT OF RECEIPT

Receipt of signed acceptance on (date) 3/12/07 at _____ AM/PM, by Buyer, or _____, Seller's Designated Representative, is acknowledged. [Signature] (Initials)

BROKER ACCEPTANCE; BROKER COMMISSIONS

Listing Broker is Coldwell Banker Previews, (firm name),
 is represented by Brian Johnson, (agent).
 Selling Broker is _____, (firm name),
 is represented by _____, (agent).
 Total real estate brokerage commission is _____% of the sale price, or \$ _____, and unless otherwise agreed, shall be divided equally by Brokers referenced above. If court confirmation of the sale is required, the court will determine the commission amount. Commissions need vary from county to county. Commissions are payable by Seller only if the sale closes. Seller is not liable for a commission to any agent or broker who is directly or indirectly a purchaser of the property, or has an interest in the purchase.

MISSION IN EVENT OF AN OVERBID BY ANOTHER BROKER: In the event court confirmation of the sale is required, the original selling agent identified above agrees to waive all commission rights in the event of a successful overbid in court by a different buyer represented by _____.
 Original Selling Agent's Acknowledgment [Signature] Listing Agent's Acknowledgment _____

Buyer Broker Acceptance: Date _____
Coldwell Banker Previews
Brian Johnson (agent)
 Selling Broker Acceptance: Date 2-6-2007
 Firm Coldwell Banker
 By [Signature] (agent)

Not available for use by the entire real estate industry. This form is not intended to identify the user as a REALTOR. Transferred content may be used by members of the NATIONAL ASSOCIATION OF REALTORS® who are Code of Ethics.

OFFICE USE ONLY
 Reviewed by Broker or Designee _____
 Date _____



ADDENDUM TO PURCHASE AGREEMENT

This Addendum to Purchase Agreement (hereinafter called "Agreement") is entered into on this 6 day of February, 2008, by and between Laszlo & Clara Doma, (hereinafter "Buyer") and **Richard A. Marshack**, as Chapter 7 Trustee for the estate of: **Robert L. McWhirk, Case No. SA 05-19596ES**, (hereinafter called "Seller" or "Trustee") pursuant to the terms and conditions as follows:

RECITALS

WHEREAS: The Debtor in the bankruptcy proceeding entitled **Robert L. McWhirk, Case No. SA 05-19596ES** is the owner of record of certain real property commonly known as: **31562 Bluff Drive Laguna Beach, California 92651; AP # 658-092-09**, (Hereinafter the "Subject Property").

WHEREAS: On **October 12, 2005**, the Debtor filed a petition seeking relief pursuant to Chapter 7 of Title 11, of the United States Bankruptcy Code.

WHEREAS: As a result of the filing of the Chapter 7 petition, **Richard A. Marshack**, was appointed as the Trustee to administer the assets of the bankruptcy estate, one of which was the Debtor's interest in the Subject Property.

WHEREAS: Pursuant to 11 U.S.C. Section 363, **Richard A. Marshack**, Chapter 7 Trustee and/or his attorneys will seek a Court Order authorizing the sale of the Subject Property.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

CONDITIONS OF SALE

1. Court Approval: Seller agrees to proceed in good faith to obtain Court approval for the sale of property located at **31562 Bluff Drive Laguna Beach, California 92651; AP # 658-092-09**, contemplated herein, within a reasonable time period after said offer.
2. Broker's Compensation: Brokers and Agents are entitled to compensation only upon recordation of a deed or other evidence of title.



3. No Assignment: This agreement is between Buyer and Seller. Buyer shall have no right to assign the Escrow, this agreement, or transfer the Subject Property concurrent with closing without consent of Seller.

4. Title Insurance: The title insurance policy shall be subject only to liens, encumbrances, clouds and other matters as may appear on the preliminary title report, that are not to be removed at the close of Escrow, and have not been objected to by Buyer. Should Seller be unwilling or unable to eliminate those title matters disapproved by Buyer as above, the Seller may terminate this Agreement or, should Seller fail to deliver good and marketable title as provided above, Seller or Buyer may terminate this Agreement. In either case, the Buyer's deposit shall be returned to Buyer, and Buyer shall have no recourse against Seller, **Richard A. Marshack**, as Bankruptcy Trustee, individually, or the **Law Offices of Shulman, Hodges & Bastian, the bankruptcy estate of: Robert L. McWhirk, Case No. SA 05 -19596ES**, or the Debtor, or any real estate agent, broker or attorney involved in this transaction.

5. Limitations of Sale: The parties acknowledge that the operation of the law has placed the Bankruptcy Trustee in a unique role as the Seller of the Subject Property, which is the subject of this agreement. Due to the nature of the Trustee's role in administering the bankruptcy estate, there are limitations as to the extent, type and character of the agreement under which the Trustee can convey the Subject Property. The Trustee proposes to sell this asset subject to certain limitations. The parties hereby acknowledge that they understand the terms under which this Subject Property is to be conveyed may vary substantially from the normal customs and trade within the real estate industry. Except where expressly mandated by operation of law, the Buyer consents to any such modifications and amendments.

6. Purchase without Warranties: Buyers acknowledge that they are purchasing the Subject Property from the Seller "AS IS" without warranties of any kind, expressed or implied, being given by the Seller, concerning the condition of the property or the quality of the title thereto, or any other matters relating to the Property. Buyer represents and warrants that they are purchasing the Subject Property as a result of their own investigations and are not buying the Subject Property pursuant to any representation made by any Broker, Agent, Accountant, Attorney or Employee acting at the direction, or on the behalf of the Seller. Buyers acknowledge that Buyers have inspected the Subject Property, and upon closing of Escrow governed by this Agreement, Buyer forever waives, for himself, his heirs, successors and assigns, any and all claims against the Debtors, their attorneys, agents and employees, the bankruptcy estate of: **Robert L. McWhirk, Case No. SA 05 -19596ES**, **Richard A. Marshack**, as Bankruptcy Trustee and individually, and his Attorneys, Agents and Employees, arising or which might otherwise arise in the future concerning the Subject Property.

 C.D.



C:\OLD PREVIOUS DOCUMENTS\TRUSTEE & BROKER\RD MARSHACK\MCMW\BTS.SALE ADDEN MARSHACK 11 20 06.DOC

7. Trustee's Liability: Buyer acknowledges that the Trustee is acting in her official capacity only. No personal liability shall be sought or enforced against the Trustee with regard to this Agreement, including the Addendum, the assets, the sale of the Subject Property, or the physical condition of the Subject Property. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to return any money paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Assets of this transaction and Agreement; and all disputes arising before and after closing shall be resolved in said Court.

8. Hold Harmless:

(a) Buyer understands the terms and conditions of the entire purchase contract and holds the Estate and the realtors, brokers, agents, **Richard A. Marshack**, and the **Law Offices of Shulman, Hodges & Bastian**, his attorneys, agents and employees harmless from any liabilities arising from this contract.

(b) All parties hereto further agree, jointly and severally, to pay on demand as well as to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of any kind or nature which in good faith, Escrow may incur or sustain in connection with or arising out of this Escrow and Escrow is hereby given a lien upon all the rights, titles and interest of each of the undersigned in all escrow papers and other property and monies deposited in this escrow, to protect the rights of escrow and to indemnify and reimburse Escrow under this Agreement. In the event this Escrow is not completed for any reason, Escrow is authorized to deduct and pay its fee, plus costs incurred from any funds on deposit.

9. Any and all disputes, which involve in any manner the Bankruptcy Estate or **Richard A. Marshack**, arising from this Purchase Contract, this Addendum or relating in any manner to the Subject Property, shall be resolved only in the United States Bankruptcy Court, Central District of California, Santa Ana Division.
10. **Seller will not provide a pest control report nor pay for any corrective work; nor shall Buyer receive any credit for corrective work.**
11. **Buyer is aware that this offer is contingent upon Chapter 7 Bankruptcy Trustee approval, Bankruptcy Court confirmation & overbid procedures.**
12. **Buyer has NO CONTINGENCIES In this transaction; including but not limited to the contingency of obtaining financing & appraisal, inspections, etc.**

Deposit is refundable only if Bankruptcy Court accepts overbid, or as otherwise provided for in Paragraph 7 above.

Richard A. Marshack C. D.

C:\OLD DRIVE\MY DOCUMENTS\BANKRUPTCY TRUSTEE'S ADDENDUM\STANDARD MARSHACK\WORK\BALS ADDEN MARSHACK.8 20 08.DOC

Richard A. Marshack

13. Seller, at her own expense, shall arrange for the Subject Property to be in vacant condition no later than (5) FIVE- calendar days prior to close of escrow.

14. In addition to the \$100,000 deposit, Buyer will deposit the additional sum of \$2,800,000 - (Balance of purchase price) into escrow on or before the close of escrow.

I, the Buyer herein, have reviewed the foregoing Agreement and understand the terms and conditions set forth herein, and further agree to purchase the Subject Property pursuant to said terms and conditions.

Dated: _____ [Signature]
_____, Buyer

Dated: _____ [Signature]
_____, Buyer

I, Seller, agree to sell the Subject Property pursuant to the terms and conditions set forth herein.

Dated: 2/13/07
[Signature]
Richard A. Marshack, In his sole capacity as Bankruptcy Trustee for the Estate of:
Robert L. McWhirk, Case No. SA 05 - 19596ES and not in his individual capacity or as a member of the Law Offices of Shulman, Hodges & Bastian

SO AGREED,

Dated: _____

Brian Johnson, Trustee's Agent
Coldwell Banker Previews International
140 Newport Center Drive, Suite 100
Newport Beach, CA 92660

949.721.5015 Office, Direct Line
949.258.5151 Facsimile

Dated: 2-6-07
Coldwell Banker

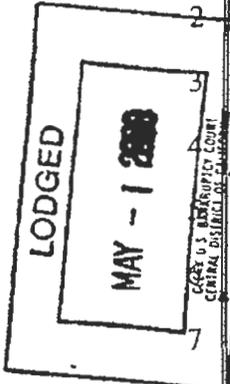
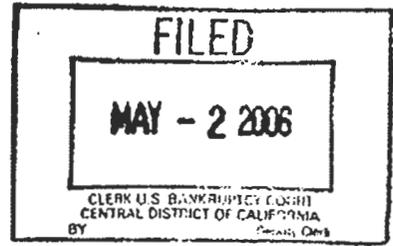
[Signature] 2-6-07
_____, Buyer's Agent

EXHIBIT E

CHFA Stipulation

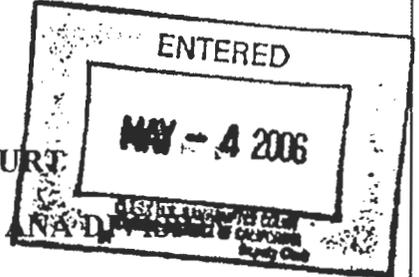
Leonard M. Shulman – Bar No. 126349
SHULMAN HODGES & BASTIAN LLP
26632 Towne Centre Drive, Suite 300
Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
Facsimile: (949) 340-3000

Attorneys for Richard A. Marshack
the Chapter 7 Trustee



ORIGINAL

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA



In re

ROBERT L. MCWHIRK,

Debtor.

Case No. SA 05-19596 ES

Chapter 7

**STIPULATION FOR SURCHARGE OF
DISPUTED SECURED CLAIM TO PERMIT
PAYMENT OF CERTAIN
ADMINISTRATIVE EXPENSES; ORDER
THEREON**

[No Hearing Required]

Richard A. Marshack, Chapter 7 Trustee ("Trustee") for the Bankruptcy Estate of Robert L. McWhirk ("Debtor"), and the California Housing Finance Agency ("CHFA") by and through its authorized representative (collectively the "Parties"), hereby agree and stipulate based on the following recitals:

BACKGROUND INFORMATION

On November 19, 2004, CHFA obtained a judgment in the Orange County Superior Court against Robert L. McWhirk for the sum of \$12,309,654, which through the incorporation of various post-judgment orders includes prejudgment interest, costs and attorneys fees (the "State Court Judgment"). Debtor filed a notice of appeal from the State Court Judgment but did not obtain a stay pending appeal. Oral argument before the California Court of Appeals is expected to take place in the summer of 2006.

1 In 1997, Debtor purchased residential property located at 31562 Bluff Drive, Laguna
2 Beach, California, and legally described in Exhibit "A" (the "Residence"). In 1999 Debtor
3 caused a deed to be recorded that purported to transfer the Residence to the Robert L. McWhirk
4 Living Trust.

5 In 2003, Debtor caused a grant deed to be recorded that purported to transfer the
6 Residence to James Machkoff and Southpac Trust International as Trustees of the Amended and
7 Restated RLM Family Trust dated January 14, 2003.

8 In 2004, Debtor caused a grant deed to be recorded that purports to transfer the Residence
9 to RLM Family Holdings LLC, a Nevada Limited Liability Company ("RLM Family Holdings
10 LLC").

11 On January 7, 2005 CHFA caused to be recorded in the Orange County Recorder's
12 Office an Abstract of Judgment evidencing the State Court Judgment (the "CHFA Abstract").
13 CHFA contends that the CHFA Abstract encumbers and constitutes a valid lien against the
14 Residence.

15 On October 12, 2005, the Debtor filed a voluntary petition for relief under Chapter 7 of
16 the Bankruptcy Code (the "Petition Date"). Richard A. Marshack is the duly appointed,
17 qualified and acting Chapter 7 Trustee for the Debtor's bankruptcy estate.

18 Trustee disputes whether the CHFA Abstract attaches to the Residence. As of December
19 2004 a grant deed was of record stating that title to the Residence was held in the name of RLM
20 Family Holdings, LLC. Trustee contends that the CHFA Abstract did not attach to the
21 Residence, as on the date the CHFA Abstract was recorded RLM Family Holdings LLC, and not
22 the Debtor, was the record title owner of the Residence.

23 AGREEMENT

24 **WHEREFORE**, the Trustee and CHFA agree, subject to Court approval, as follows:

25 1. To the extent the CHFA has a valid lien against the Residence and the claim of
26 CHFA is determined to be an allowed secured claim under Bankruptcy Code section 506 (a)
27 CHFA consents to recovery by the Trustee pursuant to Bankruptcy Code section 506 (c) from
28 any proceeds of the Residence for (i) all reasonable and necessary fees, costs and expenses of the

1 Trustee and professionals employed by the Trustee in connection with administration of the
2 Chapter 7 estate without regard to whether the services of the Trustee and his professionals
3 benefited CHFA as the holder of the CHFA Abstract, (ii) any income taxes and all other
4 reasonable expenses incurred by the estate as a direct consequence of sale or liquidation of the
5 Residence by the Trustee and (iii) all fees for escrow services, title insurance and real estate
6 agents and brokers related to the sale or liquidation of the Residence. The Trustee shall use his
7 best efforts to keep to a minimum the income tax consequences of any such sale or liquidation of
8 the Residence, including appropriate use of all available tax attributes and exemptions.

9 2. Notwithstanding any other provisions of this Stipulation (i) CHFA does not consent
10 to the surcharge of its secured claim for fees, costs or expenses incurred in objecting to the claim
11 of, or otherwise prosecuting actions against, CHFA and (ii) absent further agreement or court
12 order for good cause shown the maximum amount under Paragraph 1, subsection (i) above of
13 reasonable fees, expenses and costs covered by this consent to surcharge shall not exceed
14 \$420,000 exclusive of any fees and expenses of Felderstein, Fitzgerald, Willoughby & Pascuzzi
15 or O'Melveny & Myers and the maximum amount of income taxes under paragraph 1,
16 subsection (ii) above covered by this consent to surcharge shall not exceed \$850,000.

17 3. This Stipulation does not prejudice Trustee's right to dispute or object to CHFA's
18 claim, the validity of the claim or the CHFA Abstract or to the extent the claim is secured.

19 4. This Stipulation does not prejudice CHFA's right to object to the allowance and
20 payment of any claims to which CHFA has consented to surcharge in paragraph 1 above,
21 including but not limited to the claims of the Trustee, professionals of the bankruptcy estate and
22 taxes.

23 5. This Stipulation and the consent of CHFA to surcharge shall not apply to
24 proceeds of the Residence if the Residence is ordered abandoned from the estate or the case is
25 dismissed.

26 6. This Stipulation may be modified upon the written agreement of the Trustee and
27 CHFA.

28 ///

1 7. If there are proceeds that come into the estate that are not related to the Residence,
2 then administration expenses shall be paid first from those proceeds to the extent doing so would
3 be fair and equitable.

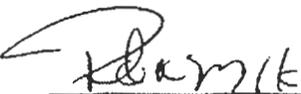
4 SO AGREED:

5
6 Dated: 4-06-06

CALIFORNIA HOUSING FINANCE AGENCY

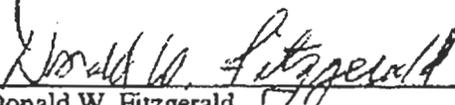
by: THOMAS C. HUGHES
its: General Counsel

9
10 Dated: 4-07-06


Richard A. Marshack, Chapter 7 Trustee
for the bankruptcy estate of Robert L. McWhirk

11 APPROVED AS TO FORM AND CONTENT:

12 FELDERSTEIN FITZGERALD WILLOUGHBY & PASCUZZI LLP

13
14 
15 Donald W. Fitzgerald
16 Attorneys for California Housing Finance Agency

17
18 SHULMAN HODGES & BASTIAN LLP

19 
20 Leonard M. Shulman
21 Attorneys for Richard A. Marshack,
22 Chapter 7 Trustee for the bankruptcy estate of
23 Robert L. McWhirk

24 ORDER

25 IT IS SO ORDERED.

26 Dated: 5/2/06


THE HONORABLE ERITHE A. SMITH
UNITED STATES BANKRUPTCY JUDGE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610.

On April 7, 2006, I served the documents named below on the parties as follows:

DOCUMENT(S) SERVED: **STIPULATION FOR SURCHARGE OF DISPUTED SECURED CLAIM TO PERMIT PAYMENT OF CERTAIN ADMINISTRATIVE EXPENSES; ORDER THEREON**
SERVED UPON: **SEE THE ATTACHED SERVICE LIST**

X (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of 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.

(BY FACSIMILE) Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list. The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error.

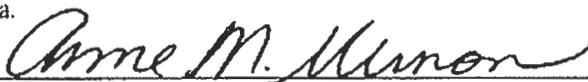
(BY FEDERAL EXPRESS OR AIRBORNE EXPRESS) I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by such overnight delivery company for overnight delivery.

(BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by ASAP Corporate Service to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.

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

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

Executed on April 7, 2006, at Foothill Ranch, California.


Anne Marie Vernon

SERVICE LIST

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INTERESTED PARTY

OFFICE OF THE U.S. TRUSTEE
411 W. FOURTH ST., SUITE 9041
SANTA ANA, CA 92701-8000

CHAPTER 7 TRUSTEE – VIA HAND DELIVERY

RICHARD A. MARSHACK
26632 TOWNE CENTER DRIVE SUITE 300
FOOTHILL RANCH, CA 92610

DEBTOR

ROBERT L. MCWHIRK
31562 BLUFF DRIVE
LAGUNA BEACH, CA 92651

COUNSEL FOR THE DEBTOR

JAMES BOHN, ESQ.
JACOB GODARD, ESQ.
BOHM, MATSEN, KEGEL & AGUILERA, LLP
695 TOWN CENTER DRIVE, SUITE 700
COSTA MESA, CALIFORNIA 92626

COUNSEL FOR CALIFORNIA HOUSING
FINANCE AGENCY/RFSN

DONALD W. FITZGERALD, ESQ.
FELDERSTEIN FITZGERALD WILLOUGHBY &
PASCUZZI LLP
400 CAPITOL MALL, SUITE 1450
SACRAMENTO, CA 95814-4434

PAUL B. SALVATY, ESQ.
O'MELVENY & MYERS
400 S. HOPE STREET
LOS ANGELES, CA 90071-2899

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In re ROBERT L. MCWHIRK, Debtor.	Case No. SA 05-19596 ES Chapter 7
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**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(a)(1)(E), that a judgment* or order entitled (*specify*):

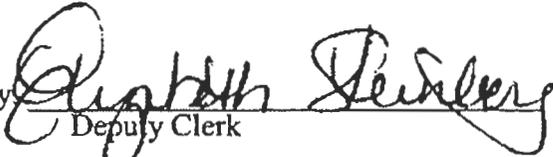
STIPULATION FOR SURCHARGE OF DISPUTED SECURED CLAIM TO PERMIT PAYMENT OF CERTAIN ADMINISTRATIVE EXPENSES; ORDER THEREON

was entered on (*specify date*): 5/4/06

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*):
5/4/06

Dated: 5/4/06

**JON D. CERETTO
CLERK OF THE BANKRUPTCY COURT**

By: 
Deputy Clerk

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INTERESTED PARTY

OFFICE OF THE US TRUSTEE
411 W. FOURTH ST., SUITE 9041
SANTA ANA, CA 92701-8000

CHAPTER 7 TRUSTEE

RICHARD A. MARSHACK
26632 TOWNE CENTER DRIVE SUITE 300
FOOTHILL RANCH, CA 92610

DEBTOR

ROBERT L. MCWHIRK
31562 BLUFF DRIVE
LAGUNA BEACH, CA 92651

COUNSEL FOR THE DEBTOR

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ATTORNEYS FOR THE CHAPTER 7 TRUSTEE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610.

On March 7, 2007, I served the documents named below on the parties as follows:

DOCUMENT(S)
SERVED:

**NOTICE OF MOTION AND CHAPTER 7 TRUSTEE'S MOTION
FOR ORDER:**

- (1) **APPROVING THE SALE OF REAL PROPERTY FREE AND CLEAR OF CERTAIN LIENS PURSUANT TO BANKRUPTCY CODE 363(b)(1) AND (f) AND SUBJECT TO OVERBID PROCEDURES, INCLUDING PAYMENT OF A BREAK-UP FEE;**
- (2) **APPROVING PAYMENT OF REAL ESTATE COMMISSION;**
- (3) **PROHIBITING PAYMENT OF THE DEBTOR'S HOMESTEAD EXEMPTION CLAIM SUBJECT TO OUTCOME OF THE TRUSTEE'S FORMAL OBJECTION TO THE HOMESTEAD EXEMPTION CLAIM;**
- (4) **APPROVING INTERIM DISTRIBUTION TO ALLOWED PRIORITY AND GENERAL UNSECURED CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 704(1); AND**
- (5) **GRANTING RELATED RELIEF;**

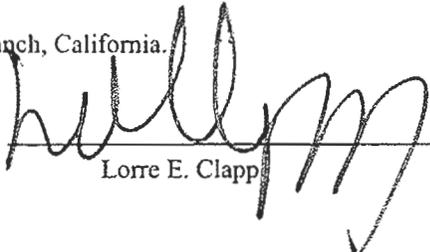
**MEMORANDUM OF POINTS AND AUTHORITIES AND
DECLARATION OF RICHARD A. MARSHACK IN SUPPORT
THEREOF**

SERVED UPON:

SEE THE ATTACHED SERVICE LIST

- (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of 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.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on March 7, 2007, at Foothill Ranch, California.


Lorre E. Clapp

SERVICE LIST

Debtor

ROBERT L MCWHIRK
31562 BLUFF DRIVE
LAGUNA BEACH, CA 92651

Interested Party

UNITED STATES TRUSTEE (SA)
411 W FOURTH ST., SUITE 9041
SANTA ANA, CA 92701-4593

Attorneys for California Housing Finance Agency

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California Housing Finance Agency

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CALIFORNIA HOUSING FINANCE
AGENCY
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SACRAMENTO, CA 95814

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ATTN BANKRUPTCY
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Creditor Listing

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EL MACERO, CA 95616

Creditor Listing

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SANTA ANA, CA 92702

Creditor Listing

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DISSOLVED
31562 BLUFF DRIVE
LAGUNA BEACH, CA 92651

Chapter 7 Trustee - Via Hand Delivery

RICHARD A MARSHACK, TRUSTEE
C/O SHULMAN HODGES & BASTIAN LLP
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FOOTHILL RANCH, CA 92610-2808

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WOODLAND, CA 95695

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Creditor Listing

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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24000 AVILA RD
LAGUNA NIGUEL, CA 92677

Creditor Listing

INTERNAL REVENUE SERVICE
MAILSTOP 5503
24000 AVILA ROAD
LAGUNA NIGUEL, CA 92677

Creditor Listing

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RANCHO MIRAGE, CA 92270

Creditor Listing

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COLLECTOR
P O BOX 1438
SANTA ANA, CA 92702

Creditor Listing

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2 ROANOKE
IRVINE, CA 92720

Creditor Listing

STARS & STRIPES, INC.-CAL.
31562 BLUFF DRIVE
LAGUNA BEACH, CA 92651

Creditor Listing

UNITED MILEAGE PLUS CARD
CHASE CARD SERVICES
POB 15298
WILIMINGTON, DE 19850

Creditor Listing

Chase Bank USA NA
P O Box 15145
Wilmington De 19850-5145

Creditor Listing

STATE OF NEVADA DEPARTMENT OF
TAXATION – REVENUE DIVISION
555E WASHINGTON AVE SUITE 1300
LAS VEGAS, NV 89101-1041

Interested Party

CITY OF LAGUNA BEACH
ATTN JOE CHIQUETE
505 FOREST AVENUE
LAGUNA BEACH, CA 92651

RETURNED MAIL