

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Aram Ordubegian (SBN 185142) Andy S. Kong (SBN 243933) ARENT FOX LLP 555 West Fifth Street, 48th Floor Los Angeles, CA 90013-1065 Telephone: 213.629.7400 Facsimile: 213.629.7401 Email: aram.ordubegian@arentfox.com andy.kong@arentfox.com  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> General Bankruptcy Counsel for Chapter 7 Trustee, Howard M. Ehrenberg	FOR COURT USE ONLY
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re:  <b>FRANK J. SMITH,</b>   Debtor(s).	CASE NO.: 2:11-bk-54945-ER CHAPTER: 7   <p style="text-align: center;"><b>NOTICE OF SALE OF ESTATE PROPERTY</b></p>
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<b>Sale Date:</b> April 24, 2013	<b>Time:</b> 10:00 am
<b>Location:</b> Courtroom 1568, U.S. Bankruptcy Court, 255 E. Temple Street, Los Angeles, CA 90012	

**Type of Sale:**  Public  Private **Last date to file objections:** April 10, 2013

**Description of property to be sold:** Residential Real Property located at 185 Sierra Dr. #204, Walnut Creek, CA 94596

**Terms and conditions of sale:** Free and clear of liens pursuant to Bankruptcy Code §§ 363(b) and (f) and subject to overbids. Total purchase price is \$250,000 subject to overbids.

**Proposed sale price:** \$250,000

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

**Overbid procedure (if any):** Attached hereto as Exhibit 1.

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

Property is to be sold free and clear of liens or other interests. Qualified bidders may bid at the auction sale on:

Date: April 23, 2013

Time: 1:00 p.m.

Location: 185 Sierra Dr. #204

Walnut Creek, CA 94596

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**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

Vickie Carano, Realtor

KELLER WILLIAMS REALTY

100 Pringle Ave., Suite 100

Walnut Creek, 94596

Telephone: 925.934.2900 (office)

925.389.1328 (cell)

Facsimile: 925.954.3204

Email: Vickie@VickieCarano.com

Date: April 3, 2013

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This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

# EXHIBIT 1

### **Bidding Procedures**

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the prospective sale (the "Sale") by Howard M. Ehrenberg, the duly appointed chapter 7 trustee (the "Seller") of the Frank J. Smith bankruptcy estate (the "Estate") (Bankruptcy Case No. 2:11-bk-54945-ER, of the real property commonly known as 185 Sierra Dr. #204, Walnut Creek, CA 94596 and legally described in Exhibit "A" attached hereto (the "Property") and all of Seller's and the Estate's rights appurtenant thereto.

Seller has currently entered into an agreement for the purchase and sale of the Property to Xiao Jun Zhang and Gen Chen ("Buyer") (the "Sale Agreement"). Seller will seek entry of an order by the United States Bankruptcy Court (the "Bankruptcy Court"), among other things, authorizing and approving the Sale to Buyer or to a Qualified Overbidder (as hereinafter defined) which the Bankruptcy Court may determine to have made the highest or otherwise best offer to purchase the Property (the "Successful Over-Bidder(s)").

### **The Bidding Process**

Seller shall (i) determine whether any person is a Qualified Overbidder, (ii) coordinate the efforts of Qualified Overbidders in conducting their respective due diligence investigations regarding the Property, (iii) receive offers from Qualified Overbidders, and (iv) negotiate any offer made to purchase the Property (collectively, the "Bidding Process"). Any person who wishes to participate in the Bidding Process must be a Qualified Overbidder. Neither Seller nor his representatives shall be obligated to furnish any information of any kind whatsoever related to the Property to any person who is not a Qualified Overbidder. Seller shall have the right to adopt such other rules for the Bidding Process which, in his reasonable judgment, will better promote the goals of the Bidding Process and which are not inconsistent with any of the other provisions hereof, Title 11 of the United States Code, or of any Bankruptcy Court order.

### **Participation-Bid Requirements**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process, each person (a "Potential Bidder") must deliver to Seller the following documents (the "Required Bid Documents") at least two (2) business days prior to the Auction (defined below), unless Seller waives in writing any/all of these requirements:

(a) Current financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Property, current financial statements or other financial information of the equity holder(s) of the Potential Bidder, or such other form of financial disclosure acceptable to Seller and his advisors, demonstrating such Potential Bidder's ability to close the proposed transaction;

(b) A letter stating that the Potential Bidder's offer is irrevocable until the earlier of (x) two (2) business days after the Property has been disposed of pursuant to these Bidding Procedures, or (y) thirty (30) days after the Sale Hearing (defined below);

(c) An executed copy of a Residential Purchase Agreement and Joint Escrow Instructions: (i) acceptable in form to Seller (the "Overbid Purchase Agreement"), (ii) clearly marked to show any changes from the terms of the Sale Agreement, or (iii) on the same or more favorable terms as the Sale Agreement; provided, however, the purchase price in such proposed Overbid Purchase Agreement must be at least \$260,000.00;

(d) A good faith deposit (the "Good Faith Deposit") in the form of a certified check (or other form acceptable to Seller in his sole discretion) payable to the order of Seller (or such other party as Seller may determine to hold such funds in escrow) in an amount equal to \$7,500.00; and;

(e) Written evidence of a commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to Seller in his sole discretion. Seller will consider a bid only if the bid is on terms that are not conditioned on obtaining financing.

A Qualified Overbidder is a Potential Bidder that delivers the documents described in subparagraphs (a), (b), (c), (d), and (e) above, whose financial information demonstrates the financial capability of the Potential Bidder to consummate the Sale, and that Seller determines is reasonably likely (based on the availability of financing, experience and other considerations) to submit a *bona fide* offer and to be able to consummate the Sale if selected as the Successful Over-Bidder(s).

Within two (2) business days after a Potential Bidder delivers all of the materials required by subparagraphs (a), (b), (c), (d), and (e) above, Seller shall determine, and shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Overbidder.

The Buyer's offer set forth in the Sale Agreement and any overbid by Buyer is also a "Qualified Bid" herein.

#### **Due Diligence**

Seller may afford each Qualified Overbidder reasonable due diligence access to the Property. Seller will designate an appropriate representative to coordinate all reasonable requests for additional information and due diligence access for such bidders. Seller shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined herein). Neither Seller nor any of his representatives are obligated to furnish any information relating to the Property to any person except to a Qualified Overbidder who provides the Required Bid Documents. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Property provided by anyone other than Seller or his representatives.

#### **Bid Deadline**

A Qualified Overbidder that desires to make a bid shall deliver a written copy of his/her/its bid to Seller's counsel, Andy Kong, Esq. of Arent Fox LLP at 555 West Fifth Street, 48<sup>th</sup> Floor, Los Angeles, California 90013 (fax: 213-629-7401; email: [andy.kong@arentfox.com](mailto:andy.kong@arentfox.com)) **on or before 4:00 p.m. PDT on April 19, 2013**. Seller may extend such deadline in his sole discretion (such deadline, including such extension, the "Bid Deadline"). In addition to the above-referenced extension, Seller may extend the Bid Deadline once or successively, but he is not obligated to do so.

#### **"As Is, Where Is"**

The Sale of the Property shall be on an "As Is, Where Is" basis and without representations or warranties of any kind, nature, or description by Seller, his agents or the Estate except to the extent set forth in the Overbid Purchase Agreement of the Successful Over-Bidder as accepted by Seller and approved by the Bankruptcy Court. Except as otherwise provided in the Sale Agreement or an Overbid Purchase Agreement acceptable to Seller, and approved by the Bankruptcy Court, all Seller's and the Estate's rights, title and interests in and to the Property shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims,

charges, options and interests thereon and there against (collectively, the “Interests”) in accordance with 11 U.S.C. §§ 363 and 365, with such Interests to attach to the net proceeds of the Sale of the Property.

Each Potential Bidder shall be deemed to acknowledge and represent he/she/it has had an opportunity to inspect and examine the Property and to conduct any and all due diligence regarding the Property prior to making his/her/its offer; that he/she/it has relied solely upon his/her/its own independent review, investigation and/or inspection of any documents and/or assets in making his/her/its bid; and that he/she/it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction (as defined below), except as expressly stated in these Bidding Procedures or, as to the Successful Over-Bidder, the Sale Agreement or the Overbid Purchase Agreement.

### **Sale Hearing and Auction**

After all Qualified Bids have been received, Seller shall conduct an auction (the “Auction”) for the Property. Such Auction shall take place at the Property on **April 23, 2013, commencing at 1:00 p.m.** Only a Qualified Overbidder who has submitted a Qualified Bid will be eligible to participate at the Auction. At such Auction, Buyer and Qualified Overbidders will be permitted to increase their bids. Based upon the terms of the Qualified Bids received, the level of interest expressed as to the Property and such other information as Seller determines is relevant, Seller, after reasonable efforts to consult with interested parties, shall conduct an Auction in the manner designed to result in the highest or otherwise best offer for the Property including, but not limited to (i) setting subsequent bid amounts in \$5,000.00 increments or such other amounts in the Seller’s sole discretion provided however, that the initial overbid by a Qualified Bidder must be \$260,000.00 and (ii) providing for such additional procedural rules that Seller determines to be reasonable under the circumstances for conducting the Auction.

Upon conclusion of the Auction, Seller shall (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale and (ii) identify the highest and otherwise best offer (the “Successful Over-Bid”). At the Sale Hearing, Seller shall present to the Bankruptcy Court for approval, the Successful Over-Bid and any backup bids. Subject to Bankruptcy Court approval, Seller may adopt rules for the Bidding Process that are not inconsistent with any of the provisions of the Bankruptcy Code, Bankruptcy Rules, any Bankruptcy Court order, or these Bidding Procedures.

The sale hearing (the “Sale Hearing”) shall take place following the Auction on **April 24, 2013 at 10:00 a.m.** at the Bankruptcy Court. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date of the Sale Hearing. At such Sale Hearing, Seller shall present the Successful Over-Bid to the Bankruptcy Court for approval. Following the Sale Hearing approving the Sale of the Property to a Successful Over-Bidder, if such Successful Over-Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Over-Bidder, (a) he/she/it will forfeit his/her/its Good Faith Deposit to Seller and Seller may pursue any and all of his options at law and in equity with respect to such breach and (b) the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be deemed to be the Successful Over-Bid and Seller shall be authorized to effectuate such sale without further order of the Bankruptcy Court or (c) Seller may reschedule for a later date and time, another auction for the Property.

### **Acceptance of Qualified Bids**

Seller presently intends to sell the Property to Buyer or the highest or otherwise best Qualified Overbidder. Seller's presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute Seller's acceptance of such bid. Seller will be deemed to have accepted a bid only when the bid has been approved by an order of the Bankruptcy Court.

### **Return of Good Faith Deposit**

Within five (5) business days after the entry by the Bankruptcy Court approving the Sale of the Property to the Successful Over-Bidder, any Good Faith Deposits submitted by Qualified Bidders shall be returned, along with interest accrued thereon, except for the Good Faith Deposit of the Successful Over-Bidder (and except with respect to any Qualified Bidder willing to serve as a back-up bidder), in which case the Good Faith Deposit will be applied to the purchase price for the Property, and except with respect to any bidder that forfeits his/her/its Good Faith Deposit. In the event a back-up bidder is selected and agrees to be designated as such, that Qualified Bidder's Good Faith Deposit shall continue to be held until the time the sale to the Successful Over-Bidder closes or the back-up bidder becomes the Successful Over-Bidder, at which time the Good Faith Deposit will be applied to the final purchase price.

### **Modifications**

Seller may (a) determine, in his business judgment, which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before the entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that, in Seller's reasonable discretion is (i) inadequate or insufficient, (ii) not in conformity with the conditions of sale, or (iii) contrary to the best interests of Seller, the Estate and/or its creditors. At or before the Sale Hearing, Seller may impose such other terms and conditions as he may determine to be in the best interest of Estate, its creditors and/or other parties in interest, provided that any such other terms or conditions are approved by the Bankruptcy Court.

**EXHIBIT A  
TO EXHIBIT 1**

## **EXHIBIT A**

The land referred to is situated in the County of Contra Costa, City of Walnut Creek, State of California, and is described as follows:

**A CONDOMINIUM COMPRISED OF:**

**PARCEL A:**

Unit 22, TRACT 5396, "GREENWOOD for Condominium Purposes", filed March 11, 1980 in Book 235 of Maps at Page 31, Contra Costa County Records, as said Unit is shown on the "SUBDIVISION 5396 Condominium Plan, Diagrammatic Floor Plans", Exhibit "B" of the Declaration of Covenants, Conditions and Restrictions of GREENWOOD Condominiums, recorded April 2, 1980 in Book 9798, Page 463, Contra Costa County Official Records, as Amended by an "Amendment to Declaration of Covenants, Conditions and Restrictions of GREENWOOD Condominiums" executed by Grantor on June 26, 1980 and recorded in the Office of the Recorder of Contra Costa County, State of California on July 29, 1980 in Book 9930, Page 570, Official Records.

EXCEPTING THEREFROM any portion of the Common Area lying within said Unit.

**PARCEL B:**

An undivided .3547 percent interest, as Tenants-in-Common, in and to the Common Area, as shown on the Plan, subject to the Provisions of the Restrictions.

**PARCEL C:**

TOGETHER WITH the following appurtenant Easements:

1. - Non-exclusive Easements for support of said Parcel A through the Common Area and for repair of said Parcel A through all other Units and through the Common Area.
2. - An exclusive Easement to use the appurtenant Balcony/Patio as shown on the Plan.
3. - An exclusive Easement to use Parking Space No. PS 313 and Storage Space S 40, as shown on the Plan.

**PARCEL D:**

TOGETHER WITH non-exclusive Easements appurtenant to the Unit described in Parcel A above, for ingress and egress, utility services, support, encroachments, maintenance and repair, over and cross and the Common Area as defined in the Declaration.

APN: 178-470-022

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
Arent Fox LLP, Gas Company Tower, 555 West Fifth Street, 48th Floor, Los Angeles, CA 90013.

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* **April 3, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On *(date)* **April 3, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

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

April 3, 2013  
*Date*

MANDI SANDSTROM  
*Printed Name*

*/s/ Mandi Sandstrom*  
*Signature*

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This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Adam J Biehl on behalf of Interested Party Courtesy NEF  
BR-ECF@BaileyCavalieri.com, BR-ECF@BaileyCavalieri.com

Howard M Ehrenberg (TR)  
ehrenbergtrustee@sulmeyerlaw.com, ca25@ecfbis.com;C123@ecfbis.com

Todd S Garan on behalf of Creditor BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME  
ch11ecf@piteduncan.com

Arnold L Graff on behalf of Interested Party Courtesy NEF  
ecfcacb@piteduncan.com

John H Kim on behalf of Creditor Wells Fargo Bank N.A.  
jkim@cookseylaw.com

Andy Kong on behalf of Trustee Howard Ehrenberg, Chapter 7 Trustee  
Kong.Andy@ArentFox.com

Dare Law on behalf of U.S. Trustee United States Trustee (LA)  
dare.law@usdoj.gov

Aram Ordubegian on behalf of Trustee Howard Ehrenberg, Chapter 7 Trustee  
ordubegian.aram@arentfox.com

Joshua B Rittenberg on behalf of Creditor Bridgeview Commercial Finance, Inc.  
jrittenberg@muchshelist.com, lromines@muchshelist.com

Ramesh Singh on behalf of Interested Party Courtesy NEF  
claims@recoverycorp.com

Michael W Tan on behalf of Creditor UNITED STATES OF AMERICA, IRS  
michael.w.tan@irs.counsel.treas.gov

Jennifer R Tullius on behalf of Creditor OMP Azusa Cyn, LLC  
jtullius@tulliuslaw.com

United States Trustee (LA)  
ustpregion16.la.ecf@usdoj.gov

Robert M Yaspan on behalf of Debtor Frank Smith  
court@yaspanlaw.com, tmenachian@yaspanlaw.com

**2. SERVED BY UNITED STATES MAIL:**

**Judge**

Honorable Ernest M. Robles  
United States Bankruptcy Court  
255 E. Temple Street, Suite 1560  
Los Angeles, CA 90012

**U.S. Trustee**

Dare Law  
United States Trustee  
725 South Figueroa Street, 26th Floor  
Los Angeles, CA 90017

**Debtor**

Frank J. Smith  
4850 Azusa Canyon Road  
Irwinale, CA 91704

**Request For Special Notice**

Sedacca Accountancy Corporation  
11661 San Vicente Blvd Ste 609  
Los Angeles, CA 90049

Steven E Trabish  
4850 Azusa Canyon Road  
Irwindale, CA 91706

**Buyer**

Xiaojun Zhang  
1250 Walker Ave., #56  
Walnut Creek, CA 94596

**20 Largest Creditors**

James Griffen Esq.  
Three First Natural Plaza  
70 West Madison St., Suite 4500  
Chicago IL 60602

Thomas G. Amon, Esq.  
250 West 57th Street, Suite 1316  
New York, NY 10107

Options in Home Care  
c/o Aaron R. Salo Esq.  
20955 Pathfinder Rd., Suite 100  
Diamond Bar, CA 91765

William A. Klepperman  
11355 West Olympic Blvd., Suite 100  
Los Angeles, CA 90064

John McGuire  
5112 Baldwin Park Blvd.  
Los Angeles, CA 90064

Lucille Dennis  
2115 Stratford  
La Verne, CA 91750

Wells Fargo Bank  
350 Colorado Blvd, Suite 390  
Pasadena, CA 91105

The Sandown Fund LP  
708 Third Street, Suite 2500  
New York, NY 10017

Scope Aircraft Finance  
140 East Town Street, Suite 1400  
Columbus, OH 43215

**Secured Creditors**

Bank of America  
ATTN: Correspondence Unit  
CA6-919-01-41  
PO Box 5170  
Simi Valley, CA 93062

Bridgeview Bank Group  
7940 S. Harlam Ave  
Budgeview, IL 06455

Chase Bank  
Mail Code: 01-14-7302  
P.O. Box 24696  
Columbus, OH 43224-0696

Wells Fargo Bank  
350 Colorado Blvd Suite 390  
Pasadena, CA 91105

**Federal and State Government Units**

Internal Revenue Service (IRS)  
Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Franchise Tax Board  
PO Box 1673  
Sacramento, CA 95812-1673

Internal Revenue Service  
Centralized Insolvency Operations  
600 Arch Street  
Philadelphia PA 19106

Los Angeles County Tax Collector  
P. O. Box 54110  
Los Angeles, CA 90051-0110

Securities Exchange Commission  
5670 Wilshire Boulevard, 11th Floor  
Los Angeles, CA 90036

LA County Tax Collector  
P.O. Box 54088  
Los Angeles, CA 90054-0088

Employment Development Department  
Bankruptcy Group MIC 92E  
P. O. Box 826880  
Sacramento, CA 94280-0001

Contra Costa County Treasurer Tax Collector  
Attn Eric Moe  
P.O. Box 967  
Martinez, CA 94553-0096

Franchise Tax Board  
Bankruptcy Section, MS: A-340  
P. O. Box 2952  
Sacramento, CA 95812-2952