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| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Peter J. Mastan, Trustee 550 S. Hope St., Suite 825 Los Angeles, CA 90071 (213) 452-4928 travis@gumportlaw.com | FOR COURT USE ONLY |
| <input checked="" type="checkbox"/> Individual appearing without attorney <input type="checkbox"/> Attorney for: | |

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

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|--|---|
| In re: DIGBY DIEHL and KAY BEYER DIEHL, Debtor(s). | CASE NO.: 2:13-bk-26113-RN CHAPTER: 7 <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p> |
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| | |
|-----------------------|-------|
| Sale Date: 12/05/2013 | Time: |
| Location: | |

Type of Sale: Public Private Last date to file objections: 12/05/2013

Description of property to be sold: _____
(1) 2001 Volvo S60; (2) 2013 Honda Accord; (3) Cash (\$200); (4) Union Bank Checking Acct (\$5,904.35); and
(5) Logix Credit Union Checking Acct (\$1,687.24).

Terms and conditions of sale: "AS IS" and "WHERE IS" basis, subject to all existing encumbrances, liens, claims and restrictions thereon, if any. See attached motion for details.

Proposed sale price: \$ 18,475.00

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): Initial bid of \$18,475. Subsequent bids may be made in \$500 increments. Payment must be tendered at the hearing by cashier's check.

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

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

Peter J. Mastan / Travis Terry
550 S. Hope St., Suite 1765
Los Angeles, CA 90071
(213) 452-4928
travis@gumportlaw.com

Date: 11/18/2013

E-FILED
DATE: 11/18/13

1 PETER J. MASTAN, Trustee
travis@gumportlaw.com
2 550 South Hope Street, Suite 1765
Los Angeles, California 90071-2627
3 Telephone: (213) 452-4928

4 Chapter 7 Trustee of the Bankruptcy
Estate of Digby Diehl and Kay Beyer Diehl
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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re

12 DIGBY DIEHL
13 and
14 KAY BEYER DIEHL,

15 Debtor(s)
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21

Bk. No.: 2:13-bk-26113-RN

CHAPTER 7

NOTICE OF MOTION AND MOTION
TO APPROVE ASSIGNMENT
AGREEMENT BETWEEN THE
TRUSTEE AND DEBTORS FOR THE
TRUSTEE'S ASSIGNMENT OF THE
ESTATE'S INTEREST IN (1) 2001
VOLVO S60; (2) 2013 HONDA
ACCORD; (3) CASH; AND
(4) DISCLOSED CHECKING
ACCOUNTS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF PETER J.
MASTAN; AND EXHIBITS

[No hearing is Requested or Required]

DATE:

TIME:

PLACE:

Courtroom 1645
255 E. Temple Street
Los Angeles, CA 90012
[Judge Richard M. Neiter]

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1 **TO THE DEBTORS, THE OFFICE OF THE UNITED STATES TRUSTEE, ALL**
2 **POTENTIAL CREDITORS OF THE ESTATE, ALL OTHER INTERESTED**
3 **PARTIES; AND COUNSEL OF RECORD:**

4 **NOTICE IS HEREBY GIVEN** that, on November 18, 2013, Peter J. Mastan,
5 Chapter 7 trustee (the "Trustee") of the bankruptcy estate (the "Estate") of Digby Diehl
6 and Kay Beyer Diehl (the "Debtors"), filed a motion (the "Motion") for an order that does
7 each of the following:

8 (1) Approves the Assignment Agreement (the "Agreement") attached as
9 **Exhibit 1.**

10 (2) Authorizes the Trustee to make the assignment of the Estate's interest on an
11 "AS IS" and "WHERE IS" basis, subject to all existing encumbrances, liens, claims and
12 restrictions thereon, if any, in the following scheduled assets (collectively, the
13 "Property"):

- 14 a. 2001 Volvo S60;
- 15 b. 2013 Honda Accord;
- 16 c. Cash in the amount of \$200;
- 17 d. Checking accounts at Union Bank with a balance of \$5,904.35; and
- 18 e. Checking accounts at Logix Credit Union with a balance of
19 \$1,687.24.

20 (3) Determines that the Agreement was made in good faith in an arm's-length
21 transaction and that the assignee of the Estate's interest in the Property (whether the
22 Debtors, or a successful overbidder) are acting in good faith within the meaning of
23 11 U.S.C. § 363(m).

24 (4) Determines that adequate notice of the hearing, if any, on the Motion for
25 approval of the Agreement was given.

26 (5) Authorizes the Trustee to perform the terms of the Agreement and to sign
27 all such documents that are reasonably necessary to perform the Trustee's obligations
28 under the Agreement.

1 (6) Reserves Bankruptcy Court jurisdiction to enforce the Agreement.

2 (7) Approves the following overbid procedure:

3 (a) any initial overbid for an assignment of the Estate's interest in the
4 Property must be in an amount at least \$1,000 greater than the amount to be paid by
5 Debtors under this Agreement plus Debtors' claimed exemptions in the Property (i.e., in
6 an amount not less than \$18,475);

7 (b) any overbid must be received by the Trustee within 17 days after
8 service of this notice;

9 (c) in the event that the Trustee receives an overbid, the Trustee will
10 request a hearing from the Court;

11 (d) in the event that the Trustee receives multiple overbids, any
12 subsequent overbids must be made in Court at the time of the hearing on the Motion and
13 must be made in minimum increments of \$500;

14 (e) any overbid must be accompanied by a certified or cashier's check in
15 the full amount of that bid and the successful overbidder must pay to the Trustee by
16 certified or cashier's check the full purchase price at the time of the hearing on the
17 Motion;

18 (f) any assignment from overbid will be "AS IS", "WHERE IS", subject
19 to all claims, liens, encumbrances, and other interests, with all faults and without any
20 representation or warranty whatsoever, whether express or implied, including without
21 limitation, without warranty as to merchantability, or fitness for a particular purpose; and

22 (g) the Trustee may exercise his discretion to reject a particular overbid
23 that is not both higher and better (based upon all of the circumstances) than the Debtors'
24 offer or the offer of other overbidders.

25 (8) Authorizes the Trustee to close the proposed assignment of the Estate's
26 interest in the Property to the Debtors (or the successful overbidder) unless an appeal of
27 the order authorizing that assignment is timely filed and a stay pending appeal is entered.

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1 (9) Waives the 14-day stay of orders for the disposition of Estate property set
2 forth in Fed.R.Bankr.P. 6004(h).

3 **NOTICE IS FURTHER GIVEN** that in the event that no overbid or objection is
4 received by the Trustee within 17 days after service of the Notice of Motion, the Trustee
5 will submit a declaration of non-opposition to the Court, and lodge an order which seeks
6 the relief set forth above.

7 **NOTICE IS FURTHER GIVEN** that the Motion is made pursuant to 11 U.S.C.
8 §§ 363(b) and 363(m), Federal Rules of Bankruptcy Procedure 2002 and 6004, and Local
9 Bankruptcy Rules 6004-1 and 9013-1 on the grounds that the proposed assignment is in
10 the best interests of the Estate in that it will maximize the value to unsecured creditors of
11 the Estate's interests in the Property.

12 **NOTICE IS FURTHER GIVEN** that the Motion is based on (a) this Notice of
13 Motion; (b) the attached Memorandum of Points and Authorities, Declaration of Peter J.
14 Mastan, and Exhibits; (c) the concurrently filed Notice of Filing of the Motion; (d) the
15 pleadings on file with the Court of which the Court is requested to take judicial notice;
16 and (e) such further evidence that may be properly submitted prior to or at any hearing on
17 the Motion.

18 **NOTICE IS FURTHER GIVEN that, pursuant to Local Bankruptcy Rule**
19 **9013-1(f), any opposition to the Motion must be in writing; must be filed with the**
20 **Court and served upon the Trustee, the Office of the United States Trustee, and the**
21 **Debtors at the addresses set forth below not later than 17 days after service of the**
22 **Notice; and must include a complete written statement of all reasons in opposition**
23 **thereto or in support or joinder thereof, declarations and copies of all photographs**
24 **and documentary evidence on which the responding party intends to rely, and any**
25 **responding memorandum of points and authorities:**

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1 **For Filing With the Court**

2 Clerk's Office
3 United States Bankruptcy Court
4 255 E. Temple Street
5 Los Angeles, California 90012

**For Service on Richard M. Neiter,
Bankruptcy Judge**

Hon. Richard M. Neiter
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal
Building and Courthouse
255 E. Temple Street, Suite 1652
Los Angeles, CA 90012

6 **For Service on the Trustee**

7 Peter J. Mastan, Trustee
8 550 South Hope Street, Suite 825
9 Los Angeles, California 90071-2627

For Service on Office of U.S. Trustee

Office of the U.S. Trustee
Ernst & Young Plaza
725 South Figueroa Street, 26th Floor
Los Angeles, California 90017

9 **For Service on the Debtors**

10 Helen R. Frazer, Esq.
11 Atkinson Andelson Loya Ruud & Romo
12 12800 Center Court Dr., Ste 300
13 Cerritos, CA 90703

14 and

15 Digby Diehl
16 Kay Beyer Diehl
17 788 S. Lake Ave.
18 Pasadena, CA 91106

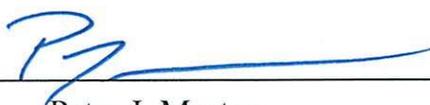
19 **NOTICE IS FURTHER GIVEN that, pursuant to Local Bankruptcy Rule
20 9013-1(h), failure to timely file and serve an objection may be deemed by the Court
21 to be consent to granting the Motion.**

22 DATED: November 18, 2013

Respectfully submitted,

CHAPTER 7 TRUSTEE

23
24 By: _____


Peter J. Mastan
Chapter 7 Trustee of the
Bankruptcy Estate of Digby Diehl
and Kay Beyer Diehl

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Peter J. Mastan, Chapter 7 trustee (the “Trustee”) of the bankruptcy estate (the “Estate”) of Digby Diehl and Kay Beyer Diehl (the “Debtors”), submits this Memorandum of Points and Authorities in support of his motion (the “Motion”) for an order that:

(1) Approves the Assignment Agreement (the “Agreement”) attached as **Exhibit 1.**

(2) Authorizes the Trustee to make the assignment of the Estate’s interest on an “AS IS” and “WHERE IS” basis, subject to all existing encumbrances, liens, claims and restrictions thereon, if any, in the following scheduled assets (collectively, the “Property”):

- a. 2001 Volvo S60 (the “Volvo”);
- b. 2013 Honda Accord (the “Honda”);
- c. Cash in the amount of \$200;
- d. Checking accounts at Union Bank with a confirmed balance of \$5,904.35; and
- e. Checking accounts at Logix Credit Union with a confirmed balance of \$1,687.24.

(3) Determines that the Agreement was made in good faith in an arm’s-length transaction and that the assignee of the Estate’s interest in the Property (whether the Debtors, or a successful overbidder) are acting in good faith within the meaning of 11 U.S.C. § 363(m).

(4) Determines that adequate notice of the hearing, if any, on the Motion for approval of the Agreement was given.

(5) Authorizes the Trustee to perform the terms of the Agreement and to sign all such documents that are reasonably necessary to perform the Trustee’s obligations under the Agreement.

1 (6) Reserves Bankruptcy Court jurisdiction to enforce the Agreement.

2 (7) Approves the following overbid procedure:

3 (a) any initial overbid for an assignment of the Estate's interest in the
4 Property must be in an amount at least \$1,000 greater than the amount to be paid by
5 Debtors under this Agreement plus Debtors' claimed exemptions in the Property (i.e., in
6 an amount not less than \$18,475);

7 (b) any overbid must be received by the Trustee within 17 days after
8 service of this notice;

9 (c) in the event that the Trustee receives an overbid, the Trustee will
10 request a hearing from the Court;

11 (d) in the event that the Trustee receives multiple overbids, any
12 subsequent overbids must be made in Court at the time of the hearing on the Motion and
13 must be made in minimum increments of \$500;

14 (e) any overbid must be accompanied by a certified or cashier's check in
15 the full amount of that bid and the successful overbidder must pay to the Trustee by
16 certified or cashier's check the full purchase price at the time of the hearing on the
17 Motion;

18 (f) any assignment from overbid will be "AS IS", "WHERE IS", subject
19 to all claims, liens, encumbrances, and other interests, with all faults and without any
20 representation or warranty whatsoever, whether express or implied, including without
21 limitation, without warranty as to merchantability, or fitness for a particular purpose; and

22 (g) the Trustee may exercise his discretion to reject a particular overbid
23 that is not both higher and better (based upon all of the circumstances) than the Debtors'
24 offer or the offer of other overbidders.

25 (8) Authorizes the Trustee to close the proposed assignment of the Estate's
26 interest in the Property to the Debtors (or the successful overbidder) unless an appeal of
27 the order authorizing that assignment is timely filed and a stay pending appeal is entered.

28 ///

1 (9) Waives the 14-day stay of orders for the disposition of Estate property set
2 forth in Fed.R.Bankr.P. 6004(h).

3 After negotiating with the Debtors, through their counsel, the Trustee agreed to
4 assign the Estate's interest in the Property to the Debtors for a total amount of \$10,000,
5 subject to bankruptcy court approval and overbid. The Trustee has not received any other
6 offers from any other party for the Property. The Trustee has considered the potential fair
7 market value of the Volvo and the Honda (collectively, the "Vehicles"), the scheduled
8 liens against the Vehicles, the Debtors' claimed exemption in the Honda, and the costs of
9 selling the Vehicles on the open market. The Trustee has also considered the amount of
10 cash held in disclosed financial accounts. Based thereon, the Trustee believes that the
11 proposed assignment of the Estate's right, title, and interest in and to the Property to the
12 Debtors for \$10,000 will maximize the value of the Estate's interest in the Property.

13 **II. STATEMENT OF FACTS**

14 **A. Procedural History**

15 On June 20, 2013, the Debtors filed a voluntary petition for relief under Chapter 7
16 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of
17 California. Mastan Decl., ¶ 3(a). The Trustee was appointed to administer the Estate.
18 Mastan Decl., ¶¶ 1, 3(a).

19 **B. The Property**

20 On June 20, 2013, Debtors filed Schedules B, C and D. Mastan Decl., ¶ 3(b),
21 Ex. 2. On August 13, 2013, Debtors amended Schedule B. Mastan Decl., 3(c), Ex. 3.

22 **1. The Volvo**

23 Debtors' amended Schedule B values the Volvo at \$4,500. Ex. 3. Debtors have
24 not claimed any exemptions in the Volvo. Mastan Decl., ¶ 4(a), Ex. 2.

25 **2. The Honda**

26 Debtors' amended Schedule B values the Honda at \$25,000. Mastan Decl., ¶ 4(b),
27 Ex. 3. Debtors claimed exemptions of \$2,900. Mastan Decl., ¶ 4(b), Ex. 2. Schedule D
28 shows secured liens of \$14,000. Mastan Decl., ¶ 4(b), Ex. 2.

1 **3. Cash**

2 Debtors' amended Schedule B shows cash on hand of \$200.00. Mastan Decl.,
3 ¶ 4(c), Ex. 3.

4 **4. Union Bank Checking Accounts** (the "Union Bank Account")

5 Debtors' amended Schedule B shows a balance of \$5,904.35 in the Union Bank
6 Account. Mastan Decl., ¶ 4(d), Ex. 3. Debtors claimed exemptions in the Union Bank
7 Account in the amount of \$4,575, leaving \$1,329.35 as property of the Estate. Mastan
8 Decl., ¶ 4(d), Ex. 2.

9 **5. Logix Credit Union Checking Accounts** (the "Logix Bank
10 Account")

11 Debtors' amended Schedule B shows a balance of \$1,687.24 in the Logix Bank
12 Account. Mastan Decl., ¶ 4(e), Ex. 3. Debtors have no exemptions available to them to
13 exempt the Logix Bank Account, leaving \$1,687.24 as property of the Estate. Mastan
14 Decl., ¶ 4(e), Ex. 2.

15 After the initial examination of the Debtors at their 341(a) meeting of creditors on
16 July 18, 2013, the Trustee negotiated with the Debtors through their counsel for their
17 acquisition of the Estate's right, title, and interest in the Property for \$10,000, subject to
18 Bankruptcy Court approval and overbid. Mastan Decl., ¶ 2, Ex. 1.

19 **III. SUMMARY OF ASSIGNMENT AGREEMENT**

20 Subject to Bankruptcy Court approval and overbid, and on the terms set forth in
21 Exhibit 1, the Trustee intends to assign to the Debtors the Estate's right, title, and interest
22 in and to the Property. The proposed assignment will be on an "AS IS" and "WHERE
23 IS" basis, and subject to all existing liens, if any. In return for the assignment, the
24 Debtors will pay to the Estate \$10,000.

25 *The foregoing is a summary of the proposed assignment. All interested persons*
26 *are encouraged to read the assignment agreement attached hereto as Exhibit 1.*

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1 **IV. THE COURT SHOULD AUTHORIZE THE TRUSTEE TO SELL THE**
2 **ESTATE'S INTEREST IN THE PROPERTY TO THE DEBTORS OR A**
3 **SUCCESSFUL OVERBIDDER**

4 **A. Standards For Approval of Sale Outside the Ordinary Course of**
5 **Business**

6 Bankruptcy code § 704 requires a Chapter 7 Trustee to, among other things,
7 “collect and reduce to money the property of the estate.” See 11 U.S.C. § 704(a)(1).

8 A trustee is empowered to sell the estate's assets out of the ordinary course of
9 business. 11 U.S.C. § 363(b). *In re Ionosphere Clubs, Inc.*, 184 B.R. 648, 653 (S.D.N.Y.
10 1995). Approval of such a sale is within the sound discretion of the Court. *Committee of*
11 *Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2nd
12 Cir. 1983); *In re Baldwin United Corp.*, 43 B.R. 905 (Bankr. S.D. Ohio 1984). The
13 touchstone for granting permission to sell assets outside of the ordinary course of
14 business is the existence of a good business reason. *Stephens Ind., Inc. v. McClung*, 789
15 F.2d 836 (6th Cir. 1986); *Lionel*, 722 F.2d at 1070. *Accord In re Walter*, 83 B.R. 14,
16 19-20, (9th Cir. BAP 1988).

17 In addition to the existence of a sound business reason, other requirements for
18 approval of a sale of assets pursuant to § 363(b) include (1) accurate and reasonable
19 notice of the sale, (2) a fair and reasonable price of the assets sold, and (3) “good faith,”
20 i.e., the absence of any lucrative or undisclosed deals for insiders. *In re Industrial Valley*
21 *Refrigerator and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

22 **B. The Proposed Sale of the Property is Reasonable Under the**
23 **Circumstances**

24 Under the totality of the circumstances, the Trustee's sale of the Estate's right,
25 title, and interest in and to the Property to Debtors for \$10,000 is reasonable and in the
26 best interests of the Estate.

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1 **1. The Sale is Supported by Sound Business Judgment**

2 Bankruptcy courts will often defer to a trustee's business judgment regarding the
3 sale of estate assets, unless such decision is arbitrary and capricious. See *In re Curlew*
4 *Valley Assocs.*, 14 B.R. 506, 511-513 (Bankr. D. Utah 1991) (detailing the historical basis
5 behind the presumption of deference to a trustee's business judgment). Courts generally
6 will not second guess a trustee's business decision where "that conduct involves a
7 business judgment made in good faith, upon a reasonable basis, and within the scope of
8 his authority under the Code." *Id.* at 513-14.

9 The Trustee has sound business reasons for the proposed assignment of the
10 Estate's interest in the Property, and believes that assigning the Estate's interest in the
11 Property to the Debtors for \$10,000 would minimize his administrative costs and
12 maximize the Estate's interest for the benefit of the creditors to the Estate.

13 **a. The Volvo**

14 The Volvo has an approximate value of \$4,500 (i.e., the value claimed by Debtors
15 on their amended Schedule B, which the Trustee does not dispute). Mastan Decl. ¶ 4(a),
16 Ex. 3. There are no scheduled liens against the Volvo and no exemptions claimed by the
17 Debtors for the Volvo. The Trustee estimates costs of sale of approximately \$1,000.
18 Mastan Decl., ¶ 4(a). Taking these factors into account, there is approximately \$3,500 in
19 potential value to the Estate.

20 **b. The Honda**

21 The Honda has an approximate value of \$25,000, according to Debtors' amended
22 Schedule B, which the Trustee does not dispute. Mastan Decl., ¶ 4(b), Ex. 3. Debtors
23 claimed exemption in the Honda is \$2,900. Mastan Decl., ¶ 4(b), Ex. 2. Secured liens
24 against the Honda are \$12,212, according to Debtors' counsel. Mastan Decl. ¶ 4(b).
25 Ex. 2. Taking these factors into account along with approximate costs of sale of
26 approximately \$3,000, the Trustee calculates that there is approximately \$6,888 in
27 potential value to the Estate. Mastan Decl. ¶ 4(b).

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1 **c. Cash, Union Bank Account and Logix Bank Account.**

2 The Debtors' amended Schedule B shows a total of \$7,791.59 when the cash,
3 Union Bank Account and Logix Bank Account are combined. Mastan Decl., ¶ 4(c)-(e),
4 Ex. 3. Debtors claim \$4,575 of this as exempt, which leaves \$3,216.59 as property of the
5 Estate. Mastan Decl., ¶ 4(c)-(e), Ex. 2.

6 **2. There is Adequate Notice of the Proposed Assignment**

7 The Trustee has given notice of the proposed assignment to all scheduled creditors,
8 the Debtors, persons requesting special notice, and other parties in interest. Moreover,
9 the Trustee has concurrently filed with the Court a "Notice of Sale of Estate Property" so
10 that the assignment, and the right to overbid on that assignment, is included on the
11 Bankruptcy Court's website.

12 **3. The Sale Price is Fair and Reasonable**

13 The Trustee negotiated the terms of the Assignment Agreement with the Debtors,
14 through their counsel, in order to obtain a reasonable value for the Estate's interest in the
15 Property. Given the Debtors' values of the Vehicles and balances of the bank accounts
16 and cash held by the Debtors, Debtors' claimed exemptions in the Honda and the Union
17 Bank Account, scheduled liens against the Honda, and taking into account costs of sale
18 and administration of the Property, the sale price is fair and reasonable. Mastan Decl. ¶ 5.

19 Additionally, the Trustee's assignment of the Property is subject to overbid and
20 notice of the assignment is being included in the Bankruptcy Court's website advertising
21 bankruptcy court sales. Accordingly, the proposed assignment will be subjected to the
22 market.

23 **4. The Sale was Negotiated in Good Faith**

24 The Trustee wishes to ensure the finality and reliability of the assignment of the
25 Estate's interest in the Property, by facilitating the consummation of the transaction even
26 in the event of an appeal. For this reason, the Trustee seeks a finding of good faith under
27 the provisions of Section 363(m) of the Bankruptcy Code.

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1 Although the Bankruptcy Code does not define “good faith,” the Court of Appeals
2 for the Ninth Circuit has held that for purposes of § 363(m), “a ‘good faith purchaser’ is
3 one who buys ‘in good faith’ and ‘for value.’” *Ewell v. Diebert (In re Ewell)*, 958 F.2d
4 276, 281 (9th Cir. 1992) (citations omitted). Conversely, a ‘lack of good faith’ is shown
5 by ‘fraud, collusion between the purchaser and the trustee, or an attempt to take grossly
6 unfair advantage of other bidders.” *Id.*

7 As set forth above and in the Mastan Declaration, the Agreement was negotiated at
8 arms’ length with all parties involved acting in good faith. There are no undisclosed side
9 deals or terms, and the Debtors are not related to the Trustee. Mastan Decl. ¶ 2.

10 **5. The Court Should Impose an Overbid Procedure on the Sale**

11 As set forth in the Agreement, the proposed assignment of the Estate’s interest in
12 the Property to the Debtors is subject to overbid. The Trustee is prepared to sell the
13 Estate’s interest in the Property to the qualified bidder making the best all cash bid. The
14 Trustee requests that the Court impose the overbid procedure set forth in the Notice of
15 this Motion in order to ensure that the Estate’s interest in the Property is sold for the best
16 possible price under the circumstances.

17 **V. THE COURT SHOULD WAIVE THE 14-DAY STAY**

18 Fed.R.Bankr.P. 6004(h) provides as follows:

19 An order authorizing the use, sale or lease of property other
20 than cash collateral is stayed until the expiration of 14 days
21 after entry of the order unless the court orders otherwise.

22 The Trustee requests that the Court “order otherwise” here and waive that stay.

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1 **VI. CONCLUSION**

2 For the reasons set forth above, the Court should grant the relief requested in the
3 Notice of this Motion.

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5 DATED: November 18, 2013

Respectfully submitted,

6 CHAPTER 7 TRUSTEE

7
8 By: _____


9 Peter J. Mastan
10 Chapter 7 Trustee of the Bankruptcy
11 Estate of Digby Diehl and Kay Beyer
12 Diehl
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DECLARATION OF PETER J. MASTAN

I, PETER J. MASTAN, declare:

1. I am the Chapter 7 trustee of the bankruptcy estate (the "Estate") of Digby Diehl and Kay Beyer Diehl (the "Debtors"). As a result, except as expressly stated as matters of judicial notice, I have personal knowledge of the facts set forth below and could and would competently testify under oath thereto if requested to do so.

2. Exhibit 1 is an Assignment Agreement (the "Agreement") between the Estate, on the one hand, and the Debtors on the other hand. I negotiated the Agreement as the trustee of the Estate. I have not made, and to the best of my knowledge, nobody else has made, any side deals with the Debtors. To the best of my knowledge, there are no terms to the Agreement except as set forth therein, and I am not related to the Debtors.

3. The Court may take judicial notice of the following:

(a) On June 20, 2013, the Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code and related schedules;

(b) Exhibit 2 is a true and correct copy of Schedules B, C and D as filed by the Debtors.

(c) On August 13, 2013, the Debtors filed an amended Schedule B, a true and correct copy of which is attached as **Exhibit 3**.

4. I believe that it is in the best interest of the Estate to sell the Estate's interest in the following assets of the Estate (collectively, the "Property") to the Debtors for a total of \$10,000, subject to overbid, for the following reasons:

a. 2001 Volvo S60 (the "Volvo"). The Debtors value the Volvo at \$4,500, which I do not dispute. According to Debtors' schedules, there are no secured liens against the Volvo, and no exemptions are claimed. I estimate costs of retrieval, storage and sale of the Volvo to be approximately \$1,000. After taking all of this into consideration, there is approximately \$3,500 in potential value to the Estate.

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: 550 S. Hope Street, Suite 1765, Los Angeles, CA 90071

A true and correct copy of the foregoing document described as: **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 indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(S) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 18, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addresses indicated below:

- **Helen R Frazer** hfrazer@aalrr.com
- **Peter J Mastan (TR)** pmastan@gumportlaw.com, pmastan@ecf.epiqsystems.com
- **Ramesh Singh** claims@recoverycorp.com
- **United States Trustee (LA)** ustregion16.la.ecf@usdoj.gov
- **Kim Viola** bankruptcyonlinefilings@lfcu.com

___ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served): On **November 18, 2013** I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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. *

UNITED STATES BANKRUPTCY COURT

Hon. Richard M. Neiter
United States Bankruptcy Court
Edward R. Roybal Federal
Building and Courthouse
255 E. Temple Street, Suite 1652
Los Angeles, CA 90012

DEBTORS

Digby Diehl
Kay Beyer Diehl
788 S. Lake Ave.
Pasadena, CA 91106

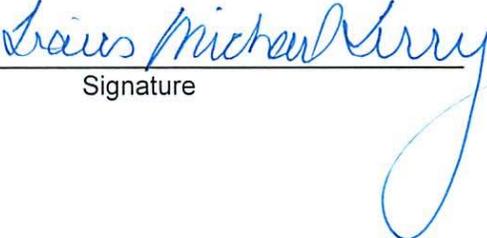
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III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 18, 2013** I served the following person(s) and/or entity(ies) by personal delivery, 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 mailing 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 of America that the foregoing is true and correct.

November 18, 2013 **TRAVIS MICHAEL TERRY**
Date Type name


Signature