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UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: 2B or NOT 2B, LLC, Debtor(s).	CASE NO.: SV-06-11276-MT

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: September 18, 2006	Time: 10:00 a.m.
Location: 21041 Burbank Blvd., Courtroom 302, Woodland Hills, California 91367	

Type of Sale: Public Private Last date to file objections: September 4, 2006

Description of Property to be Sold: 3-story storefront retail and office building comprising of approximately 10,800 square feet located in Westwood area of Los Angeles, California

Terms and Conditions of Sale: Cash sale, "as-is, where is," without representations or warranties, free and clear of all liens, claims, interests and encumbrances. Debtor requests qualified bids only pursuant to the criteria set forth in the Notice of Motion attached hereto as Exhibit A

Proposed Sale Price: Debtor proposes that bidders must bid \$5.1 million to qualify for auction

Overbid Procedure (If Any): See Exhibit A

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing: September 18, 2006, 10:00 a.m., 21041 Burbank Blvd., Courtroom 302, Woodland Hills, CA 91364

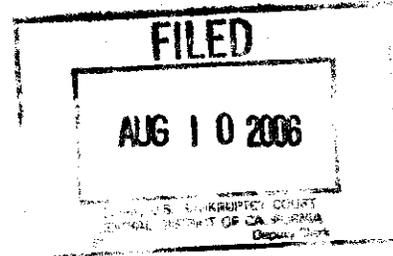
Contact: Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

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Date: August 16, 2006



CONFORM



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8 Proposed Bankruptcy Counsel for 2B Or Not 2B,
9 LLC

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SAN FERNANDO VALLEY DIVISION

13 In re:
14 2B OR NOT 2B, LLC,

15 Debtor.

16 Case No. SV 06-11276 MT
17 Chapter 11

18 **NOTICE OF MOTION AND MOTION OF**
19 **DEBTOR FOR ORDER AUTHORIZING**
20 **AND APPROVING (1) SALE OF**
21 **DEBTOR'S REAL PROPERTY ASSETS**
22 **FREE AND CLEAR OF ALL LIENS,**
23 **CLAIMS, ENCUMBRANCES AND**
24 **OTHER INTERESTS, AND (2)**
25 **REJECTION OF REAL PROPERTY**
26 **LEASE WITH FRIED BANANAS, LLC;**
27 **MEMORANDUM OF POINTS AND**
28 **AUTHORITIES; DECLARATION OF**
JEFF KATOFSKY; DECLARATION OF
BOB SAFAI

Date: September 18, 2006
Time: 10:00 a.m.
Place: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA

1 **TO THE HONORABLE MAUREEN TIGHE, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE UNITED STATES TRUSTEE, AND ALL PARTIES IN INTEREST:**

3 **PLEASE TAKE NOTICE** that on September 18, 2006 at 10:00 a.m., or as soon thereafter
4 as the matter can be heard, before the Honorable Maureen Tighe, United States Bankruptcy Judge, in
5 Courtroom 302, located at 21041 Burbank Blvd., Woodland Hills, California, the Bankruptcy Court
6 will consider and act upon the motion of the above-captioned debtor (the "Debtor") for an Order
7 authorizing and approving (1) the sale of the Debtor's real property assets free and clear of all liens,
8 claims, encumbrances and other interests, and (2) rejection of a real property lease with Fried
9 Bananas, LLC (the "Motion").

10 **PLEASE TAKE FURTHER NOTICE** that the Motion is based upon this Notice of Motion
11 and Motion, the attached Memorandum of Points and Authorities and Declarations of Jeff Katofsky
12 and Bob Safai, the records and files in this chapter 11 case, and such additional evidence and
13 argument as may be presented at or before the hearing on the Motion.

14 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-
15 1(a)(7), a formal response to the Motion must be filed with the Bankruptcy Court and served on the
16 counsel for the Debtor at least fourteen (14) days before the hearing on the Motion. Pursuant to
17 Local Bankruptcy Rule 9013-1(a)(11), failure to file and serve timely a response in accordance with
18 the Local Bankruptcy Rules may be deemed by the Bankruptcy Court to be consent to the granting
19 of the relief requested in the Motion.

20
21 Dated: August 8, 2006

PEITZMAN, WEG & KEMPINSKY LLP

22 By: David B. Shemano
23 Howard J. Weg
24 David B. Shemano

25 Proposed Bankruptcy Counsel for the Debtor
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27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **JURISDICTION AND VENUE**

4 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
5 matter relates to the administration of the Debtor's bankruptcy estate and is accordingly a core
6 proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue of this case is proper in this Court
7 pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are
8 sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules
9 6004 and 6006 of the Federal Rules of Bankruptcy Procedure ("FRBP").
10

11 **II.**

12 **GENERAL BACKGROUND**

13 The Debtor commenced a case under chapter 11 of the Bankruptcy Code in the Bankruptcy
14 Court for the Central District of California on August 4, 2006 (the "Petition Date"). The Debtor is a
15 limited liability corporation whose primary asset is the real property and improvements located at
16 10935 Weyburn, in Los Angeles (the "Property"). The Property includes a three-story office
17 building with approximately 10,800 square feet.

18 The members of the Debtor are Barry Beitler and Jeff Katofsky. Katofsky acts as the
19 managing member. For many years, Beitler and Katofsky worked together to create and fund
20 successful commercial real estate investments. The investments were usually held in single asset
21 (or, in some instances, multiple asset) limited liability companies ("LLCs"), such as the Debtor.

22 Beginning in 2004, however, Beitler and Katofsky began to have disputes concerning the
23 management and operations of the LLCs. When it became clear that the business relationship
24 between Beitler and Katofsky was no longer viable, Katofsky sought to voluntarily unwind the
25 relationship, but Beitler refused to give the consent required by the pertinent LLC operating
26 agreements. Accordingly, Katofsky filed a lawsuit in the Superior Court of the State of California
27 seeking dissolution of the relationship and a fair distribution of the assets held by the LLCs. Beitler
28

1 responded to the lawsuit by, among other things, filing a series of lawsuits against Katofsky alleging
2 various misconduct concerning the LLCs.

3 Katofsky has been able to arrange for the sale of some of the assets held by the LLCs without
4 Beitler's consent and to distribute the sale proceeds to the appropriate parties (including Beitler).
5 However, in general, Beitler's lawsuits against Katofsky have had the effect of causing significant
6 concerns for potential buyers of the properties owned by the LLCs (and title companies) and
7 effectively blocking the sale of the properties.

8 9 **III.**

10 **THE DEBTOR MUST REORGANIZE**

11 On or about May 27, 2004, the Debtor borrowed \$4,100,000 from Centennial Bank, which
12 indebtedness is secured by a deed of trust on the Property. The Debtor intended to service the
13 indebtedness by leasing the real property. On or about April 15, 2004, the Debtor entered into a
14 lease with Fried Bananas, LLC ("Fried Bananas") for a portion of the Property. However, as set
15 forth below, as a result of alleged disputes arising under the lease, Fried Bananas has refused to pay
16 any rent and, therefore, the Debtor presently has no ability to service the indebtedness from cash
17 flow.

18 Unlike Katofsky, who personally guaranteed the indebtedness, Beitler is not a guarantor and
19 has no personal interest in ensuring that the indebtedness is paid or that the Debtor timely address its
20 financial and operational issues. Beitler has refused to make capital contributions or authorize the
21 Debtor to enter into any new leases. Consequently, the Debtor does not have the ability to pay its
22 debts as the debts become due and has sought the protection of chapter 11 of the Bankruptcy Code in
23 order to reorganize and/or dispose of its assets.

24 25 **IV.**

26 **THE PROPOSED SALE OF THE DEBTOR'S REAL PROPERTY ASSETS**

27 Because the Debtor cannot service the indebtedness to Centennial Bank and has no ability to
28 normally operate due to the existing litigation between Beitler and Katofsky, Katofsky concluded

1 that the Debtor had no alternative but to sell the Property. However, because of the existing
2 litigation and Beitler's refusal to cooperate, Katofsky was advised that buyers and title companies
3 would not participate in a sale. After an evaluation of the Debtor's options, Katofsky concluded that
4 a chapter 11 bankruptcy case should be commenced for the Debtor to ensure a court-supervised sale
5 process that would address the concerns of any buyer and title company and also protect Beitler's
6 rights.

7 On or about March 15, 2006, the Debtor entered into a broker agreement with Madison
8 Partners for the sale of the Property. Madison Partners actively marketed the Property and procured
9 an offer of \$5,000,000 from Claudette Nevins (the "Buyer"). On July 14, 2006, the Debtor and the
10 Buyer entered into an Asset Purchase Agreement ("APA"), which sets forth the terms of the
11 proposed sale to the Buyer (the "Transaction"). In accordance with the APA, the Buyer has
12 delivered a deposit into escrow in the amount of \$250,000 (the "Deposit"). The APA specifically
13 contemplates that the Debtor will file a chapter 11 petition and that an Order from the Bankruptcy
14 Court approving the Transaction is a condition to closing.

15 A true and correct copy of the APA is attached as Exhibit A to the Declaration of Jeff
16 Katofsky (the "Katofsky Declaration") and is incorporated herein by this reference. Capitalized
17 terms in this Motion have the meanings ascribed to them in the APA, unless otherwise defined
18 herein. The material terms of the APA described below are subject to the terms of the APA, which
19 control:

20 A. Subject to overbids, the Buyer shall pay the Purchase Price in cash at the closing of the
21 sale after all "Conditions Precedent" have been satisfied (the "Closing"), which shall occur within
22 three business days after the order approving the sale is entered and is not stayed pending an appeal.

23 B. The Debtor shall transfer to the Buyer all of the Debtors' right, title and interest in the
24 land, buildings and structures located at 10935 Weyburn Avenue, Los Angeles, California (the
25 "Assets"). The Assets do not include any of the Debtors' cash, receivables, claims against third
26 parties or other personal property.

27 C. The Debtor is required to obtain an Order from the Bankruptcy Court authorizing the
28 rejection of the existing lease with Fried Bananas and a determination that the Buyer has no financial

1 liability under the Lease (other than the preservation of the right, if any, of Fried Bananas to recoup or
2 offset any claims against the Debtor by withholding rental payments to the Buyer).

3 D. The sale shall be free and clear of all liens, claims, encumbrances and other interests of
4 any and every kind whatsoever. With respect to any possessory right of Fried Bananas under the
5 rejected lease pursuant to section 365(h) of the Bankruptcy Code, if Fried Bananas is in possession as
6 of the Closing and the Debtor has not obtained a written termination of the lease or an order from a
7 court that Fried Bananas must vacate the Property, the Purchase Price will be reduced by \$50,000.

8 E. The APA contains no financing or due diligence contingencies to the closing of the
9 sale. However, if the Buyer does not pay the Purchase Price or otherwise does not close the
10 Transaction, and the failure to pay the Purchase Price or close the Transaction is a default under the
11 APA, the Debtor may terminate the APA by providing written notice to the Buyer and the Debtor
12 shall be entitled to retain and apply the Deposit as liquidated damages and shall have no other right or
13 remedy against the Buyer as a result of the Buyer's failure to close.

14 F. If the Closing does not occur within sixty (60) days following the Execution Date, the
15 Buyer may elect to terminate the APA. As the Execution Date was July 14, 2006, the Buyer was
16 originally entitled to elect to terminate if the Closing did not occur by September 12, 2006. The
17 Buyer has agreed to extend the right to terminate date to September 30, 2006. Because the Buyer has
18 the right to terminate if a sale is not consummated by September 30, 2006, the Debtor requests a
19 waiver of the 10-day stay set forth in FRBP 6004(g).

20
21 V.

22 **PROPOSED SALE PROCEDURES**

23 In order to facilitate an orderly auction, the Debtor is proposing the following auction
24 procedures and will request that the Bankruptcy Court approve the auction procedures at the hearing
25 to be held on September 18, 2006, at 10:00 a.m. (the "Auction Hearing"):

26 A. Qualified Bids. The Debtor shall consider qualified bids for the Assets ("Qualified
27 Bids"), but shall not consider proposed bids that are not Qualified Bids. In order for a proposed bid
28

1 to be deemed a Qualified Bid, a proposed bid must meet each of the criteria set forth in the following
2 subparagraphs 1 through 6:

3 1. Timing. All of the documents and information required to be submitted
4 pursuant to subparagraphs 2 through 6 must be received by the Debtor's bankruptcy counsel, David
5 B. Shemano of Peitzman, Weg & Kempinsky LLP, 10100 Santa Monica Blvd., Suite 1450, Los
6 Angeles, CA 90067, no later than 5:00 p.m., California time, on September 11, 2006 (the "Bid
7 Deadline"). Unless a bid containing all of the required documents and information is submitted by
8 the Bid Deadline, it will not constitute a Qualified Bid.

9 2. Form and Content of Bid. In order to be a Qualified Bid, any overbid must
10 include an executed asset purchase agreement which is in form and substance substantially the same
11 as the APA (except for the identity of the purchaser and the Purchase Price), together with a redline
12 of the overbidder's asset purchase agreement showing the differences from the APA.

13 3. Initial Bid Amount. In order to be a Qualified Bid, the bid must be not less
14 than cash in the amount of \$5,100,000.

15 4. Offers Irrevocable. In order to be a Qualified Bid, any bid must contain a
16 letter signed by the bidder stating that the bid will remain open and irrevocable until an order by the
17 Court approving the sale of the Assets (an "Approval Order") has been entered by the Clerk of the
18 Court. The proposed Approval Order (and accompanying findings of fact and conclusions of law)
19 are attached as Exhibit B to the Katofsky Declaration. If a bidder proposes any changes to the form
20 Approval Order (or findings of fact and conclusions of law), the bidder must submit with their bid a
21 redline showing any proposed changes to the proposed Approval Order (or findings of fact and
22 conclusions of law).

23 5. Deposits. In order to be a Qualified Bid, any bid must be accompanied by a
24 deposit in the form of a cashiers' check payable to "2B OR NOT 2B, LLC" in the amount of
25 \$250,000. The Debtor shall deposit all hold all deposits in a segregated account, subject to Court
26 order, to defray all costs, expenses and damages arising as a result of the failure of any winning
27 overbidder to close the sale for any reason other than the default of the Debtor. The Debtor shall
28 return a deposit to an overbidder as soon as practicable after the earlier to occur of (i) the Debtor's

1 delivery of notice to an overbidder that its overbid is not a Qualified Bid and (ii) entry of an
2 Approval Order providing for the sale of the Assets to an entity other than the overbidder. Interest
3 that accrues on the successful bidder's deposit (including the Buyer's Deposit if the Buyer is the
4 successful bidder) shall be credited toward the Purchase Price..

5 6. Ability of Bidder to Consummate Transaction. In order to be a Qualified Bid,
6 the bid must include written financial documentation, satisfactory to the Debtor in its sole discretion,
7 demonstrating that the bidder has the ability to consummate the transactions contemplated by the
8 APA. Such financial documentation may include, among other things, background reports and/or
9 references, financing commitments, financial statements, income statements, tax returns, balance
10 sheets, annual reports and bank statements.

11 B. Qualification and Disqualification of Bids. No later than 5:00 p.m., California time,
12 one (1) business day before the Auction Hearing (the "Determination Deadline"), the Debtor shall
13 determine whether each bidder has submitted a Qualified Bid and shall so inform each bidder
14 whether it has submitted a Qualified Bid. The Debtor shall have the right to permit a bidder that
15 submitted a bid prior to the Bid Deadline that was not a Qualified Bid to modify the bid so that the
16 bid will be deemed a Qualified Bid.

17 C. Bankruptcy Court Resolution of Disputes. Any disputes concerning whether a bidder
18 submitted a Qualified Bid shall be resolved by the Bankruptcy Court at the Auction Hearing.

19 D. Auction If Qualified Bids. If the Debtor determines by the Determination Deadline
20 that there are one or more Qualified Bids, the Debtor and the Court shall hold an auction (the
21 "Auction") at the Auction Hearing.

22 1. Only entities that submitted Qualified Bids may participate in the Auction.

23 2. The Debtor may cancel or continue the Auction to a later date without further
24 notice other than an announcement at the Auction Hearing.

25 3. At the commencement of the Auction, the Debtor shall announce which of the
26 initial Qualifying Bids is, in its determination, the highest and best offer. In making this
27 determination (and subsequent determinations of what is the highest and best offer during the
28 Auction), the Debtor shall have the right to consider, among other things: (a) the number, type and

1 nature of any changes to the APA and Approval Order requested by each bidder; (b) the extent to
2 which such modifications are likely to delay closing of the sale of the acquired assets to such bidder
3 and the cost to the Debtor of such modifications or delay; and (c) the likelihood of the bidder's
4 ability to close a transaction and the timing thereof.

5 4. At the Auction, further bids must be at least \$100,000 greater than the
6 previous bid.

7 5. At the conclusion of the Auction, the Debtor shall announce which of the bids
8 is, in its determination, the highest and best offer, and that bid will be presented to the Court for
9 approval.

10 6. All unsuccessful final bids at the auction shall be treated as binding back-up
11 bids, and in the event that the successful bidder fails to consummate the APA, the Debtor shall have
12 the right to select one of the unsuccessful final bids as the replacement successful bid; provided,
13 however, the right of the Debtor to select an unsuccessful final bid as the replacement successful bid
14 shall expire sixty (60) days after the Auction Hearing.

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16 VI.

17 **THE SALE IS IN THE BEST INTERESTS OF THE ESTATE**

18 Section 363(b) of the Bankruptcy Code provides, in relevant part, that a trustee "after notice
19 and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the
20 estate." The standard to be applied in determining whether a sale should be authorized under section
21 363(b) is whether such sale is in the best interests of the estate and the price is fair and reasonable.
22 *See generally, In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985). The trustee is given
23 substantial discretion in this regard. *Id.*

24 Pursuant to the APA, the Debtor's estate will be paid consideration of \$5 million cash. After
25 substantial marketing, this is the best offer for the purchase of the Debtor's Assets negotiated to date
26 and the Debtor believes that the terms of the APA negotiated with the Buyer offer the best source of
27 recovery for creditors unless there is an overbid. The Buyer's proposal also offers the best way to
28 find out if someone wants to overbid.

1 A. Accurate and Reasonable Notice Has Been Given.

2 The Debtor has served notice of this Motion by U.S. mail on the following entities: (i) the
3 Office of the United States Trustee, (ii) all parties that have asserted liens on or interests in the
4 Assets, (iii) all parties that submitted an offer for the Assets, (iv) all parties identified on the
5 Debtor's creditor matrix, and (v) all parties that have requested special notice. The Debtor is also
6 making available copies of the Motion and the sale procedures to all inquiring potential bidders.

7 B. The Purchase Price Is Fair And Reasonable.

8 As set forth in the Katofsky Declaration and the Declaration of Bob Safai (the "Safai
9 Declaration"), the Debtor actively marketed the Assets prior to the commencement of this case.
10 After careful analysis, the Debtor determined that the Buyer's offer contained both fair value for the
11 Assets and could be quickly consummated. The Debtor is continuing to market the Property for sale
12 pending the Auction. The fact that other parties can come forward to bid at an auction that has been
13 widely noticed satisfies the requirement that the price paid for the Assets be fair and reasonable. An
14 auction sale is generally considered to establish sufficient value for the assets being sold. *See, e.g.,*
15 *In re Abbott Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

16 C. The Proposed Sale Is In Good Faith.

17 The good faith requirement focuses principally on the disclosure of all material sale terms
18 and the absence of fraud or collusion. *See, e.g., In re Abbotts Dairies of Pennsylvania, Inc.*, 788
19 F.2d at 147; *see also, In re Apex Oil Co.*, 92 B.R. 847, 869-71 (Bankr. E.D. Mo. 1988). The Motion
20 discloses all material sale terms. Furthermore, the APA was negotiated by the Debtor and the Buyer
21 at arm's-length, and the sale will be consummated on an arm's-length basis after the Assets were
22 marketed for sale by the Debtor and after overbids were solicited. The Buyer is neither an insider
23 nor an affiliate of the Debtor. Thus, the Buyer should be deemed a good faith purchaser pursuant to
24 section 363(m) of the Bankruptcy Code.
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VII.

**SALE FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND OTHER INTERESTS**

Pursuant to the APA, the Assets are to be transferred free and clear of all liens, claims, encumbrances and other interests (collectively, "Interests"). The Bankruptcy Court is authorized to approve the transfer of the Assets free and clear of all Interests pursuant to section 363(f) of the Bankruptcy Code, which provides:

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

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

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

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

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

As set forth below, section 363(f) is satisfied with respect to each of the known Interests asserted in the Assets.

Except for undisputed Interests and closing costs that the Debtor proposes to pay at the Closing, all Interests will attach to the net proceeds of the sale with the same priority, validity and enforceability, if any, as they had had against the Assets, which proceeds shall be held by the Debtor in a segregated account pending further Order of the Bankruptcy Court. Notice of the Motion has been served on all parties who have asserted Interests in the Assets. A true and correct copy of a preliminary title report for the real property is attached as Exhibit C to the Katofsky Declaration and incorporated herein by reference.

The following is a list of the parties who have asserted Interests and been served with notice of the Motion, and the basis for the sale free and clear of the Interests pursuant to section 363(f) of the Bankruptcy Code. Furthermore, failure to object to the sale free and clear of Interests should be deemed consent pursuant to section 363(f)(2) of the Bankruptcy Code. *See, e.g., Homeowners Services, Inc. v. Elliot (In re Elliott)*, 94 B.R. 343 (E.D. Pa. 1988). If any other entity asserts any

1 Interests against the Assets, the Debtor will demonstrate at or prior to the hearing on the Motion that
2 the Assets may be sold free and clear of such Interests.

3 A. **Real Estate Tax Liens.** Pursuant to the APA, the sale of the Assets will be subject to
4 all applicable non-delinquent general and special real property taxes of record, but will be free and
5 clear of all other tax liens. The Debtor proposes to pay all undisputed delinquent real property tax
6 liens of record from the net proceeds at the Closing. To the extent any asserted tax lien or claim is
7 subject to a bona fide dispute, the lien will attach to the net proceeds of the sale with the same
8 priority, validity and enforceability, if any, as it had against the Assets. Furthermore, the Purchase
9 Price of the Assets (\$5,000,000) is greater than the aggregate value of all liens on the Assets.
10 Therefore, sections 363(f)(3) and (4) are satisfied with respect to all tax liens.

11 B. **Centennial Bank.** Centennial Bank (the "Bank"), as trustee, asserts a lien on the
12 Assets to secure a claim in the amount of \$4,100,000. The lien is evidenced by a deed of trust
13 recorded on June 3, 2004.

14 The Debtor proposes to satisfy the undisputed indebtedness owing to the Bank from the net
15 proceeds at the Closing. To the extent the lien or claim is subject to a bona fide dispute, the Bank's
16 lien will attach to the net proceeds of the sale with the same priority, validity and enforceability, if
17 any, as it had against the Assets. Furthermore, the Purchase Price of the Assets (\$5,000,000) is
18 greater than the aggregate value of all liens on the Assets. Therefore, sections 363(f)(3) and (4) are
19 satisfied with respect to the Interest asserted by the Bank.

20 C. **Prats, Inc.** Prats, Inc. ("Prats") asserts a lien on the Assets to secure a claim in the
21 amount of \$250,000. The lien is evidenced by a Mechanic's Lien recorded on March 3, 2006.

22 Prats is an affiliate of Fried Bananas, the present lessee of the Property. Any claim asserted
23 by Prats is based upon alleged improvements made by Prats to the Property pursuant to the lease
24 with Fried Bananas. As discussed below, Fried Bananas is in default under the Lease and is
25 indebted to the Debtor for significantly more than \$250,000. Furthermore, in addition to any setoff
26 and recoupment claims by the Debtor, the Debtor has paid all amounts due and owing to Prats.
27 Therefore, the Debtor disputes Prats's claim and lien and a bona fide dispute exists with respect to
28 the claim and lien. Furthermore, the Purchase Price of the Assets (\$5,000,000) is greater than the

1 aggregate value of all liens on the Assets. Therefore, sections 363(f)(3) and (4) are satisfied with
2 respect to the Interest asserted by Prats.

3 D. **Fire Call, Inc.** Fire Call, Inc. ("Fire Call") asserts a lien on the Assets to secure a
4 claim in the amount of \$1,300. The lien is evidenced by a Mechanic's Lien recorded on July 15,
5 2005.

6 The Debtor never entered into any agreement with Fire Call and has no specific knowledge
7 concerning the basis for the claim. The Debtor assumes that Fire Call is a subcontractor that
8 performed work for Prats. Because the Debtor did not enter into any agreement with Fire Call, the
9 Debtor disputes Fire Call's claim and lien and a bona fide dispute exists with respect to the claim
10 and lien. Furthermore, the Purchase Price of the Assets (\$5,000,000) is greater than the aggregate
11 value of all liens on the Assets. Therefore, sections 363(f)(3) and (4) are satisfied with respect to the
12 Interest asserted by Fire Call.

13 E. **T R E Elevators, Inc.** T R E Elevators, Inc. ("TRE") asserts a lien on the Assets to
14 secure a claim in the amount of \$34,000. The lien is evidenced by a Mechanic's Lien recorded on
15 March 3, 2006.

16 The Debtor contracted with TRE to construct an elevator at the Property. The contract
17 required that construction be completed by March 2004. Not only did TRE fail to meet the
18 contractual deadline, it has never completed the elevator. Furthermore, after the Debtor refused
19 further payment until TRE completed the elevator, TRE, without permission, came to the Property
20 and removed parts and equipment for which the Debtor had already paid. The Debtor disputes
21 TRE's claim and lien and a bona fide dispute exists with respect to the claim and lien. Furthermore,
22 the Purchase Price of the Assets (\$5,000,000) is greater than the aggregate value of all liens on the
23 Assets. Therefore, sections 363(f)(3) and (4) are satisfied with respect to the Interest asserted by
24 TRE.

25 F. **Jeff Katofsky.** On July 28, 2006, Jeff Katofsky advanced \$55,000 to the Debtor,
26 which the Debtor in turn paid to Peitzman, Weg & Kempinsky LLP in part for prepetition legal
27 services and the remainder as a retainer for postpetition services. The advance is secured by a deed
28 of trust recorded on July 28, 2006.

1 The Debtor proposes to satisfy the undisputed indebtedness owing to Katofsky from the net
2 proceeds at the Closing. To the extent the lien or claim is subject to a bona fide dispute, Katofsky's
3 lien will attach to the net proceeds of the sale with the same priority, validity and enforceability, if
4 any, as it had against the Assets. Furthermore, the Purchase Price of the Assets (\$5,000,000) is
5 greater than the aggregate value of all liens on the Assets. Therefore, sections 363(f)(3) and (4) are
6 satisfied with respect to the Interest asserted by Katofsky.

7 G. **Fried Bananas, Inc.** Pursuant to an unrecorded lease dated April 15, 2004 (the
8 "Lease"), Fried Bananas leased the entire first floor and basement of the Property to operate a
9 restaurant and bar. The monthly rent is \$25,000 and the term expires on May 13, 2013. A true and
10 correct copy of the Lease is attached as Exhibit D to the Katofsky Declaration and incorporated
11 herein by reference. As set forth below, the Debtor seeks to reject the Lease pursuant to section
12 365(a) of the Bankruptcy Code.

13 1. **The Debtor May Sell Free And Clear Of The Lease Pursuant To**
14 **Section 363(f)(4) Of The Bankruptcy Code.**

15 A lease is an "interest" in property that a trustee may sell free and clear of pursuant to section
16 363(f) of the Bankruptcy Code. *See generally, C.H.E.G., Inc. v. Millennium Bank*, 99 Cal. App. 4th
17 505, 511 (2002) ("Uniformly, courts reaching this issue have determined that a lease is an interest
18 under section 363.").

19 Notwithstanding that the Lease required the payment of monthly rent from the
20 commencement date (June 13, 2004, pursuant to Section 1.3 of the Lease), Fried Bananas has never
21 paid any rent to the Debtor. Pursuant to an addendum to the Lease dated April 19, 2004, Fried
22 Bananas was entitled to a \$350,000 tenant improvement allowance. However, even assuming Fried
23 Bananas had the right to credit improvements against the rent (which the Lease does not permit), the
24 accrued unpaid rent through the Petition Date is more than \$600,000, Fried Bananas has provided
25 evidence of only approximately \$150,000 in improvements, and has ceased making any further
26 improvements. Therefore, Fried Bananas is in material default under the Lease.

27 Fried Bananas has taken the position that it is not required to pay any rent or make any
28 further improvements until it obtains a liquor license, which it has yet to obtain. Nothing in the

1 Lease supports Fried Banana's position that there is a "liquor license condition" to the payment of
2 rent and further improvements. Therefore, Fried Bananas is in material default under the Lease and
3 Fried Bananas no longer has any right to possess the Property. As a result, the Debtor disputes Fried
4 Banana's Lease and a bona fide dispute exists with respect to the Lease. Therefore, section 363(f)(4)
5 is satisfied with respect to the Interest asserted by Fried Bananas.

6 2. **Section 365(h)(1) Does Not Preclude A Sale Free And Clear Of The**
7 **Ground Lease.**

8 As set forth below, the Debtor seeks authorization to reject the Fried Bananas Lease.
9 Because section 365(h)(1) of the Bankruptcy Code permits a lessee to a rejected lease to remain in
10 possession of the leased property, lessees have argued that 365(h)(1) trumps section 363(f) and
11 operates to preclude a sale free and clear of the rejected lease. However, in *Precision Industries v.*
12 *Qualitech Steel*, 327 F.3d 537 (7th Cir. 2003), the Seventh Circuit Court of Appeals firmly rejected
13 that view and held that section 363(f) permits a trustee to sell property free and clear of a rejected
14 lease. *Accord, In re Downtown Athletic Club*, 2000 U.S. Dist. LEXIS 7917 (S.D.N.Y. 2000); *but*
15 *see, In re Taylor*, 198 B.R. 142 (Bankr. D. S.C. 1996). Therefore, any argument that section
16 365(h)(1) precludes a sale free and clear is unavailing.

17
18 **VIII.**

19 **THE DEBTOR SHOULD BE AUTHORIZED**
20 **TO REJECT THE FRIED BANANAS LEASE**

21 Section 365(a) of the Bankruptcy Code provides, in relevant part, that "the trustee, subject to
22 the court's approval, may assume or reject any executory contract or unexpired lease of the Debtor."
23 The United States Supreme Court has held that the debtor's decision to assume or reject an
24 agreement as an executory contract should be judged by the "business judgment" test. *See, National*
25 *Labor Relations Board v. Bildisco and Bildisco*, 465 U.S. 513, 523, 104 S.Ct. 1188, 1194-95 (1984);
26 *see also, Robertson v. Pierce (In re Chi-Feng Huang)*, 23 B.R. 798, 800 (BAP 9th Cir. 1982).

27 Pursuant to the APA, the Buyer is not obligated to close unless the Debtor obtains an Order
28 from the Bankruptcy Court authorizing the rejection of the Fried Bananas Lease. As set forth above,
Fried Bananas has never paid rent and is in material default under the Lease. Under the

1 circumstances, the Debtor submits that the rejection of the Lease is a reasonable exercise of the
2 Debtor's business judgment and Debtor requests that the Bankruptcy Court authorize the rejection of
3 the Lease.

4 A. **The Court Should Enter An Order Determining That The Buyer Shall Have No**
5 **Financial Liabilities Under The Lease.**

6 As a result of the existing dispute between the Debtor and Fried Bananas, the Buyer
7 demanded as a condition to closing that the Court enter an Order specifically determining that the
8 Buyer shall not have any financial liabilities under the Lease other than the preservation of the right,
9 if any, of Fried Bananas to recoup or offset any claims against the Debtor by withholding rental
10 payments to the Buyer. Such a determination is consistent with section 365(h)(1)(B) of the
11 Bankruptcy Code, which provides that if the tenant under a rejected lease elects to retain its
12 possessory rights pursuant to section 365(h)(1)(A)(ii), its exclusive remedy against the debtor/lessor
13 for nonperformance under the lease is the offset of rent. *See, e.g., In re Arden and Howe Associates,*
14 *Ltd.*, 152 B.R. 971, 973-74 (Bankr. E.D. Cal. 1993). The exclusivity of offset as a remedy is not
15 limited to claims against the debtor, but is applicable to the debtor's successor, such as a purchaser
16 of the property from the estate. *Id.* at 975. Therefore, the requested determination is reasonable and
17 should be granted.

18 B. **The Court Should Enter An Order Requiring Fried Bananas To Vacate The**
19 **Property.**

20 Pursuant to the APA, the Buyer is entitled to a \$50,000 reduction in the Purchase Price
21 unless, prior to the Closing, the Debtor obtains either (i) a written termination of the Lease, or (ii) an
22 order from a court that Fried Bananas must vacate the Property. The Debtor has been in negotiations
23 with Fried Bananas for several months concerning a consensual termination of the Lease and the
24 Debtor is hopeful that a consensual accommodation will be achieved. However, if a consensual
25 termination cannot be achieved by the hearing date on the Motion, the Debtor requests that the Court
26 enter an Order requiring that Fried Bananas vacate the Property.

27 Section 365(h)(1)(A)(ii) provides that if the trustee rejects an unexpired lease of real property
28 under which the debtor is the lessor:

1 if the term of such lease has commenced, the lessee may retain its rights under
2 such lease (including rights such as those relating to the amount and timing of
3 payment of rent and other amounts payable by the lessee and any right of use,
4 possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in
or appurtenant to the real property for the balance of the term of such lease and for
any renewal or extension of such rights to the extent that such rights are
enforceable under applicable nonbankruptcy law.

5 As set forth in above, in *Precision Industries v. Qualitech Steel*, 327 F.3d 537 (7th Cir. 2003), the
6 Court of Appeals for the Seventh Circuit held that the trustee's right to sell free and clear pursuant to
7 section 363(f) trumps the lessee's right to continue possession pursuant to section 363(h). As also
8 set forth above, the Debtor has the right to sell free and clear of the Fried Bananas Lease pursuant to
9 section 363(f)(4) because the Lease is in bona fide dispute.

10 Furthermore, in addition to the Debtor's right to sell free and clear under section 363(f), the
11 Debtor submits that Fried Bananas does not have any possessory rights pursuant to section 363(h).
12 A lessee only has the right to exercise possessory rights under section 363(h) "if the terms of such
13 lease has commenced" and the lessee is in possession of the leased property. *See generally, In re*
14 *Marina Enterprises, Inc.*, 14 B.R. 327 (Bankr. S.D. Fla. 1981) (lessee did not have right to
15 possession of debtor's property under section 365(h) where property was vacant and unimproved, no
16 physical use had been made of it since time of lease, no rent was paid, and lessee paid no taxes or
17 mortgage payments as permitted in lease). In addition, a lessee only has the right to remain in
18 possession "to the extent that such [possessory] rights are enforceable under applicable
19 nonbankruptcy law." 11 U.S.C. § 365(h)(1)(A)(ii).

20 Fried Bananas has never paid rent, does not occupy or use the Property, and does not pay the
21 taxes or mortgage payments. Pursuant to the Lease, Fried Bananas was required to commence
22 paying rent on June 1, 2004, which date was defined in the Lease as the "Commencement Date."
23 Fried Bananas cannot have its cake and eat it too. If Fried Bananas takes the position that it never
24 became obligated to pay rent under the Lease, then Fried Bananas should be estopped from arguing
25 that the term of the Lease commenced for purposes of section 363(h). Alternatively, if Fried
26 Bananas takes the position that the term of the Lease commenced for purposes of section 363(h),
27 then the Court should determine that Fried Bananas' failure to pay rent is a material default and it
28 has no existing right under applicable nonbankruptcy law to possess the Property. Under either

1 argument, the Court should determine that Fried Bananas does not have any possessory right under
2 section 365(h) and must vacate the Property. There should be no dispute that the Bankruptcy Court
3 has the authority to compel Fried Bananas to vacate the premises and the Debtor is not required to
4 commence a proceeding in State court to evict Fried Bananas. *See, e.g., In re Elm Inn, Inc.*, 942
5 F.2d 630, 634 (9th Cir. 1991).

6
7 **IX.**

8 **REQUEST FOR GOOD FAITH FINDING**

9 Section 363(m) of the Bankruptcy Code authorizes the Bankruptcy Court to make a finding
10 that the Buyer is a good faith purchaser. A purchaser of property is protected from the effects of
11 reversal on appeal of the authorization to sell or lease as long as the Court finds that the purchaser
12 acted in good faith and the appellant fails to obtain a stay of the sale. *See*, 11 U.S.C. § 363(m).
13 Although the Code does not define “good faith,” courts generally have followed traditional
14 principles in holding that a good faith purchaser is one who buys “in good faith” and “for value.”
15 *See, e.g., In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *see also,*
16 *Kham and Nate’s Shoes No. 2 v. First Bank*, 908 F.2d 1351, 1355 (7th Cir. 1990) (“The purpose of
17 Section 363(m) is to disable courts from backtracking on promises with respect to bankruptcy sales
18 in the absence of bad faith”); *In re Pine Coast Enters., Ltd.*, 147 B.R. 30, 33 (Bankr. N.D. Ill. 1992)
19 (“The requirement that a purchaser act in good faith speaks to the integrity of its conduct in the
20 course of the sale proceeding”).

21 It is a condition to the closing of the sale of the Assets that the Buyer receive the protection
22 of section 363(m). Therefore, the Debtor requests that the Court make a finding that the Buyer is a
23 good faith purchaser of the Assets within the meaning of section 363(m). In *In re M Capital Corp.*,
24 290 B.R. 743 (BAP 9th Cir. 2003), the Bankruptcy Appellate Panel held that a bankruptcy court may
25 not make a finding of good faith in the absence of evidence, but may make such a finding if
26 appropriate evidence is presented. As set forth in the Katofsky and Safai Declarations, the Buyer has
27 no connection to the Debtor, the APA was negotiated at arm’s-length, the proposed purchase price
28 for the Assets is fair consideration, the Motion adequately describes the APA, and the bidding

1 procedures for the Assets have established a fair process for competing bids. Under these
2 circumstances, a finding of good faith within the meaning of section 363(m) is appropriate.

3
4 X.

5 **THE DEBTOR SHOULD BE AUTHORIZED TO PAY**
6 **AT CLOSING REAL ESTATE TAXES, INDEBTEDNESS**
7 **TO BANK AND KATOFSKY, AND BROKER'S COMMISSION**

8 The Debtor requests authorization to pay at the Closing from the sale proceeds the (i)
9 undisputed real estate taxes, (ii) the undisputed secured claim asserted by the Bank, (iii) the
10 undisputed secured claim asserted by Katofsky, (iv) the commission owed to the Debtor's broker,
11 Madison Partners, and (v) all reasonable and customary escrow fees, recording fees, title insurance
12 premiums, and other closing costs necessary and proper to consummate the Transaction.

13 With respect to the commission owed to Madison Partners, the Debtor will soon file its
14 application to formally employ Madison Partners pursuant to section 327(a) of the Bankruptcy Code.
15 Pursuant to the listing agreement between the Debtor and Madison Partners, Madison Partners is
16 entitled to receive a commission of five percent (5%) of the gross sales price of the Property.

17 **WHEREFORE**, the Debtor requests that the Bankruptcy Court enter an Order, substantially
18 in the form attached as Exhibit B to the Katofsky Declaration:

19 A. Authorizing the Debtor to enter into and perform the APA and to sell, assign and
20 transfer the Assets to the Buyer pursuant to the APA, and determining that, when the sale,
21 assignment and transfer is effective, the Debtor shall be deemed to have sold, assigned and
22 transferred all of the Debtor's rights, title and interest in and to the Assets to the Buyer free and clear
23 of all Interests of any and every kind whatsoever.

24 B. Directing that all Interests shall attach to the proceeds of the sale with the same
25 priority, validity and enforceability, if any, as they had had against the Assets, which proceeds shall
26 be held by the Debtor in a segregated account pending further Order of the Bankruptcy Court.

27 C. Authorizing the Debtor to reject the Fried Bananas Lease and determining that the
28 Buyer has no financial liabilities under the Lease other than the preservation of the right, if any, of

1 Fried Bananas to recoup or offset any claims against the Debtor by withholding rental payments to
2 the Buyer.

3 D. Determining that that Fried Bananas has no possessory interest in the Property
4 pursuant to section 365(h) of the Bankruptcy Code and must vacate the Property and turnover
5 possession to the Debtor no later than ten (10) days after entry of the Order approving the
6 Transaction.

7 E. Determining that the Buyer acted in good faith in purchasing the Assets within the
8 meaning of section 363(m) of the Bankruptcy Code.

9 F. Authorizing the Debtor to pay directly from proceeds of the sale at Closing: (i) the
10 undisputed real property taxes, (ii) the undisputed secured claim asserted by Centennial Bank, (iii)
11 the undisputed secured claim asserted by Jeff Katofsky, (iv) the real estate commission due and
12 owing to Madison Partners, and (v) all reasonable and customary escrow fees, recording fees, title
13 insurance premiums, and other closing costs necessary and proper to conclude the sale of the Assets.

14 G. Authorizing the Debtor to execute all documents and instruments and to take all
15 actions necessary to effectuate the Transaction.

16 H. Authorizing the auction procedures set forth in the Motion.

17 I. Granting such other and further relief as may be appropriate under the circumstances.

18
19 Dated: August 8, 2006

PEITZMAN, WEG & KEMPINSKY LLP

20 By: David B. Shemano
21 Howard J. Weg
22 David B. Shemano

23 Proposed Bankruptcy Counsel for the Debtor
24
25
26
27
28

DECLARATION OF JEFF KATOFSKY

I, Jeff Katofsky, declare as follows:

1. I am the managing member 2B Or Not 2B, LLC, the above-captioned debtor (the "Debtor"). Except as otherwise stated, I have personal and first-hand knowledge of the matters set forth herein and, if called as a witness, would competently testify thereto.

2. The Debtor commenced a case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Central District of California on August 4, 2006 (the "Petition Date"). The Debtor is a limited liability corporation whose primary asset is the real property and improvements located at 10935 Weyburn, in Los Angeles (the "Property"). The Property includes a three-story office building with approximately 10,800 square feet.

3. The members of the Debtor are Barry Beitler and myself. I act as the managing member. For many years, Beitler and I worked together to create and fund successful commercial real estate investments. The investments were usually held in single asset (or, in some instances, multiple asset) limited liability companies ("LLCs"), such as the Debtor.

4. Beginning in 2004, however, Beitler and I began to dispute the management and operations of the LLCs. When it became clear that the business relationship between Beitler and me was no longer viable, I sought to voluntarily unwind the relationship, but Beitler refused to give the consent required by the pertinent LLC operating agreements. Accordingly, I filed a lawsuit in the Superior Court of the State of California seeking dissolution of the relationship and a fair distribution of the assets held by the LLCs. Beitler responded to the lawsuit by, among other things, filing a series of lawsuits against me alleging various misconduct concerning the LLCs.

5. I have been able to arrange for the sale of some of the assets held by the LLCs without Beitler's consent and to distribute the sale proceeds to the appropriate parties (including Beitler). However, in general, Beitler's lawsuits against me have had the effect of causing significant concerns for potential buyers of the properties owned by the LLCs (and title companies) and effectively blocking the sale of the properties.

6. On or about May 27, 2004, the Debtor borrowed \$4,100,000 from Centennial Bank, which indebtedness is secured by a deed of trust on the Property. The Debtor intended to service the

1 indebtedness by leasing the real property. On or about April 15, 2004, the Debtor entered into a
2 lease with Fried Bananas, LLC ("Fried Bananas") for a portion of the Property. However, as a result
3 of alleged disputes arising under the lease, Fried Bananas has refused to pay any rent and, therefore,
4 the Debtor presently has no ability to service the indebtedness from cash flow.

5 7. While I am a guarantor of the indebtedness to Centennial Bank, Beitler is not a
6 guarantor. Beitler has refused to make capital contributions or authorize the Debtor to enter into any
7 new leases. Consequently, the Debtor does not have the ability to pay its debts as the debts become
8 due and has sought the protection of chapter 11 of the Bankruptcy Code in order to reorganize and/or
9 dispose of its assets.

10 8. Because the Debtor cannot service the indebtedness to Centennial Bank and has no
11 ability to normally operate due to the existing litigation between Beitler and me, I concluded that the
12 Debtor had no alternative but to sell the Property. However, because of the existing litigation and
13 Beitler's refusal to cooperate, I was advised that buyers and title companies would not participate in
14 a sale. After an evaluation of the Debtor's options, I concluded that a chapter 11 bankruptcy case
15 should be commenced for the Debtor to ensure a court-supervised sale process that would address
16 the concerns of any buyer and title company and also protect Beitler's rights.

17 9. On or about March 15, 2006, the Debtor entered into a broker agreement with
18 Madison Partners for the sale of the Property. Madison Partners actively marketed the Property and
19 procured an offer of \$5,000,000 from Claudette Nevins (the "Buyer"). On July 14, 2006, the Debtor
20 and the Buyer entered into an Asset Purchase Agreement ("APA"), which sets forth the terms of the
21 proposed sale to the Buyer (the "Transaction"). In accordance with the APA, the Buyer has
22 delivered a deposit into escrow in the amount of \$250,000 (the "Deposit"). The APA specifically
23 contemplates that the Debtor will file a chapter 11 petition and that an Order from the Bankruptcy
24 Court approving the Transaction is a condition to closing. A true and correct copy of the APA is
25 attached as Exhibit A and is incorporated herein by this reference.

26 10. Pursuant to the APA, the Debtor's estate will be paid consideration of \$5 million
27 cash. After substantial marketing, this is the best offer for the purchase of the Debtor's Assets
28

1 negotiated to date and I believe that the terms of the APA negotiated with the Buyer offer the best
2 source of recovery for creditors unless there is an overbid.

3 11. The Motion discloses all material terms of the APA. Furthermore, the APA was
4 negotiated by the Buyer and me at arm's-length, and the sale will be consummated on an arm's-
5 length basis after the Assets were marketed for sale by me and after overbids were solicited. The
6 Buyer is neither an insider nor an affiliate of the Debtor or me.

7 12. Pursuant to the APA, the Assets are to be transferred free and clear of all liens,
8 claims, encumbrances and other interests (collectively, "Interests"). All Interests will attach to the
9 net proceeds of the sale with the same priority, validity and enforceability, if any, as they had had
10 against the Assets, which proceeds shall be held by the Debtor in a segregated account pending
11 further Order of the Bankruptcy Court. Notice of the Motion has been served on all parties who
12 have asserted Interests in the Assets. A preliminary title report on the real property is attached as
13 Exhibit C and incorporated herein by reference.

14 13. With respect to the Interest asserted by Prats, Inc. ("Prats"), Prats is an affiliate of
15 Fried Bananas, the present lessee of the Property. Any claim asserted by Prats is based upon alleged
16 improvements made by Prats to the Property pursuant to the lease with Fried Bananas. As discussed
17 in the Motion, Fried Bananas is in default under the Lease and is indebted to the Debtor for
18 significantly more than \$250,000. Furthermore, in addition to any setoff and recoupment claims by
19 the Debtor, the Debtor has paid all amounts due and owing to Prats.

20 14. With respect to the Interest asserted by Fire Call, Inc., the Debtor never entered into
21 any agreement with Fire Call and has no specific knowledge concerning the basis for the claim. The
22 Debtor assumes that Fire Call is a subcontractor that performed work for Prats.

23 15. With respect to the Interest asserted by T R E Elevators, Inc. ("TRE"), the Debtor
24 contracted with TRE to construct an elevator at the Property. The contract required that construction
25 be completed by March 2004. Not only did TRE fail to meet the contractual deadline, it has never
26 completed the elevator. Furthermore, after the Debtor refused further payment until TRE completed
27 the elevator, TRE, without permission, came to the Property and removed parts and equipment for
28 which the Debtor had already paid.

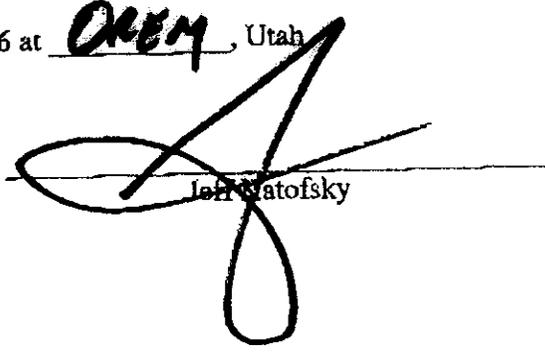
1 16. With respect to my Interest, because the Debtor did not have funds to retain
2 bankruptcy counsel, I advanced \$55,000 to the Debtor, which the Debtor in turn paid to Peitzman,
3 Weg & Kempinsky LLP in part for prepetition legal services and the remainder as a retainer for
4 postpetition services.

5 17. With respect to the Interest asserted by Fried Bananas, pursuant to an unrecorded
6 Lease dated April 15, 2004, Fried Bananas leased the entire first floor and basement of the Property
7 to operate a restaurant and bar. The monthly rent is \$25,000 and the term expires on May 13, 2013.
8 A true and correct copy of the Lease is attached as Exhibit D and incorporated herein by reference.
9 Notwithstanding that the Lease required the payment of monthly rent from the commencement date
10 (June 13, 2004, pursuant to Section 1.3 of the Lease), Fried Bananas has never paid rent, does not
11 occupy or use the Property, and does not pay the taxes or mortgage payments. Pursuant to an
12 addendum to the Lease dated April 19, 2004, Fried Bananas was entitled to a \$350,000 tenant
13 improvement allowance. However, even assuming Fried Bananas had the right to credit
14 improvements against the rent (which the Lease does not permit), the accrued unpaid rent through
15 the Petition Date is more than \$600,000, Fried Bananas has provided evidence of only approximately
16 \$150,000 in improvements, and has ceased making any further improvements. Therefore, Fried
17 Bananas is in material default under the Lease.

18 18. I respectfully request that the Court enter an order in substantially the form attached
19 as Exhibit B.

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

21 Executed this 8 day of August 2006 at Ogden, Utah

22
23 
24 Jeff Stofsky
25
26
27
28

DECLARATION OF BOB SAFAI

I, Bob Safai, declare as follows:

1. I am a licensed real estate professional and the President of Madison Partners (“Madison”). Except as otherwise stated, I have personal and first-hand knowledge of the matters set forth herein and, if called as a witness, would competently testify thereto.

2. On March 15, 2006, the Debtor entered into a broker agreement with Madison for the sale of the real property located at 10935 Weyburn, in Los Angeles (the “Property”). I immediately began: (i) compiling a database of potential acquirers of the Property; and (ii) preparing an information package for potential acquirers concerning the Asset (the “Information Package”). On June 5, 2006, I emailed preliminary offering data to approximately 1,050 potential buying entities, informing them that the Property was available for acquisition. The Information Package was then emailed to eight potential purchasers who had responded to the offering letter.

3. On June 5, 2006, I received an offer from Claudette Nevins (“Nevins”), which was immediately countered. On June 6, 2006, Nevins resubmitted her offer for the amount at which the Debtor countered. We subsequently received several other offers, but none at the countered price. Therefore, the Nevins offer was accepted and a formal purchase contract was signed on July 14, 2006 and escrow opened on July 19, 2006.

4. Based on the various offers I received, I recommend to the Debtor that the offer submitted by Nevins is the best bid for the following reasons:

a. Based upon my knowledge of the real estate market in Los Angeles and the surrounding areas, the proposed purchase price of \$5,000,000 represents a reasonable offer;

b. Based upon prior experience with Nevins, I know she is a serious buyer, with sufficient assets and a willingness to close.

5. The fact that the offer was made for the full countered price and a \$250,000 non-refundable deposit was made distinguishes the Nevins bid from all others. Every other serious offer contained financing and/or due diligence conditions to closing. Therefore, I advised the Debtor that the Nevins bid was the best bid received.

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

Executed this 8th day of August 2006 at Los Angeles, California.



Bob Safai