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CLERK U.S. BANKRUPTCY COURT.  
CALIFORNIA. BY: \_\_\_\_\_

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2 Christopher A. Minier [Bar No. 190705]  
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8 Attorneys for Debtor and Debtor-in-Possession,  
9 Lambco Engineering, LLC

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

13 In re:  
14 **LAMBCO ENGINEERING, LLC, a California**  
15 **limited liability company,**  
16  
17 **Debtor and**  
18 **Debtor-in-Possession.**

Case No. SA 03-13314 JB

Chapter 11

**NOTICE OF MOTION BY DEBTOR FOR AN ORDER:**

**(1) APPROVING SALE OF REAL PROPERTY OUTSIDE OF THE ORDINARY COURSE OF BUSINESS, FREE AND CLEAR OF LIENS, PURSUANT TO 11 U.S.C. § 363(b)(1) AND (f);**

**(2) APPROVING OVERBID PROCEDURES;**

**(3) FOR A DETERMINATION THAT THE SALE WAS CONDUCTED IN GOOD FAITH PURSUANT TO 11 U.S.C. § 363(m); AND**

**(4) AUTHORIZING DISTRIBUTION OF SALE PROCEEDS, INCLUDING APPLICATION FOR PAYMENT OF BROKERS' COMISSIONS**

HEARING DATE:

DATE: April 27, 2004

TIME: 10:30 a.m.

PLACE: Courtroom 6D,  
411 West Fourth Street  
Santa Ana, California 92701

COPY

1           **PLEASE TAKE NOTICE** that on April 27, 2004, at 10:30 a.m., in Courtroom 6D of the  
2 above-entitled Court, located at 411 West Fourth Street, Santa Ana, California 92701, before  
3 the Honorable James N. Barr, United States Bankruptcy Judge, Lambco Engineering, LLC,  
4 debtor and debtor-in-possession in the above-entitled Chapter 11 case (hereafter "Debtor"),  
5 will, and hereby does, move the Court for an Order:

6           (1) Pursuant to 11 U.S.C. § 363(b)(1) and (f), authorizing the sale of commercial  
7 real property commonly known as 1170 East Fruit Street, Santa Ana, California 92701  
8 (hereafter the "Property"), free and clear of liens, interests and encumbrances, all of  
9 which would transfer to and attach to the net sale proceeds, outside the ordinary course  
10 of business, to Los Dos Amigos, Inc., a California corporation (hereafter the "Buyer"),  
11 subject to overbids, for \$2,314,524 (\$120.55 per square foot), pursuant to the terms  
12 specified in, and by approving the, Standard Offer, Agreement and Escrow Instructions  
13 for Purchase of Real Estate, attached as Exhibit "1" (hereafter the "Agreement") to the  
14 full and complete moving papers;

15           (2) Approving overbid procedures for the sale of the Property;

16           (3) Reciting that the parties to the sale of the Property are entitled to the benefit  
17 and protection of 11 U.S.C. § 363(m);

18           (4) Authorizing and approving the payment of real estate brokers' / agents'  
19 commissions at the close of escrow;

20           (5) Authorizing the disbursement of sale proceeds through the escrow, including  
21 payment of the following:

22           (A) Approving the application for approval and payment of commission of  
23 Debtor's real estate broker and agents (Grubb & Ellis Company and its agents  
24 David L. Kluver and Garrett M. Sholer hereafter collectively "Grubb & Ellis"), and  
25 authorizing the payment of total commissions of: (i) 5.0% of the Property's gross  
26 sale price at the close of escrow, to be split equally between Grubb & Ellis and  
27 the broker for the Buyer or for a successful overbidder; (ii) 4.0% of the Property's  
28 gross sale price if David L. Kluver or Garrett Sholer of Grubb & Ellis represent  
both the successful purchaser and seller of the Property; (iii) 2.5% of the  
Property's gross sale price to Grubb & Ellis if the Property is sold to an  
unrepresented buyer; or (iv) 0.0% commission is the Property is sold to one of the  
parties excluded from Debtor's listing agreement with Grubb & Ellis;

(B) normal "closing costs," including, but not limited to property taxes, and  
title and escrow fees; and

(C) payment of the remaining sale proceeds to Merrill Lynch Business  
Financial Services Inc. (hereafter "Merrill Lynch"), holder of a first deed of trust  
on the Property which secures currently outstanding amounts owed by Debtor to  
Merrill Lynch well in excess of \$3 Million.

(6) In the alternative, authorizing sale of the Property to a third-person who  
submits a higher and better bid, taking into consideration both the purchase price, the  
terms of sale, and the desirability of closing escrow quickly.

The Motion is made on the grounds that the above-described Agreement, sale, Order of  
Court, payments, and related matters are in the best interest of the estate and all interested  
parties.

1 The Motion is based on this document, the separate, full Motion with its attached  
2 Memorandum of Points and Authorities, supporting Declarations and exhibits, and upon all  
3 pleadings, papers and records on file with the Court and such other evidence, oral or  
4 documentary, as may be presented to the Court in connection with this the Motion and the  
5 hearing hereon.

6 The foregoing brief summary is not a complete reiteration of the entire moving papers.  
7 Parties in interest are cautioned to review the above-described moving papers for further  
8 important details and provisions, all of which may be viewed at, or a copy obtained from the  
9 Clerk of the United States Bankruptcy Court, located at 411 West Fourth Street, Suite 2030,  
10 Santa Ana, California, 92701, or by contacting the Trustee's undersigned counsel at the  
11 address shown on the upper left corner of the first page of this document.

12 **IF YOU DO NOT OPPOSE THE MOTION**, you need take no further action.

13 **IF YOU WISH TO OPPOSE THE MOTION**, pursuant to Local Bankruptcy Rule 9013-  
14 1(a)(7), your objections must be in writing and must be filed with the Bankruptcy Court Clerk  
15 (with a duplicate copy) at the United States Courthouse, located at 411 West Fourth Street,  
16 Suite 2030, Santa Ana, California 92701, and must be served upon Debtor's counsel,  
17 Christopher A. Minier, at the Law Offices of Todd C. Ringstad, located at 2030 Main Street,  
18 Suite 1200, Irvine, California, 92614, and on the Office of the United States Trustee, located at  
19 411 West Fourth Street, Suite 9041, Santa Ana, California, 92701, not less than fourteen (14)  
20 days prior to the scheduled Court hearing.

21 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(a)(7)(A) further  
22 provides that any opposition is to consist of "(1) A brief, but complete, written  
23 statement of all reasons in opposition thereto . . . and answering memorandum of points and  
24 authorities, declarations and copies of all photographs and documentary evidence on which the  
25 responding party intends to rely . . . ."

### 26 **SUBMISSION OF OVERBIDS**

27 To ensure that the sale of the Property is fair and reasonable, and in order to obtain the  
28 highest and best price for the Property, the Debtor proposes that the sale of the Property to the  
above-described Buyer be subject to overbidding. If you wish to submit a competing bid for the  
purchase of the Property, you must attend the Court hearing and follow the overbidding  
procedure set forth below, which Debtor is asking the Court to approve in taking any overbids.

The Debtor is requesting that the Court permit any person or entity to bid at the hearing  
on this motion, with a required initial minimum bid of \$50,000.00 above the currently  
proposed (adjusted) purchase price of \$2,314,524.00<sup>1</sup>. In other words, the first bid must be at  
least \$2,364,524.00 (with no subsequent adjustments of any kind for allegedly needed

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<sup>1</sup> This "adjusted purchase price" represents the \$2,342,400.00 purchase price specified in the Agreement, less total  
repair credits of \$27,876.00 that Debtor has agreed to grant the Buyer.

1 repairs, deferred maintenance, or for any other reason). The next subsequent bid must be in  
2 the minimum amount of \$5,476.00 (making the total sale price \$2,370,000.00). Each  
3 subsequent bid must be in increments of at least \$5,000.00 until the Property is sold to the  
4 highest "Qualified Bidder" (as defined below) upon terms which are the same or better than  
5 those terms proposed for the sale of the Property to Debtor's proposed Buyer, i.e., terms that  
6 are the same or better than those terms contained in Exhibit "1" to the Motion.

7 Unless otherwise authorized by the Court, Debtor is requesting that only "Qualified  
8 Bidders" be able to submit an overbid at the hearing on the Motion. A "Qualified Bidder" is one  
9 who, at or before the hearing on this Motion, furnishes to Debtor's undersigned counsel, or to  
10 Grubb & Ellis, any and all of the bidders:

- 11 (i) Year to date corporate and/or personal income statement and balance sheets;
- 12 (ii) 2003, 2002, and 2001 corporate and/or personal federal and state tax  
13 returns;
- 14 (iii) Proof of ability to provide a down payment of at least \$250,000 if the bidder  
15 will be using SBA financing will be used, or a down payment of at least \$850,000 if the  
16 bidder will be using conventional financing (or other sufficient proof of the bidder's  
17 ability to pay any necessary down payment and / or the Property's purchase price);
- 18 (iv) Preliminary loan approval from a lender if financing is to be used to pay any  
19 part of the Property's purchase price; and
- 20 (v) A brief description of the bidder's business and proposed use for the Property.

21 At or before the hearing on the Motion, any overbidder must present to Debtor's counsel  
22 an initial down payment of at least \$100,000 in cash or certified funds (payable to "Lambco  
23 Engineering, LLC"), with \$35,000 of this down payment becoming non-refundable immediately  
24 upon the Court choosing the bidder as the successful purchaser of the Property, and the  
25 additional \$65,000 becoming non-refundable upon the expiration of a 30 day contingency  
26 period.

27 Any successful overbidder chosen as the purchaser of the Property must close escrow  
28 within 60 days of the date of the hearing on the Motion, or the Debtor may consummate the  
sale with the next highest bidder.

If you would like more information about the Property, or would like to view the Property,  
contact the Debtor's real estate agents: (1) Mr. David L. Kluver at Grubb & Ellis, located at  
4675 MacArthur Court, Suite 1600, Newport Beach, CA 92660, telephone (949) 608-2055;  
and/or Mr. Garrett M. Sholer at Grubb & Ellis, 4675 MacArthur Court, Suite 1600, Newport  
Beach, CA 92660, telephone (949) 608-2026.

LAW OFFICES OF TODD C. RINGSTAD

Date: March 29, 2004

By:   
Christopher A. Minier,  
Attorneys for Lambco Engineering, LLC,  
Debtor and Debtor-in Possession

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2030 Main Street, Suite 1200, Irvine, California 92614.

On April 6, 2004, I served the foregoing document described as **NOTICE OF SALE OF ESTATE PROPERTY** on the interested parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows or as otherwise indicated:

SEE ATTACHED SERVICE LIST

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

( ) By personal service, I caused such envelope to be delivered by hand to the above \*addressee(s).

( ) By overnight courier, I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above \*\*addressee(s).

( ) By facsimile machine I caused the above-referenced document(s) to be transmitted to the \*above-named person(s) at the above telecopier numbers .

I declare that I am employed in the office of a member of the bar of this court at whose direction this filing and declaration was made.

Executed on April 6, 2004, at Irvine California

  
Becky J. Metzner

**SERVICE LIST**

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Office of the United States Trustee  
411 West Fourth Street  
Suite 9041  
Santa Ana, CA 92701-8000

Lambco Engineering, LLC  
1170 East Fruit Street  
Santa Ana, CA 92701