

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Leonard M. Shulman – State Bar No. 126349 Elyza P. Eshaghi – Bar No. 293395 SHULMAN HODGES & BASTIAN LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: lshulman@shbllp.com; eeshaghi@shbllp.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Lynda T. Bui, Chapter 7 Trustee	FOR COURT USE ONLY
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION**

In re: ORALIA CASTILLO SMITH, Debtor(s).	CASE NO.: 6:11-bk-46165-MJ CHAPTER: 7 <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p>
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Last Day to Submit Bids: 7/16/2015 at 5:00 pm

Sale Date: Final Bidding/Court Hearing: 7/21/2015	Time: 10:00 am
Location: See Attached.	

Type of Sale: Public Private **Last date to file objections:** 07/07/2015

Description of property to be sold: Real Property: 45615 Holly Court, Indio, CA 92201

Terms and conditions of sale: Free and clear of liens, if any, pursuant to Bankruptcy Code §§ 363(b)(1) and (f)
Purchase price of \$130,000, subject to overbids. See attached for Bid Procedures

Proposed sale price: \$ 130,000.00

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): Potential overbidders must bid an initial amount of at least \$5,000 over the consideration offered by the Buyer, (total of at least \$135,000.) Minium bid increments after that shall be \$1,000.

See attached for more information.

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

July 21, 2015 at 10:00 am

Courtroom 301

U.S. Bankruptcy Court

3420 Twelfth Street

Riverside, CA 92501

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

Elyza P. Eshaghi , Esq.

SHULMAN HODGES & BASTIAN LLP

100 Spectrum Center Drive, Suite 600, Irvine, CA 92618

Telephone: (949) 340-3400

Facsimile: (949) 340-3000

Email: eeshaghi@shbllp.com

Date: 06/30/2015

1 **In re Oralia Castillo Smith**
2 **Case No. 6:11-bk-46165-MJ**

3 **Attachment to Notice of Sale of Estate Property:**

4 **I. INTRODUCTION**

5 Lynda T. Bui, Chapter 7 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
6 Oralia Castillo Smith (“Debtor”), will bring a Motion for Order: (1) Approving the Sale of Real
7 Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1)
8 and (f) and Subject to Overbids, Combined With Notice of Bid Procedures and Request for
9 Approval of the Bid Procedures Utilized; (2) Approving Payment of Real Estate Commission;
10 and (3) Granting Related Relief (“Sale Motion”).

11 The Trustee received an offer from Luis Marta and Rocio Marta (collectively “Buyer”) to
12 purchase the real property located at 45615 Holly Court, Indio, CA 92201 (“Holly Property”) for
13 \$130,000. The Holly Property is a single family residence.

14 The Holly Property has been on the market for over one year. The Buyer’s offer is the
15 result of negotiations between the Trustee and the Buyer for the highest and best offer.
16 Additionally, the sale of the Holly Property will be subject to the Bid Procedures set forth below.
17 The Bid Procedures provide, among other things, that bids must be in writing and be received by
18 the Trustee and the Trustee’s counsel, Shulman Hodges & Bastian LLP to the attention of Elyza
19 Eshaghi at 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618 on or before **5:00 p.m.**
20 **(California time) on July 16, 2015 (three business days before the hearing on the Sale**
21 **Motion. If overbids are received, the final bidding round shall be held at the hearing on the**
22 **Sale Motion on July 21, 2015 at 10:00 a.m. (California Time), or if rescheduled, upon**
23 **telephonic notice to the Buyer and the parties having submitted overbids.** At the final
24 bidding round, the Trustee or her counsel will, in the exercise of her business judgment and
25 subject to Court approval, accept the bidder who has made the highest and best offer to purchase
26 the Holly Property, consistent with the Bid Procedures.

27 Through the sale, the Trustee is expected to generate proceeds of \$117,367.50 for the
28 benefit of the Estate and its creditors. In the event the purchase price is increased by a successful
overbid, the estimated net proceeds will increase.

1 The Court's Claims Register indicates that there have been thirteen general unsecured
2 claims filed totaling \$57,765.59. The Debtor's former spouse also filed a late proof of claim in
3 an "unknown" amount, which amount appears to be based on his community interest and/or
4 equitable distribution in the marital assets during the time that they were married. The Trustee
5 anticipates that if the sale is approved, unsecured creditors are expected to receive a meaningful
6 distribution.

7 Prior to the bankruptcy filing, the Debtor and her former spouse were involved in a six
8 year divorce proceeding, however, no division of their community properties has been made.

9 In summary, the Trustee believes that good cause exists to grant the Sale Motion so the
10 Trustee does not lose this favorable business opportunity.

11 II. RELEVANT FACTS

12 A. Case Commencement

13 The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code
14 on November 29, 2011.

15 Lynda T. Bui is the duly appointed, qualified and acting Chapter 7 trustee for the
16 Debtor's Estate.

17 B. Claims Against the Estate

18 The last day to file proof of claims in this case was May 7, 2012 (government claims
19 were due by July 30, 2012). As of June 30, 2015, the Court's Claims Register indicates that
20 there have been thirteen general unsecured claims filed totaling \$57,765.59, plus a claim with an
21 "unknown" amount filed by the Debtor's former spouse.

22 C. The Holly Property

23 A true and correct copy of a preliminary title report on the Holly Property dated
24 June 1, 2015 is attached as Exhibit 1 to the Declaration of Lynda T. Bui ("Bui Declaration")
25 annexed to the Sale Motion. The preliminary title report indicates the legal description for the
26 Holly Property as follows:¹

27 _____
28 ¹ The legal description for the Holly Property is believed to be accurate but may be
corrected or updated by the title company in the transfer documents as necessary to
complete the proposed sale transaction.

1 THE LAND REFERRED TO HEREIN BELOW IS SITUATED
2 IN THE CITY OF INDIO, COUNTY OF RIVERSIDE,
3 STATE OF CALIFORNIA, AND IS DESCRIBED AS
4 FOLLOWS:

5 LOT 42, OF TRACT 12737-1, IN THE CITY OF INDIO,
6 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER
7 MAP RECORDED IN BOOK 116, PAGES 66 THROUGH 70
8 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY
9 RECORDER OF SAID COUNTY, AND AS AMENDED BY A
10 CERTIFICATE OF CORRECTION RECORDED OCTOBER 7,
11 1987 AS INSTRUMENT NO. 290213, OF OFFICIAL
12 RECORDS.

13 APN: 608-181-042-0

14 Although the Debtor failed to list the Holly Property on her Bankruptcy Schedules, the
15 Holly Property is an asset of the Estate and title is held in the Trustee's name solely in her
16 capacity as the Trustee for the Estate. As background, on August 31, 2012, the Trustee filed a
17 quiet title complaint against the Debtor, Olga Moreno, Ramon Vela Moreno, and Onie Castillo
18 (collectively referred to herein as "Defendants") commencing Adversary Case No. 6:12-ap-
19 01334-MJ ("Quiet Title Action") relating to the fraudulent conveyance of various properties,
20 including the Holly Property. On January 10, 2014, in order to avoid the cost and uncertainty
21 associated with litigating the Quiet Title Action, the Trustee and the Defendants entered into a
22 Settlement Agreement and Mutual General Release ("Settlement Agreement"), which was
23 approved by Court order entered on March 25, 2014 (docket 60). The Defendants defaulted on
24 the Settlement Agreement by failing to make any required settlement payment of \$175,000 to the
25 Trustee. Under the terms of the default provisions of the Settlement Agreement, a Quitclaim
26 Deed for the Holly Property was recorded with the Riverside County Recorder on March 14,
27 2014, (recording number 2014-0095808) transferring title to the Holly Property to the Trustee on
28 behalf of the Estate. A true and correct copy of the recorded Quitclaim Deed is attached as
Exhibit 2 to the Bui Declaration annexed to the Sale Motion.

The Holly Property was not listed in the Debtor's Schedules and the Debtor has not
claimed an exemption in the Holly Property. As indicated on the preliminary title report attached
as **Exhibit 1** to the Bui Declaration annexed to the Sale Motion, the Holly Property is currently
unencumbered and free and clear of any lender liens.

1 **D. The Dissolution Action**

2 The Trustee is advised that the Holly Property is subject to a pending dissolution
3 proceeding involving the Debtor and her former spouse David Smith title *David Smith v. Oralia*
4 *Castillo Smith*; San Diego County Superior Court Case No. D-488799 (“Dissolution Action”).
5 The Dissolution Action had been pending for approximately six years prior to the Petition Date
6 and involves several properties and assets. Through the Dissolution Action, Mr. Smith is
7 attempting to determine what portion of the community property are his. The Dissolution Action
8 involves issues regarding fraudulent transactions, breach of fiduciary duties, and misuse of
9 community funds. There was no final decree in the Dissolution Action identifying and/or
10 dividing all the marital property on the Petition Date.

11 The Trustee disputes any interest of Mr. Smith in the Holly Property. Specifically, the
12 Trustee is not aware that title to the Holly Property was ever recorded in Mr. Smith’s name. The
13 Holly Property was not acquired “during the marriage,” and is therefore the Debtor’s separate
14 property. The parties were separated in 1999, and the Debtor acquired the interest in the Holly
15 Property on September 24, 2004, five years later. Therefore, pursuant to California Family Code
16 Section 771, the Trustee asserts that the Holly Property is the Debtor’s separate property, and not
17 community property.

18 **E. Broker Employment, Marketing Efforts and Basis for Value of the Property**

19 On February 27, 2014, the Trustee filed an application to employ Richard A. Halderman
20 Jr. (docket 57) (“Employment Application”), as her real estate broker (“Broker”) to assist in the
21 marketing for sale of the the Holly Property. On April 7, 2014, the Court entered an order
22 approving the Employment Application (docket 63) (“Employment Order”). The listing
23 agreement with the Broker provides for a real estate commission to be paid of six percent of the
24 sale price.

25 The Holly Property has been on the market for over one year. The Buyer’s offer is the
26 result of negotiations between the Trustee and the Buyer for the highest and best offer.

27 The Estate does not have the funds to obtain a formal written appraisal for the estimated
28 value of the Holly Property. The Broker has more than twenty years of experience in the sale of

1 real property as well as property valuations and is familiar with valuing real property in today's
2 economic environment. The Broker inspected the Holly Property and believed that the Holly
3 Property had fair market value that supported it be listed for sale at \$155,000. The listing price
4 was determined on comparable sales of similar properties in the area.

5 The Trustee believes that the proposed sale, subject to overbids, will be at fair market
6 value. Given that the sale is subject to overbids, it is anticipated that the Trustee will receive the
7 best and highest value for the Holly Property and therefore the proposed sale price is fair and
8 reasonable.

9 **F. Liens and Encumbrances Against the Property and Their Proposed Treatment**
10 **Through the Sale**

11 The following chart sets forth the liens, encumbrances and other interests against the
12 Holly Property as detailed in a preliminary title report attached as **Exhibit 1** to the Bui
13 Declaration annexed to the Sale Motion, and also describes the proposed treatment of the liens,
14 encumbrances and other interests through the sale:

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment</u>
Riverside County Treasurer – Tax Collector	Real property taxes	Property taxes \$1,600 (estimated): ²	Pro-rata outstanding real property taxes will be paid through escrow on the sale transaction.
Coachella Valley Recreation and Park District	Claim lien recorded 8/2/1994, recording number 1994- 305028 Notice of Reassessment recorded 9/4/2001, recording number 2001- 0428770, of	\$413.51	Outstanding amounts due, if any, will be paid through escrow on the sale transaction.

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² Fiscal year 2014-2015, 1st and 2nd installments of \$811.63 each.

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment</u>
David Smith	Pending Court Action re Riverside Superior Court Case No. D-488799, recorded on 6/29/2011, recording number 2011-0287037	\$0.00	<p>The priority, validity and amount of this encumbrance is the subject of a bona fide dispute.</p> <p>Specifically, the Trustee is not aware that title to the Holly Property was ever recorded in Mr. Smith's name. The Holly Property was not acquired "during the marriage," and is therefore the Debtor's separate property. The parties were separated in 1999, and the Debtor acquired the interest in the Holly Property on September 24, 2004, five years later. Therefore, pursuant to California Family Code Section 771, the Holly Property is the Debtor's separate property, and not community property.</p> <p>Furthermore, the Pending Court Action recorded on June 29, 2011 (recording number 2011-0287037) by Mr. Smith relates to the Dissolution Action. The Dissolution Action was not final on the Petition Date. As such, all undivided assets subject to the Dissolution Action are community property under Bankruptcy Code section 541(a) and the Trustee may administer them. Mr. Smith appears to not be entitled to any type of equitable distribution because the Holly Property was purchased after the parties were separated in approximately 1999.</p> <p>As it is subject to a bona fide dispute, pursuant to Bankruptcy Code Sections 363(b) (1) and (f)(4), the Trustee seeks to sell the Holly Property free and clear of the encumbrance with such disputed encumbrance to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with Mr. Smith or further Court order.</p>

1 In summary, all costs of sale, including escrow fees and real estate commissions will be
2 paid at closing. In addition, all outstanding pro-rata real property taxes and city liens including
3 amounts owed to Coachella Valley Recreation and Park District, if any, will be paid through the
4 sale. The encumbrance arising under the Pending Court Action recorded by Mr. Smith will attach
5 to the proceeds of the sale pending further Court order or agreement with Mr. Smith.

6 **G. The Purchase Offer and Summary of the Sale Terms**

7 The Buyer offered to purchase the Holly Property for \$130,000. The purchase price
8 includes a deposit of \$5,000. Attached as **Exhibit 3** to the Bui Declaration annexed to the Sale
9 Motion is a true and correct copy of the Residential Purchase Agreement and Joint Escrow
10 Instructions and related addendum (collectively the “Agreement”).

11 A summary of the Agreement’s terms and highlights are discussed below, but the
12 summary and discussion are not meant to be a complete review of every provision of the
13 Agreement. The Agreement itself is the legally binding document the Trustee seeks approval of
14 and, in the event of any inconsistency between the terms, provisions or effect of the Agreement
15 and the description of it in these pleadings, the Agreement alone shall govern and not these
16 pleadings or the descriptions herein. In summary, the principal terms of the sale are as follows
17 (the Trustee is referred to at times as the “Seller” in the following summary):

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Buyer:	Luis Marta and Rocio Marta 6027 Green Meadow Rd Lakewood, CA 90713
Purchase Price:	\$130,000, subject to the Bid Procedures set forth below. \$5,000 deposit. Balance of purchase price paid at close of escrow.
Escrow Holder:	The escrow holder shall be A&A Escrow, Beverly Hills, CA
Escrow, Title and Other Costs:	Escrow company fees shall be allocated equally between Seller and Buyer. Real property taxes payable by the Seller shall be prorated to close of escrow based upon the latest tax information available. No fees shall be paid and no costs shall be reimbursed unless and until ordered by the Bankruptcy Court. Any and all such fees and costs shall be the sole and exclusive liability of and claim against the Debtor’s Estate. The Trustee shall not have any personal liability on any account.
Disclosure or Warranty	As the Seller is a federal bankruptcy trustee, notwithstanding that the Agreement contains disclose or warranty provisions, there will be no warranties or disclosures made concerning the Property.

<p>1 “As-Is” Sale</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>	<p>Buyer is purchasing the Property from the Seller “AS IS” without warranties of any kind, expressed or implied, being given by the Seller, concerning the condition of the property or the quality of the title thereto, or any other matters relating to the Property. Buyer represents and warrants that Buyer is purchasing the Property as a result of its own investigations and is not buying the Property pursuant to any representation made by any broker, agent, accountant, attorney or employee acting in the direction, or on the behalf of the Seller, except as expressly set forth in the Agreement. Buyer acknowledges that Buyer has inspected the Property, and upon closing of Escrow governed by this Agreement, Buyer forever waives, for itself, its heirs, successors and assigns, all claims against the Debtor, their attorneys, agents and employees, the Estate, Lynda T. Bui as Trustee and individually, and her attorneys, the law firm for which she is associated, her agents and employees, arising or which might otherwise arise in the future concerning the Property</p> <p>Because the sale of the Property is a bankruptcy sale, the sale shall be “as-is” and without any warranties (whatsoever), and any transfer shall be by the Bankruptcy Trustee’s Deed or Quitclaim deed at the Seller’s option.</p>
<p>10 Bankruptcy Court Approval</p> <p>11</p> <p>12</p>	<p>The Agreement is unenforceable and of no legal effect, unless and until approved by the Bankruptcy Court. Any and all sales of the Property are subject to overbid at the time of the hearing on the Sale Motion. If the Buyer is overbid at the auction for the Property in the Bankruptcy Court, the Buyer agrees to release the Seller from any and all obligations under the Agreement other than the return of any deposits made by the Buyer.</p>
<p>13 Real Estate Agent Commission</p> <p>14</p>	<p>Through escrow on the sale of the Property, and subject to Court approval, the Trustee shall pay compensation for real estate agent services to the Buyer’s agent and the Estate’s agent. The agents shall equally split a commission in the amount of six percent of the final purchase price.</p>
<p>15 Jurisdiction of the Bankruptcy Court</p> <p>16</p>	<p>Any and all disputes in connection with the Agreement are subject to the exclusive jurisdiction and venue of the United States Bankruptcy Court hearing in the Bankruptcy Case in Riverside, California.</p>
<p>17 Sale Subject to Overbidding</p> <p>18</p>	<p>The sale of the Property is subject to the Bid Procedures described below.</p>

19 **H. Bid Procedures**

20 The Trustee has determined that it would benefit the Estate to permit all interested parties
 21 to receive information and bid for the Holly Property instead of selling the Holly Property to the
 22 Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the
 23 benefit of the creditors of this Estate, the Trustee is utilizing and also seeks Court approval of the
 24 following bid procedures (“Bid Procedures”):

25 1. Potential bidders must bid an initial amount of at least \$5,000 over the Purchase
 26 Price, or \$135,000. Minimum bid increments thereafter shall be \$1,000. The Trustee shall have
 27 sole discretion in determining which overbid is the best for the Estate and will seek approval
 28 from the Court of the same.

1 2. Bids must be in writing and be received by the Trustee and the Trustee's counsel,
2 Shulman Hodges & Bastian LLP to the attention of Elyza P. Eshaghi on or before **5:00 p.m.**
3 **(California time) on July 16, 2015 (three business days before the hearing on the Sale**
4 **Motion).**

5 3. Bids must be accompanied by certified funds in an amount equal to three percent
6 of the overbid purchase price.

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

12 5. The bidder must seek to acquire the Holly Property on terms and conditions not
13 less favorable to the Estate than the terms and conditions to which the Buyer has agreed to
14 purchase the Holly Property as set forth in the Agreement with the Buyer including no
15 contingencies and closing on the sale in the same time parameters as the Buyer.

16 6. All competing bids must acknowledge that the Holly Property is being sold on an
17 "AS IS" basis without warranties of any kind, expressed or implied, being given by the Seller,
18 concerning the condition of the Holly Property or the quality of the title thereto, or any other
19 matters relating to the Holly Property. The competing bid buyer must represent and warrant that
20 he/she is purchasing the Holly Property as a result of their own investigations and are not buying
21 the Holly Property pursuant to any representation made by any broker, agent, accountant,
22 attorney or employee acting at the direction, or on the behalf of the Seller. The competing bidder
23 must acknowledge that he/she has inspected the Holly Property, and upon closing of Escrow
24 governed by the Agreement, the Buyer forever waives, for himself/herself, their heirs, successors
25 and assigns, all claims against the Debtor, their attorneys, agents and employees, the Debtor's
26 Estate, Lynda T. Bui as Trustee and individually, and her attorneys, the law firm for which she is
27 associated, Shulman Hodges & Bastian LLP, her agents and employees, arising or which might
28 otherwise arise in the future concerning the Holly Property.

7. If overbids are received, the final bidding round shall be held at the hearing on the
Sale Motion (**July 21, 2015 at 10:00 a.m., California Time, at the U.S. Bankruptcy Court,**
Courtroom 301, 3420 Twelfth Street, Riverside, California 92501), or if rescheduled, upon
telephonic notice to the Buyer and the parties having submitted overbids in order to allow all
potential bidders the opportunity to overbid and purchase the Holly Property. At the final
bidding round, the Trustee or her counsel will, in the exercise of their business judgment and
subject to Court approval, accept the bidder who has made the highest and best offer to purchase
the Property, consistent with the Bid Procedures ("Successful Bidder").

8. At the hearing on the Sale Motion, the Trustee will seek entry of an order, *inter*
alia, authorizing and approving the sale of the Holly Property to the Successful Bidder. The
hearing on the Sale Motion may be adjourned or rescheduled without notice other than by an
announcement of the adjourned date at the hearing on the Sale Motion.

9. In the event the Successful Bidder fails to close on the sale of the Holly Property
within the time parameters approved by the Court, the Trustee shall retain the Successful
Bidder's Deposit and will be released from her obligation to sell the Holly Property to the
Successful Bidder and the Trustee may then sell the Holly Property to the First Back-Up Bidder
approved by the Court.

10. In the event First Back-Up Bidder fails to close on the sale of the Holly Property
within the time parameters approved by the Court, the Trustee shall retain the First Back-Up
Bidder's Deposit and will be released from her obligation to sell the Holly Property to the First
Back-Up Bidder and the Trustee may then sell the Holly Property to the Second Back-Up Bidder
approved by the Court.

1 **I. Notice Regarding the Bid Procedures**

2 The Trustee is proposing the sale of the Holly Property to be subject to the Bid
3 Procedures discussed above. The Bid Procedures will be provided to all creditors and any
4 potential bidders or parties who have shown an interest in the Holly Property. A Notice of Sale
5 of Estate Property will be filed with the Court for posting on the Court's website under the link
6 "Current Notices of Sales", thereby giving notice to additional potential interested parties.

7 The Broker will update the Multiple Listing Service to reflect the Bid Procedures above.
8 The Trustee will also post the sale and Bid Procedures on the website for the National
9 Association of Bankruptcy Trustees.

10 Based on the foregoing, the Trustee believes that under the circumstances of this case, the
11 Holly Property will have been appropriately marketed for bidding.

12 **J. Costs of Sale Including Payment of Maintenance Expenses**

13 Pursuant to the Court order approving the employment of the Broker (docket 63), the
14 Broker is entitled to a commission in the amount not to exceed six percent of the purchase price
15 (\$7,800 based on the Buyer's offer of \$130,000), which will be split between the Trustee's
16 Broker and the Buyer's real estate broker. Escrow fees shall be split between Buyer and Estate
17 in the manner customary in Riverside County, California where the Holly Property is located.

18 The Trustee also requests authority to make the following additional disbursements
19 through escrow related to the maintenance of the Holly Property during the bankruptcy case:

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<u>Payee</u>	<u>Amount</u>	<u>Description</u>
Richard A. Halderman, Jr.	\$202.50	Reimbursement for locksmith costs to change the locks at the Holly Property.
Hector Sandoval	\$430	Four days of work by two people to clean up the Holly Property for showings and sale.
Total	\$632.50	

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26 True and correct copies of the invoices related to such costs are attached as **Exhibit 4** to the Bui
27 Declaration annexed to the Sale Motion. The costs that were incurred related to the maintenance
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1 and preservation of the Holly Property until it can be sold, are reasonable and should be paid as
2 an administrative claim of the Estate.

3 **K. Tax Consequences**

4 The Trustee is evaluating issues regarding capital gains tax consequences and at this time,
5 has not determined what the capital gains taxes liability will be, if any, generated by the sale.
6 However, based real property records, it appears that there will be no capital gains taxes.³

7 **L. The Sale Will Be Free and Clear of Liens**

8 The Holly Property will be sold free and clear of all liens and encumbrances impacting
9 the Property. The Holly Property shall be delivered to the Buyer free and clear of all liens and
10 encumbrances except for those approved by the Buyer. Out of an abundance of caution, any
11 liens and interests against the Holly Property that are not resolved through either (1) the Court
12 order approving the sale, or (2) through escrow, shall attach to the sale proceeds with the same
13 force, effect, validity, and priority as such liens or interests had with respect to the Holly
14 Property prior to the sale. The *lis pendens* filed by David Smith will attach to the sale proceeds.

15 **M. Turnover of the Property at Closing**

16 After the Petition Date and without authority of the Court, the Debtor entered into a
17 Residential Lease/Rental Agreement dated April 1, 2014 as the landlord with Juan Garcia as the
18 tenant (“Unauthorized Lease”), a true and correct copy of which is attached as Exhibit 5 to the
19 Bui Declaration annexed to the Sale Motion. After repeated requests by the Trustee, the Debtor
20 and the tenant failed to turn over possession of the Holly Property to the Trustee. As such, the
21 Trustee sought and obtained that certain Order Granting Motion and Approving Turnover of
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23 ³ Assuming the documentary transfer tax listed on a Grant Deed of the Holly Property to Rafael Llarena on
24 8/31/2004 that was notarized by the Debtor is based on the full purchase price:

Documentary Transfer Tax	\$178.20
Divided by \$.55	\$324
Multiplied by \$500 = Purchase Price in 1991	\$162,000
Estimated Net Sale Proceeds	\$117,367.50
Less Estimated Original Purchase Price	(\$162,000)
Basis for Capital Gains	\$.00
15% Tax	\$.00

1 Property of the Estate entered July 1, 2014 (docket 72) (“Turnover Order”), a true and correct
2 copy of which is attached as Exhibit 6 to the Bui Declaration annexed to the Sale Motion. The
3 Turnover Order provides, among other things, that the Debtor and all occupants of the Holly
4 Property immediately turn over possession of the Holly Property to the Trustee. Until just
5 recently, despite the Turnover Order, the Debtor and the tenant continued their failure to
6 cooperate and turnover possession of the Property to the Trustee. Although the Holly Property
7 has been vacated, out of an abundance of caution, the Trustee requests that the Court order
8 approving the Sale Motion directs that (i) the Debtor or any occupant(s) of the Holly Property are
9 ordered to immediately vacate the Holly Property; (ii) in the event the Debtor or any occupant(s)
10 of the Holly Property fail to immediately vacate the Holly Property, the Trustee shall be entitled
11 to the issuance of a writ of possession for the Holly Property; (iii) the United States Marshal or
12 other law enforcement officer enforcing the writ or accomplishing such seizure shall employ
13 whatever reasonable force is necessary to enter the Holly Property and to remove the occupant(s)
14 from possession; (iv) the United States Marshal or other law enforcement officer shall institute a
15 lock out whereby the Holly Property will be re-keyed so as to avoid further entry of the Holly
16 Property by the Debtor or any persons not authorized by the Trustee; (v) the Trustee shall hold
17 harmless the United States Marshal or other law enforcement for any claims arising from any
18 acts, incident or occurrences in connection with the seizure and possession of the Holly Property.

19 **N. Request for Payment of Real Estate Commission**

20 Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ
21 professional persons, “that do not hold or represent an interest adverse to the estate, and that are
22 disinterested persons.” 11 U.S.C. § 327(a). By an Order entered on April 8, 2014 (docket 63),
23 the Trustee was authorized to employ the Broker to assist the Trustee in the marketing and sale
24 of the Holly Property.

25 Bankruptcy Code Section 328 allows employment of a professional person under section
26 327 “on any reasonable terms and conditions of employment, including on a retainer, on an
27 hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. §
28 328(a) (emphasis added). Through this Sale Motion, as provided in the Agreement, the Trustee

1 seeks authorization to pay a real estate broker commission in the amount of six percent of the
2 purchase price. Through escrow on the sale, and subject to Bankruptcy Court approval, the
3 Trustee shall pay a real estate broker's commission as follows:

<u>Broker</u>	<u>Commission</u>
Trustee's Broker: Richard A. Halderman of Lido Pacific Asset Management	\$3,900
Buyer's Broker: Dana Tarnow of La Quinta Palms Realty	\$3,900
Total Commission:	\$7,800

10 **III. CONCLUSION**

11 **WHEREFORE**, based upon the foregoing, the Trustee respectfully submits that good
12 cause exists for granting the Sale Motion and requests that the Court enter an order as follows:

13 1. Authorizing the Trustee to sell the Holly Property to the Buyer pursuant to the
14 terms and conditions as set forth in the Agreement attached as **Exhibit 3** to the Bui Declaration
15 annexed to the Sale Motion.

16 2. Authorizing the sale of the Holly Property free and clear of liens with liens not
17 satisfied through the sale to attach to the sale proceeds in the same validity and priority as prior
18 to the closing of the sale.

19 3. Authorizing the Trustee to sign any and all documents convenient and necessary
20 in pursuit of the sale as set forth above, including but not limited to any and all conveyances
21 contemplated by the Agreement attached as **Exhibit 3** to the Bui Declaration annexed to the Sale
22 Motion.

23 4. Approving the payment of the real estate commission in the total amount not to
24 exceed six percent of the final purchase price.

25 5. Authorizing the Trustee to pay the following from the proceeds of the sale of the
26 Holly Property through escrow:

27 a. All real estate taxes owed to the Riverside County Tax Collector.

28 b. Amounts due the Coachella Valley Recreation and Park District, if any.

1 c. Reimbursement for costs related to the maintenance and preservation of the
2 Holly Property to : (i) Richard A. Halderman, Jr. in the amount of \$202.50,
3 and (ii) Hector Sandoval in the amount of \$430.

4 6. A determination by the Court that the Buyer is in good faith pursuant to
5 Bankruptcy Code Section 363(m).

6 7. Waiving the fourteen day stay of the order approving the sale of the Holly
7 Property under Federal Rules of Bankruptcy Procedure 6004(h).

8 8. Directing that (i) the Debtor or any occupant(s) of the Holly Property are ordered
9 to immediately vacate the Holly Property; (ii) in the event the Debtor or any occupant(s) of the
10 Holly Property fail to immediately vacate the Holly Property, the Trustee shall be entitled to the
11 issuance of a writ of possession for the Holly Property; (iii) the United States Marshal or other
12 law enforcement officer enforcing the writ or accomplishing such seizure shall employ whatever
13 reasonable force is necessary to enter the Holly Property and to remove the occupant(s) from
14 possession; (iv) the United States Marshal or other law enforcement officer shall institute a lock
15 out whereby the Holly Property will be re-keyed so as to avoid further entry of the Holly
16 Property by the Debtor or any persons not authorized by the Trustee; (v) the Trustee shall hold
17 harmless the United States Marshal or other law enforcement for any claims arising from any
18 acts, incident or occurrences in connection with the seizure and possession of the Holly Property.

19 9. For such other and further relief as the Court deems just and proper under the
20 circumstances of this case.

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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: **100 Spectrum Center Drive, Suite 600, Irvine, California 92618**

A true and correct copy of the foregoing document entitled (*specify*): **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*) **June 30, 2015**, 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:

- **Patti H Bass** ecf@bass-associates.com Attorney for HSBC Bank Nevada, N.A..
- **Mark Bradshaw** mbradshaw@shbllp.com, sswartzell@shbllp.com, rhodges@shbllp.com Attorney for Chapter 7 Trustee
- **Lynda T. Bui (TR)** trustee.bui@shbllp.com, C115@ecfcbis.com Chapter 7 Trustee
- **Michael J Bujold** Michael.J.Bujold@usdoj.gov Attorney for United States Trustee
- **Dolores A Contreras** dc@contreraslawfirm.com Attorney for David Wayne Smith
- **Franklin J Contreras** fcontreras@shbllp.com, lverstegen@shbllp.com Attorney for Chapter 7 Trustee
- **Elyza P Eshaghi** eeshaghi@shbllp.com, sswartzell@shbllp.com Attorney for Chapter 7 Trustee
- **Rosemary Nguyen** bknotice@rcolegal.com Attorney for Wells Fargo Bank, N.A.
- **Ryan D ODea** rodea@shbllp.com, sswartzell@shbllp.com Attorney for Chapter 7 Trustee
- **Jennifer A Pursley** ecf@bass-associates.com Attorney for eCAST Settlement Corporation
- **Leonard M Shulman** lshulman@shbllp.com Attorney for Chapter 7 Trustee
- **Andrew Edward Smyth** office@smythlo.com NEF for Interested Party
- **Scott Talkov** stalkov@rhlaw.com Attorney for the Debtor
- **United States Trustee (RS)** ustpregion16.rs.ecf@usdoj.gov United States Trustee
- **Edward T Weber** bknotice@rcolegal.com NEF Courtesy Notice
- **Jerome A Yelsky - INACTIVE -** yelsky@cherinandyelsky.com, casupportgroup@w-legal.com NEF Courtesy Notice

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **June 30, 2015**, 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*) **June 30, 2015**, 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.

Judge's Copy - Via Messenger

Hon Meredith A. Jury, U.S. Bankruptcy Court, 3420 Twelfth Street, Bin Outside Courtroom 301, Riverside, CA 92501-3819

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.

June 30, 2015

Date

Lorre Clapp

Printed Name

/s/ Lorre Clapp

Signature

U.S. MAIL SERVICE LIST

Buyer

Luis Marta and Rocio Marta
6027 Green Meadow Rd
Lakewood, CA 90713

Buyer's Agent/Broker

Dana Tarnow
La Quinta Palms Realty
51001 Eisenhower Dr
La Quinta, CA 92253

Trustee's Agent/Broker

Richard Halderman
Lido Pacific Asset Management
3857 Birch St Suite 480
Newport Beach, CA 92660

Notice Purposes

Coachella Valley Recreation and Park District
Attn General Manager/Treasurer
45-871 Clinton St
Indio, CA 92201

Coachella Valley Recreation and Park District
Attn General Manager/Treasurer
53462 Enterprise Way
Coachella, CA 92236

CONTINUED ON THE FOLLOWING PAGE.

U.S. MAIL SERVICE LIST CONTINUED.

DEBTOR

ORALIA CASTILLO SMITH
79600 CORTEZ LANE
LA QUINTA, CA 92253

NEF - UNITED STATES TRUSTEE

UNITED STATES TRUSTEE (RS)
3685 MAIN STREET, SUITE 300
RIVERSIDE, CA 92501

COURT NOTICE MATRIX

ECAST SETTLEMENT CORPORATION
C/O BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712

COURT NOTICE MATRIX

ALTURA CREDIT UNION
2847 CAMPUS PKWY
RIVERSIDE, CA 92507

PROOF OF CLAIM ADDRESS

AMERICAN EXPRESS CENTURION BANK
BECKET AND LEE LLP
PO BOX 3001
MALVERN, PA 19355-0701

COURT NOTICE MATRIX

AMEX
PO BOX 297871
FORT LAUDERDALE, FL 33329

COURT NOTICE MATRIX

BASIE & FRITZ
3638 CAMINO DEL RIO NORTH, 280
SAN DIEGO, CA 92108

COURT NOTICE MATRIX

CAPITAL ONE, N.A.
C/O CREDITORS BANKRUPTCY SERVICE
PO BOX 740933
DALLAS, TX 75374

TRANSFeree OF CLAIM NO. 8

CAPITAL ONE, N.A.
C/O BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712

COURT NOTICE MATRIX

CBNA
PO BOX 6497
SIOUX FALLS, SD 57117

COURT NOTICE MATRIX

CHASE
PO BOX 15298
WILMINGTON, DE 19850

COURT NOTICE MATRIX

CHASE-PIER
PO BOX 15298
WILMINGTON, DE 19850

COURT NOTICE MATRIX

CITI
PO BOX 6241
SIOUX FALLS, SD 57117

COURT NOTICE MATRIX

DISCOVER BANK
DB SERVICING CORPORATION
PO BOX 3025
NEW ALBANY, OH 43054-3025

COURT NOTICE MATRIX

DISCOVER FIN SVCS LLC
PO BOX 15316
WILMINGTON, DE 19850

COURT NOTICE MATRIX

EMPLOYMENT DEVELOPMENT DEPT
BANKRUPTCY GROUP MIC 92E
PO BOX 826880
SACRAMENTO, CA 94280-0001

PROOF OF CLAIM ADDRESS

GE CAPITAL RETAIL BANK
C/O RECOVERY MANAGEMENT SYSTEMS
CORP.
25 SE 2ND AVENUE, STE 1120
MIAMI, FL 33131-1605

PROOF OF CLAIM ADDRESS

MIDLAND FUNDING LLC
BY ITS AUTHORIZED AGENT RECOSE, LLC
25 SE 2ND AVENUE, STE 1120
MIAMI, FL 33131-1605

COURT NOTICE MATRIX

HSBC BANK NEVADA, N.A.
C/O BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712-1083

COURT NOTICE MATRIX

KOHL'S/CAPONE
N56 W 17000 RIDGEWOOD DR
MENOMONEE FALLS, WI 53051

COURT NOTICE MATRIX

LOWE'S
PO BOX 530914
ATLANTA, GA 30353

COURT NOTICE MATRIX

MCYDSNB
9111 DUKE BLVD
MASON, OH 45040

COURT NOTICE MATRIX

MIDWEST LOAN SERVICES
616 SHELDEN AVE STE 300
HOUGHTON, MI 49931

COURT NOTICE MATRIX

NOVACK LAW OFFICES
JEFFREY N. NOVACK
171 SAXONY RD, SUITE 211
ENCINITAS, CA 92024

COURT NOTICE MATRIX

NOVACK LAW OFFICES
43537 RIDGE PARK DRIVE
TEMECULA, CA 925903615

PROOF OF CLAIM ADDRESS

PYOD, LLC, ITS SUCCESSORS AND ASSIGNS
AS ASSIGNEE OF CITIBANK
RESURGENT CAPITAL SERVICES
PO BOX 19008
GREENVILLE, SC 29602

COURT NOTICE MATRIX

RECOVERY MANAGEMENT SYSTEMS
CORPORATION
25 S.E. 2ND AVENUE, SUITE 1120
MIAMI, FL 33131-1605

PROOF OF CLAIM ADDRESS

SMITH, DAVID WAYNE
705 SALEM COURT, #4
SAN DIEGO, CA 92109-7004

PROOF OF CLAIM ADDRESS

KIM TRACOFF-SMITH
705 SALEM COURT, #4
SAN DIEGO, CA 92109-7004

COURT NOTICE MATRIX

US BANK
PO BOX 5227
CINCINNATI, OH 45201

COURT NOTICE MATRIX

US BANK
PO BOX 5229
CINCINNATI, OH 45201-5229

COURT NOTICE MATRIX

WELLS FARGO HM MORTGAG
8480 STAGECOACH CIR
FREDERICK, MD 21701

COURT NOTICE MATRIX

WELLS FARGO BANK NA
WELLS FARGO HOME MORTGAGE AMERICA
SERVICING CO
ATTN BANKRUPTCY DEPT MAC X7801-014
3476 STATEVIEW BLVD
FORT MILL, SC 29715-7203

COURT NOTICE MATRIX

WELLS FARGO BANK NA
RCO LEGAL, P.S.
1241 EAST DYER ROAD, SUITE 250
SANTA ANA, CA 92705-5611

COURT NOTICE MATRIX

WACHOVIA DEALER SERVICES INC.
ATTN BANKRUPTCY DEPT
PO BOX 19657
IRVINE, CA 92623-9657

CREDITOR LISTING

WFDS/WDS
PO BOX 1697
WINTERVILLE, NC 28590

NOTICE PURPOSES

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA, PA 19101-7346

COURT NOTICE MATRIX

CALIFORNIA FRANCHISE TAX BOARD
BANKRUPTCY SECTION MS: A-340
PO BOX 2952
SACRAMENTO, CA 95812-2952

INTERESTED BIDDER - REAL PROPERTY

TONY DEAZTLAN
82632 HWY 111 #1
INDIO, CA 92201

COURT NOTICE MATRIX

RICHARD A HALDERMAN JR
3857 BIRCH ST SUITE 480
NEWPORT BEACH, CA 92660-2616

RETURNED MAIL COMMENTS

3/19/12: NOT DELIVERABLE AS

ADDRESSED: UNABLE TO FORWARD

CREDITOR LISTING

HSBC/BEST BUY
PO BOX 15519
WILMINGTON, DE 19850

3/15/12: NOT DELIVERABLE AS

ADDRESSED: UNABLE TO FORWARD

CREDITOR LISTING

GMAC
PO BOX 12699
GLENDALE, AZ 85318

3/14/12: NOT DELIVERABLE AS

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CREDITOR LISTING

GEGRB/WALMART DC
PO BOX 981400
EL PASO, TX 79998

1/10/13: CLAIM TRANSFERRED TO

CAPITAL ONE, N.A.

CREDITOR LISTING

HSBC BANK NEVADA, N.A.
BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712

1/19/13; CLAIM TRANSFERRED TO

MIDLAND FUNDING LLC

PROOF OF CLAIM ADDRESS

GE CAPITAL RETAIL BANK
C/O RECOVERY MANAGEMENT
SYSTEMS CORP.
25 SE 2ND AVENUE, STE 1120
MIAMI, FL 33131-1605

RETURNED 3/3/14; BOX CLOSED; NO

ORDER

CREDITOR LISTING

GEGRB/PACIFIC SALES
PO BOX 981439
EL PASO, TX 79998

SEE NEW ADDRESS

COURT NOTICE MATRIX

RICHARD A HALDERMAN JR
4020 BIRCH STREET SUITE 480
NEWPORT BEACH, CA 92660-2213

WITHDREW - COURT ORDER ENTERED

5/20/2015, DOCKET 101

NEF ATTORNEY FOR DEBTOR

MARC A DUXBURY
1901 CAMINO VIDA ROBLE STE 114
CARLSBAD, CA 92008

RETURNED 6/18/2015, UNDELIVERABLE

COURT NOTICE MATRIX

GEGRB/GE MONEY BANK LOWES
PO BOX 103065
ROSWELL, GA 30076

RETURNED 6/25/2015, UNDELIVERABLE

COURT NOTICE MATRIX

GEGRB/WALMART
PO BOX 981400
EL PASO, TX 79998-1400

RETURNED 6/25/2015, UNDELIVERABLE

COURT NOTICE MATRIX

GEGRB/PACIFIC SALES
PO BOX 981439
EL PASO, TX 79998-1439

RTS - UNABLE TO FORWARD 6/29/15

COURT NOTICE MATRIX

BANK OF AMERICA
PO BOX 17054
WILMINGTON, DE 19850

RETURNED 6/29/2015, UNDELIVERABLE

COURT NOTICE MATRIX

HSBC BANK
ATTN BANKRUPTCY DEPT
PO BOX 5213
CAROL STREAM, IL 60197-5213