

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Leonard M. Shulman – Bar No. 126349 Rika M. Kido – Bar No. 273780 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; rkido@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:  NARENDRA D. PATEL and SUNITA N. PATEL,   Debtor(s).	CASE NO.: 6:13-bk-26439-MW CHAPTER: 7   <p style="text-align: center;"><b>NOTICE OF SALE OF ESTATE PROPERTY</b></p>
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**Last Day to Submit Bids: 12/10/2015 at 5:00 pm**

<b>Sale Date:</b> Final Bidding Round/Court Hearing: 12/15/2015	<b>Time:</b> 2:00 pm
<b>Location:</b> See Attached.	

**Type of Sale:**  Public  Private **Last date to file objections:** 12/01/2015

**Description of property to be sold:** Commercial real property located at 13921 Oaks Avenue, Chino, CA 91710

**Terms and conditions of sale:** Free and clear of liens, if any, pursuant to Bankruptcy Code §§ 363(b)(1) and (f)  
Purchase price of \$820,000,000, subject to overbids. See attached for Bidding Procedures.

**Proposed sale price:** \$ 820,000.00

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 \$10,000 over the consideration offered by the Buyer (total of at least \$830,000.) Minium bid increments thereafter 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:**

December 15, 2015 at 2:00 pm

Video Hearing Room 225

U.S. Bankruptcy Court

3420 Twelfth Street

Riverside, CA 92501

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

Rika M. Kido, Esq.

SHULMAN HODGES & BASTIAN LLP

100 Spectrum Center Drive, Suite 600

Irvine, CA 92618

Telephone: (949) 340-3400

Facsimile: (949) 340-3000

Email: rkido@shbllp.com

Date: 11/24/2015

1 **In re Narendra D. Patel and Sunita N. Patel**  
2 **Case No. 6:13-bk-26439-MW**

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

4 **I. INTRODUCTION**

5 Lynda T. Bui (“Trustee”), the duly appointed, qualified and acting Chapter 7 trustee for  
6 the bankruptcy estate (“Estate”) of Narendra D. Patel and Sunita N. Patel (“Debtors”), will bring  
7 a Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of  
8 Certain Liens Pursuant to Bankruptcy Code § 363(b)(1) and (f), Subject to Overbids, Combined  
9 With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures  
10 Utilized; (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief  
11 (“Sale Motion”).

12 The Trustee has received an offer from Michael J. Chavira and Ralph Chavira  
13 (collectively, “Buyer”) to purchase the commercial real property located at 13921 Oaks Avenue,  
14 Chino, California 91710 (“Property”) for \$820,000.00, subject to overbids. The offer by the  
15 Buyer is the best offer the Estate has received thus far for the Property, and is the result of  
16 negotiations between the Trustee and the Buyer for the highest and best offer. Through the sale,  
17 the Trustee is expected to generate proceeds of at least \$252,503.20 for the benefit of the Estate  
18 and its creditors. Further, in the event the purchase price is increased by a successful overbid,  
19 the estimated net proceeds will increase and provide greater distribution to creditors.

20 Accordingly, the Trustee believes that good cause exists to grant the Sale Motion so the  
21 Trustee does not lose this favorable business opportunity.

22 **II. RELEVANT FACTS**

23 **A. Case Background**

24 The Debtors filed a Voluntary Petition for relief under Chapter 7 of the Bankruptcy Code  
25 on October 3, 2013 (“Petition Date”). Lynda T. Bui is the duly appointed and acting Chapter 7  
26 trustee for the Debtors’ Estate.

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1 The initial 341(a) Meeting of Creditors was scheduled for November 7, 2013 and was  
2 concluded on July 30, 2014.

3 The deadline for non-governmental creditors to file proofs of claims was March 10, 2014  
4 and the deadline for governmental creditors to file proofs of claims was April 1, 2014. At this  
5 time, there are five (5) claims filed for a total amount of \$1,291,328.59, including a secured claim  
6 in the total amount of \$1,768.53.

7 **B. The Property**

8 On their Schedule B, the Debtors list a “50% interest in Shree Laxmi Investments.” The  
9 Debtors list that their interest in Shree Laxmi Investment (“Shree Laxmi”) was worth  
10 approximately \$100.00 and includes a notation that Shree Laxmi owns a commercial building  
11 rented by Shree Sugonash, Inc. (another business of the Debtors) but has “no equity in property  
12 and tenant unable to pay rent.”

13 Shree Laxmi, however, does not own a commercial building. Rather, the Debtors are co-  
14 owners of the Property. The Property is legally described as follows:<sup>1</sup>

15 PARCEL NO. 8 OF PARCEL MAP NO. 5169, AS SHOWN BY  
16 MAP ON FILE IN BOOK 57, PAGES 13 AND 14 OF PARCEL  
17 MAPS IN THE OFFICE OF THE COUNTY RECORDER OF  
18 SAID COUNTY.

19 APN: 1021-221-20

20 The Trustee is informed and believes that the Debtors co-own the Property with Surendra  
21 D. Patel and Kamini S. Patel (“Whitmore Debtors”).<sup>2</sup> Specifically, title in the Property is vested  
22 in the Debtors and the Whitmore Debtors as joint tenants.

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25 <sup>1</sup> The legal description for the 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.

26 <sup>2</sup> On January 18, 2013, the Whitmore Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy  
Code, commencing Case No. 6:13-bk-10984-SY. Robert S. Whitmore (“Trustee Whitmore”) was appointed as the  
27 Chapter 7 trustee. After determining that there were no assets to administer for the benefit of creditors, Trustee  
Whitmore filed a Report of No Distribution and the Whitmore Debtors’ bankruptcy case was closed on July 18,  
28 2013. Trustee Whitmore was informed by the Trustee that the Whitmore Debtors were co-owners of the Property.  
On February 13, 2015, the Court entered an order granting the motion of the United States Trustee to reopen the  
bankruptcy case of the Whitmore Debtors.

1 The Property is commercial real property with a 7,416 square foot structure on a 16,500  
2 square foot lot and is currently leased to Calvary Chapel Chino Hills (“Calvary Chapel”).<sup>3</sup> The  
3 Trustee is informed by the Debtors, based on a Phase I Environmental Asset (“Phase I”), that the  
4 Property has some environmental cleanup issues and that cleanup costs could be between  
5 \$100,000.00 and \$150,000.00.<sup>4</sup>

6 After conducting an on-site inspection, the Trustee was informed by her real estate broker  
7 that as of the Petition Date, the Property had a range of value between \$629,000 and \$639,000.  
8 However, at the present time, the Broker informed the Trustee that the Property was worth  
9 approximately \$729,000.00 and recommended listing the Property for sale at \$729,000.00.

10 There is a first deed of trust recorded against the Property on November 7, 2002 in favor  
11 of Bank of America, N.A., Instrument No. 2002-0625792 (“BofA Lien”). The Trustee is  
12 informed and believes that as of October 28, 2015, the balance on the BofA Lien was  
13 approximately \$83,300.18. There is also a second deed of trust recorded against the Property on  
14 February 21, 2012 in favor of Chandresh J. Patel, a married man, Instrument No. 2012-0070093  
15 (“Patel Lien”). The original amount of the Patel Lien was \$150,000.00. The Trustee currently  
16 has no information on the outstanding amount owing on the Patel Lien. As discussed below, this  
17 lien may be voided. Finally, there are several liens against the Property related to past due  
18 unsecured property taxes due and owing in the amount of \$13,170.43.

19 **C. The Trustee’s Adversary Proceeding Against the Whitmore Debtors**

20 In an effort to administer the jointly owned Property, on December 4, 2014, the Trustee  
21 filed a Complaint for: (1) Sale of Property [11 U.S.C. § 363(h)]; (2) Turnover of Property of the

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22 <sup>3</sup> On August 26, 2015, the Broker notified the Trustee that the Property was currently being leased by  
23 Calvary Chapel. After further investigation, the Trustee learned that on August 28, 2014, the Debtors and the  
24 Whitmore Debtors entered into a lease with Calvary Chapel to lease the Property from August 29, 2014 through  
25 August 31, 2017 for a base rent of \$4,702.98 per month (the “Calvary Lease”). The Calvary Lease provided that  
Calvary Chapel would pay \$51,732.78 for the period of August 29, 2014 through August 31, 2015, along with a  
security deposit of \$4,702.98.

26 <sup>4</sup> The Trustee’s general counsel’s transactional department reviewed the Phase I report and believed such  
27 report to be self-serving and substandard as compared to other Phase I reports in the industry. The effect is that  
28 while the Phase I report may at a glance raise issues (more like red herrings), a more thorough review would reveal  
that the Property may not have any significant environmental issues or certainly the clean-up costs would not be  
nearly as high as suggested in the Phase I report That being said, even if there is a reduction of the sale price to  
account for a Phase II and/or cleanup costs for the environmental issues, the Trustee believes there is still significant  
equity in the Property for the benefit of creditors.

1 Estate [11 U.S.C. § 542]; and (3) Declaratory Relief (“Complaint”) commencing the Adversary  
2 Proceeding No. 6:14-ap-01291-MW (“Trustee’s Adversary”).

3 On December 22, 2014, the Whitmore Debtors filed an Answer to the Complaint.

4 In light of the fact that the Whitmore Debtors’ bankruptcy case has been reopened, on  
5 April 30, 2015, this Court entered an order vacating all scheduling deadlines. A continued status  
6 conference is currently scheduled for January 14, 2016 at 9:00 a.m.

7 **D. Trustee Whitmore’s Adversary Proceeding**

8 As indicated, the Whitmore Debtors did not schedule their interest in the Property and  
9 their bankruptcy case was closed as a no asset case. However, upon learning of the Property,  
10 Trustee Whitmore reopened the case on February 13, 2015 to administer the Property.

11 On April 8, 2015, Trustee Whitmore filed a Complaint to Determine Property of the  
12 Estate, Determine Interests in Real Property, Avoid Preference and Avoid Fraudulent Transfer  
13 (“Whitmore Complaint”) against the Whitmore Debtors, the Debtors and Chandresh Patel,  
14 commencing the Adversary Proceeding No. 6:15-01115-SY (the “Whitmore Adversary”).

15 On August 21, 2015, after defaults had been entered, the Whitmore Debtors, the Debtors  
16 and Chandresh Patel, filed their Answer to the Whitmore Complaint.

17 On September 2, 2015, Trustee Whitmore filed a Motion for Summary Adjudication That  
18 Unscheduled Real Property Was Not Abandoned Upon Closing of the Estate (the “MSA”). A  
19 hearing on the MSA is currently scheduled for December 3, 2015.

20 The Trustee’s Adversary and the Whitmore Adversary both relate to the Property.  
21 Trustee Whitmore has indicated to the Trustee that he does not oppose the sale of the Property.  
22 However, there is an issue regarding whether the Whitmore Debtors’ bankruptcy estate owns  
23 their interest in the Property, which is pending for resolution before Judge Yun (i.e. the MSA).  
24 The Trustee believes that the issue will be resolved before the hearing on this Sale Motion.  
25 Further, Bankruptcy Code Section 363(i) provides that before the consummation of the sale of a  
26 property to which subsection (h) applies, the co-owner of such property may purchase such  
27 property at the price at which such sale is to be consummated. *See* 11 U.S.C. §  
28 363(i). Accordingly, the Whitmore Debtors may purchase the property for \$820,000.00.

1 **E. Employment of Real Estate Broker, Marketing Efforts and Basis for the Value of**  
2 **the Property**

3 On September 14, 2015, the Court entered on Order authorizing the employment of John  
4 P. Gould and Zizi Pak of Rodeo Realty, Inc. (“Broker”) as the Trustee’s real estate broker to  
5 assist her with effectively listing and marketing the Property for sale, as well as negotiating a sale  
6 price to prospective buyers to provide a benefit to the Estate (“Employment Order”) (docket  
7 number 51).

8 The Broker has more than eight (8) years of experience working with bankruptcy trustees  
9 in the sale of real property as well as property valuations and is familiar with valuing real property  
10 in today’s economic environment. As of the hearing on this Motion, the Property will have been  
11 marketed for approximately three months by the Trustee with the assistance of the Broker. The  
12 marketing by the Broker has included listing the Property on the Multiple Listing Service for  
13 publication as well as on the Court’s website pursuant to the Notice of Sale of Estate Property on  
14 Local Bankruptcy Form 6004-2.

15 On or about August 25, 2015, the Trustee received a full price offer to purchase the  
16 Property in the amount of \$729,000.00 from the Buyer. The Trustee also received at least six  
17 other offers. She countered by requesting that all interested buyers submit their highest and best  
18 offer. The highest and best offer came from the Buyer for \$820,000.00 and on or about October  
19 5, 2015, the Trustee sent the Buyer a counter-offer, which included bankruptcy specific terms.  
20 The Buyer accepted the counter-offer.

21 The Buyer’s offer that is the subject of this Sale Motion represents the best offer received  
22 by the Trustee. As set forth below, the Trustee believes the sale of the Property will benefit the  
23 Estate and its creditors.

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

The following chart sets forth the liens and encumbrances against the Property as detailed in the Preliminary Title Report dated October 2, 2015 (“Title Report”), a copy of which is attached as Exhibit “1” to the Declaration of Lynda T. Bui (“Bui Declaration”) annexed to the Sale Motion, and the proposed treatment of the liens and encumbrances through the sale:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
San Bernardino County Treasurer-Tax Collector	Real property taxes	\$2,923.09 <sup>5</sup>	All outstanding real property taxes will be paid through escrow on the sale transaction.
Bank of America, N.A.	First Deed of Trust recorded on November 7, 2002, in the Official Records of San Bernardino County, document number 2002-0625792.	\$83,300.18 (as of October 28, 2015)	This lien will be paid through escrow on the sale transaction.
Chandresh J. Patel, a married man	Second Deed of Trust recorded on February 21, 2012, in the Official Records of San Bernardino County, document number 2012-0070093.	\$150,000.00	The Whitmore Adversary includes an avoidance action against this creditor regarding this encumbrance.  This lien is subject to a bona fide dispute by the Whitmore Debtors, and pursuant to Bankruptcy Code Sections 363(b) (1) and (f)(4), the Property will be sold free and clear of this 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 the creditor or further Court order.
San Bernardino County Treasurer-Tax Collector	Unsecured property taxes pursuant to the following liens recorded against the Property in the Official Records, County of San Bernardino:  1) Document number 2009-0504260 recorded November 19, 2009 in the amount of \$2,162.33  2) Document number 2011-0318016 recorded August 3, 2011 in the amount of \$4,149.25  3) Document number 2011-0484983 recorded November 15, 2011 in the amount of \$2,275.73	\$13,170.43	These liens will be paid through escrow on the sale transaction.

<sup>5</sup> First installment due December 10, 2015 for 2015-2016 assessment.

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
	4) Document number 2012-0468673 recorded November 9, 2012 in the amount of \$2,276.57  5) Document number 2013-0488605 recorded November 14, 2013 in the amount of \$2,306.55		

All costs of sale, including escrow fees and real estate commissions will be paid at closing.

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

The Buyer has offered to purchase the Property for \$820,000.00. The purchase price includes a deposit of \$24,600.00. Attached as Exhibit “2” to the Bui Declaration annexed to the Sale Motion is a true and correct copy of the Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate, Counter Offer and related addendums (collectively the “Agreement”).

A summary of the Agreement’s terms and highlights are discussed below, but the summary and discussion are not meant to be a complete review of every provision of the Agreement. The Agreement itself is the legally binding document the Trustee seeks approval of and, in the event of any inconsistency between the terms, provisions or effect of the Agreement and the description of it in these pleadings, the Agreement alone shall govern and not these pleadings or the descriptions herein.

In summary, the principal terms of the sale of the Property shall be as follows (the Trustee is referred to at times as the “Seller” in the following summary):

Buyer:	Michael J. Chavira and Ralph Chavira
Purchase Price:	\$820,000.00, subject to the Bidding Procedures set forth below.  \$24,600.00 to be paid as a deposit and the remainder to be paid at closing.
Title; Title Insurance	Within three (3) business days after acceptance of the Counter Offer, Progressive Title Company will be instructed to provide a preliminary report of the condition of title to the Property, including copies of underlying documents referred to in Schedule B thereof, for Buyer’s review. Buyer may, not later than the end of the period in this paragraph, or until three (3) days after receipt of the preliminary report and underlying documents, whichever occurs later, in which to give Seller written notice (“Notice of Title Disapproval”) that Buyer disapproves the condition of title with respect to a material matter(s) that interfere with the use of the Property for the purpose for which it is currently used or

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	<p>intended to be used. The Notice of Title Disapproval must refer to the specific exception(s) in Schedule B of the preliminary report and the specific underlying document(s) which are the basis for Buyer's disapproval. Within five (5) business days after receipt of the Notice of Title Disapproval, Seller may, in Seller's sole discretion, either (i) cancel the Agreement and the sale, in which event Buyer's and Seller's obligations under the Agreement shall be terminated and Buyer shall receive a full refund of Buyer's deposit, or (ii) elect to correct the item(s) that was disapproved by Buyer, in which event the sale shall proceed. Seller may correct such item by any means that will result in the Title Company either removing the disapproved exception(s) from the preliminary report or providing title insurance coverage by endorsement against such exception(s). At the close of the sale, Seller shall convey and Buyer shall accept title to the Property as shown in Schedule B of the preliminary report, subject to any corrections as in this paragraph above, free and clear of all monetary liens, subject to the terms of the within contract. Seller shall pay the costs of a CLTA Standard Owner's policy of title insurance.</p>
<p>Bankruptcy Sale</p>	<p>Buyer acknowledges that Seller is a Trustee appointed to administer the above referenced Estate, and is a party to the Agreement solely in that capacity. Seller and Brokers (defined below) and agents have not and will not determine the condition or fitness for use of the Property for any particular purpose. The sale shall be "as is," "where is," "with all faults," and with no warranty by or recourse whatsoever to Seller or Brokers or agents herein. Transfer of the Property shall be by Quit Claim Deed. All parties acknowledge that Seller is a party to the Agreement solely in the capacity as Trustee of the above referenced Estate and that in the event of any default in the performance of any of Seller's obligations under the Offer (as modified hereby) or in the event that any other claim is asserted against the Seller, Trustee or the Estate in connection with this transaction, the Trustee shall in no event have any personal liability whatsoever (whether in her individual capacity or otherwise), it being expressly understood and agreed that Buyer's sole recourse, if any, in such event shall be to the assets of such Estate.</p>
<p>Bankruptcy Court Approval; Overbidding</p>	<p>The sale is subject to notice to creditors, approval by the Bankruptcy Court, and higher and better bids received by Seller through and including the Bankruptcy Court hearing to approve the sale. Payment of any and all real estate brokers' commissions is also subject to notice to creditors and approval by the Bankruptcy Court. Buyer acknowledges and agrees that Seller may not seek to obtain the Bankruptcy Court's approval if Seller has determined that it would be in the best interest of the Estate not to do so.</p>
<p>Buyer's Due Diligence and Cancellation Right</p>	<p>Buyer shall have 30 (thirty) calendar days from acceptance to perform, complete, and satisfy all contingencies, inspections, investigations, tests and reviews of reports, and to complete all due diligence which the Buyer desires for this purchase of the Property, including, but not limited to and performing and completing any geological, soil, structural, environmental, or other tests, inspections, and investigations desired by Buyer. Buyer agrees to provide Trustee, within 30 (thirty) days from acceptance, with any and all reports acquired by Buyer or buyer's representative(s) during Buyer's inspection period. Buyer understands that Trustee and/or Trustee's brokers or attorney(s) will provide any and all of these reports to any potential overbidder(s) prior to Bankruptcy Court approval. The overbid instructions will specify, that in the event that the Buyer is overbid in Bankruptcy Court, that successful overbidder approved by the Bankruptcy Court will pay through escrow a premium to the Estate in an amount equal to 50% of the cost of the Buyer's Environmental Phase Two Report (if any) but not greater than \$10,000.00. Trustee shall reimburse Buyer through escrow once these funds are collected from the successful bidder (generally upon close of escrow to the successful bidder). Buyer may, not later than the end of the contingency period, give Seller written notice of Buyer's election to withdraw from the Agreement because of Buyer's inability to complete or dissatisfaction with the results of any of those matters ("Notice of Cancellation"), in which event Buyer's and Seller's obligations under the Agreement shall be terminated and Buyer shall receive a full refund of Buyer's deposit. If Buyer fails to give such Notice of Cancellation within such period, all such contingencies shall be automatically removed as set forth in Paragraph 3 of the Addendum and Buyer's obligation to proceed shall be non-contingent except as provided herein for, (i) Buyer's review of a Preliminary Title Report and underlying documents respecting the title to the</p>

1	Property (as set forth in Paragraph 2 of the Addendum), and (ii) Bankruptcy Court approval of the Agreement and the sale (including as set forth in Paragraph 6 of the Addendum).
2 3 4	Real Estate Agent Commission 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 split a commission in the amount of six percent (6%) of the final purchase price.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	Purchase Without Warranties Buyer acknowledges and agrees that, to the maximum extent permitted by law, the sale contemplated by the Agreement is made "as-is," "where-is," and "with all faults," except as specifically provided in the Agreement. Seller and Brokers and agents herein have not made, do not make, and specifically negate and disclaim any representations, warranties, promises, covenants, addendums, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, concerning or respecting (i) value of the Property; (ii) income to be derived from the Property; (iii) suitability of the Property, or lack thereof for any activity or use which Buyer may intend to conduct thereon, including any possibilities or limitations for future development; (iv) habitability, merchantability, marketability, profitability, or fitness for a particular purpose, of the Property, or lack thereof; (v) manner, quality, state of repair, or lack of repair of the Property; (vi) nature, quality, or condition of the Property, or any portion, system, or component thereof, including without limitation, water, soil, and geology; (vii) compliance of the Property or its operation, or lack thereof, with any laws, ordinances, regulations, rules, or orders of any applicable governmental authority or body; (viii) manner or quality of engineering, design, construction or materials, if any, incorporated into the Property; (ix) compliance or lack of compliance with any land use, building and safety, or other laws, ordinances, regulations, rules, orders, or other requirements imposed or enforced by any governmental or non-governmental body, including without limitation the Americans with Disabilities Act of 1990; (x) the presence or absence at, on, under, or adjacent to the Property, of materials described as "hazardous substances, hazardous materials, or toxic substances" or by similar terms under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S. Code §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S. Code §§1801, et seq.), the Resource Conservation and Recovery Act (42 U.S. Code §§6901, et seq.), the Toxic Substance Control Act (15 U.S. Code §2601, et seq.), the Clean Water Act (33 U.S. Code §1251, et seq.), California Health and Safety Code §25117 or 25316), or other statutes and laws, all as amended and including all regulations issued thereunder; (xi) the content, completeness or accuracy of any Due Diligence materials or Preliminary Report regarding Title to the Property; (xii) the conformity or lack of conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to Buyer; (xiii) the conformity or lack of conformity of the Property to past, current, or future applicable zoning or building requirements; (xiv) any deficiency of any undershoring, drainage, or other aspects, systems, or components of or affecting the Property; (xv) the fact, if applicable, that all or a portion of the Property may be located on or near any natural hazard zone as determined by any governmental agency or body; (xvi) the existence of vested land use, zoning, or building entitlements affecting the Property or any other property; or (xvii) any other matter. Without in any manner limiting the foregoing, Buyer hereby acknowledges and agrees that (i) Seller's Broker, has provided (and will hereafter provide) to Buyer various materials and information relating to the Property, including, without limitation, information and materials relating to the condition of the Property, and (ii) all such materials and information so provided to Buyer by Seller's Broker shall, for all purposes of the Agreement, be deemed to have been disclosed to Buyer by the Seller, as well. To the extent there is a tenant in the Property, Buyer agrees to purchase the Property with the tenant in possession.
27 28	Trustee's Liability The Buyer acknowledges that the Trustee is acting in her official capacity only. No personal liability shall be sought or enforced against the Trustee with regard to the Agreement, including the Addendum, the assets, the sale of the Property, or the physical condition of the Property. In the event that the Trustee fails or refuses to complete the transaction for any

1		reason, then the limit of the Trustee's liability is only to return any money paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Property and the Agreement, and all disputes arising before and after closing shall be resolved in said Court. Further, the Trustee and the Buyer have agreed that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.
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5	Bankruptcy Court Jurisdiction	The Bankruptcy Court for the Central District of California shall have sole and exclusive jurisdiction to interpret and enforce the terms of the Agreement and Buyer hereby consents and submits to such exclusive jurisdiction. The Agreement shall be interpreted and enforced pursuant to the laws of the United States of America including the Bankruptcy Code, Title 11, United States Code.
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8 **H. Tax Consequences of Sale**

9 The Trustee consulted with her proposed accountants who informed her with a cost basis  
10 of \$390,706.00 for the Property, after factoring the costs of sale, there will be capital gain of  
11 approximately \$165,023.00 resulting in federal capital gains tax of approximately \$4,172.00 and  
12 California income tax of approximately \$6,364.00. The Trustee intends to consult with the  
13 Debtors and the Whitmore Debtors to determine if there were improvements made to the  
14 Property which would increase the cost basis for the Property and thereby, decrease the capital  
15 gain on the sale and taxes thereon.

16 Even after payment of these taxes, there is substantial equity in the Property as shown  
17 below.

18 **I. Notice of Bidding Procedures**

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

24 1. Potential overbidder(s) must bid an initial amount of at least \$10,000.00 over the  
25 Purchase Price, or \$830,000.00. Minimum bid increments thereafter shall be \$1,000.00. The  
26 Trustee shall have sole discretion in determining which overbid is the best for the Estate and will  
seek approval from the Court of the same.

27 2. Overbids must be in writing and be received by the Trustee and the Trustee's  
28 counsel, Shulman Hodges & Bastian LLP to the attention of Rika M. Kido on or before **three (3)  
business days prior to the hearing on this Sale Motion.**

1 3. Overbids must be accompanied by certified funds in an amount equal to three  
percent (3%) of the overbid purchase price.

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

5 5. The overbidder must seek to acquire the Property on terms and conditions not less  
6 favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase  
7 the Property as set forth in the Agreement attached as Exhibit "2" to the Bui Declaration annexed  
to the Sale Motion including closing on the sale of the Property in the same time parameters as  
the Buyer.

8 6. All competing bids must acknowledge that the Property is being sold on an "AS  
9 IS" basis without warranties of any kind, expressed or implied, being given by the Trustee,  
concerning the condition of the Property or the quality of the title thereto, or any other matters  
10 relating to the Property. The competing bid buyer must represent and warrant that he/she is  
purchasing the Property as a result of their own investigations and are not buying the Property  
11 pursuant to any representation made by any broker, agent, accountant, attorney or employee  
acting at the direction, or on the behalf of the Trustee. The competing bidder must acknowledge  
12 that he/she has inspected the Property, and upon closing of Escrow governed by the Agreement,  
the competing buyer forever waives, for himself/herself, their heirs, successors and assigns, all  
13 claims against the Debtors, her attorneys, agents and employees, the Debtors' Estate, Lynda T.  
Bui as Trustee and individually, and her attorneys, agents and employees, arising or which might  
14 otherwise arise in the future concerning the Property.

15 7. If overbids are received, the final bidding round for the Property shall be held at  
the hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid  
16 and purchase the 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  
17 made the highest and best offer to purchase the Property, consistent with the Bidding Procedures  
("Successful Bidder").

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

21 9. In the event the Successful Bidder fails to close on the sale of the Property within  
the time parameters approved by the Court, the Trustee shall retain the Successful Bidder's  
22 Deposit and will be released from her obligation to sell the Property to the Successful Bidder and  
the Trustee may then sell the Property to the first back-up bidder approved by the Court at the  
23 hearing on the Sale Motion ("First Back-Up Bidder").

24 10. In the event First Back-Up Bidder fails to close on the sale of the Property within  
the time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder's  
25 Deposit and will be released from her obligation to sell the Property to the First Back-Up Bidder  
and the Trustee may then sell the Property to the second back-up bidder approved by the Court at  
26 the hearing on the Sale Motion ("Second Back-Up Bidder").

27 ///

28

**J. Request for Payment of Real Estate Commission**

Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ professional persons, “that do not hold or represent an interest adverse to the estate, and that are disinterested persons.” 11 U.S.C. § 327(a). By the Employment Order entered on September 14, 2015, the Trustee was authorized to employ the Broker to assist the Trustee in the marketing and sale of the Property.

Bankruptcy Code Section 328 allows employment of a professional person under section 327 “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a) (emphasis added). Through this Sale Motion, as provided in the Agreement, the Trustee seeks authorization to pay a real estate broker commission in the amount of six percent (6%) of the purchase price. Through escrow on the sale of the Property, and subject to Bankruptcy Court approval, the Trustee shall pay a real estate broker’s commission as follows<sup>6</sup>:

<u>Agent</u>	<u>Commission</u>
Trustee’s Broker Rodeo Realty, Inc.	\$24,600.00
Buyer’s Broker Ashwill Associates Commercial Real Estate	\$24,600.00
Total Commission	\$49,200.00

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<sup>6</sup> The total amount of real estate broker’s commission will increase if the purchase price for the Property is increased through by a successful overbid; but in no event will exceed six percent (6%) of the purchase price.

## 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*) **November 24, 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:

**COUNSEL OF RECORD FOR THE DEBTORS:** Sunil A Brahmhatt sunillaw@yahoo.com  
**CHAPTER 7 TRUSTEE:** Lynda T. Bui (TR) trustee.bui@shblp.com, C115@ecfcbis.com  
**INTERESTED PARTY:** Constance N DeSena cdesena@formanlaw.com  
**FORMER COUNSEL FOR THE DEBTORS:** Carolyn A Dye trustee@cadye.com  
**INTERESTED PARTY:** Daniel M Eliades deliades@formanlaw.com  
**COUNSEL FOR THE CHAPTER 7 TRUSTEE:** Rika Kido rkido@shblp.com, avernon@shblp.com  
**COUNSEL FOR DEFENDANTS:** Leonard Pena lpena@penalaw.com, penasomaecf@gmail.com  
**COUNSEL FOR CHAPTER 7 TRUSTEE:** Leonard M Shulman lshulman@shblp.com  
**INTERESTED PARTY:** Ramesh Singh claims@recoverycorp.com  
**COUNSEL FOR TRUSTEE WHITMORE:** Scott Talkov stalkov@rhlaw.com  
**INTERESTED PARTY:** United States Trustee (RS) ustpregion16.rs.ecf@usdoj.gov  
**INTERESTED PARTY:** Gilbert B Weisman notices@becket-lee.com

Service information continued on attached page

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

On (*date*) **November 24, 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*) **November 24, 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)**

U.S. Bankruptcy Court  
Attn: Honorable Mark S. Wallace  
411 W. Fourth Street, mail slot by 6<sup>th</sup> floor elevators  
Santa Ana, CA 92701

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.

**November 24, 2015**

Date

**Erlanna Lohayza**

Printed Name

**/s/ Erlanna Lohayza**

Signature

**EMAIL SERVICE LIST**

**Trustee's Broker**

John P. Gould  
Zizi Pak  
Rodeo Realty, Inc.  
Email: johnpgould@aol.com; zizipak@aol.com

**Buyer's Broker**

Greg Ashwill  
Ashwill & Associates  
Email: greg@ashwill.com

**Interested Party**

Dennis Holt  
Daum Commercial  
Email: dennis.holt@daumcommercial.com

**Interested Party**

Scott Ostlund  
Lee & Associates  
Email: sostlund@lee-assoc.com

**Interested Party**

John Wang  
Kinglong Group, Ltd.  
Email: jack@jsledpower.com

**Interested Party**

Joe Boshra  
Realty One Group  
Email: Boshrateam@gmail.com

**U.S. MAIL SERVICE LIST**

**Interested Parties**

Surendra Patel  
Kamini Patel  
17053 Old Lake Road  
Riverside, CA 92503-0249

**CONTINUED ON ATTACHED SERVICE LIST**

**U.S. MAIL SERVICE LIST**

**DEBTORS**

NARENDRA AND SUNITA PATEL  
627 TERRA DRIVE  
CORONA, CA 92879-5823

**COURT NOTICE MATRIX**

AMERICAN EXPRESS BANK, FSB  
C/O BECKET AND LEE LLP  
POB 3001  
MALVERN, PA 19355-0701

**COURT NOTICE MATRIX**

BUSINESS LOAN CENTER, LLC  
ONE INDEPENDENCE POINTE,  
SUITE 102  
GREENVILLE, SC 29615-4545

**COURT NOTICE MATRIX**

MANJU PATEL  
3113 W. LYNNE LANE  
PHOENIX, AZ 85041-5228

**COURT NOTICE MATRIX**

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

**COURT NOTICE MATRIX**

RIVERSIDE COUNTY  
4080 LEMON STREET  
4TH FLOOR  
RIVERSIDE, CA 92501-3634

**COURT NOTICE MATRIX**

SALLIE MAE  
P.O. BOX 9635  
WILKES BARRE, PA 18773-9635

**COURT NOTICE MATRIX**

SALLIE MAE INC. ON BEHALF OF  
DEPARTMENT OF EDUCATION  
P.O. BOX 740351  
ATLANTA, GA. 30374-0351

**COURT NOTICE MATRIX**

TRAVELODGE HOTELS, INC  
C/O CLYDE & CO  
200 CAMPUS DR, SUITE 300  
FLORHAM PARK, NJ 07932

**COURT NOTICE MATRIX**

TRAVELODGE HOTELS, INC.  
C/O FORMAN HOLT ELIADES &  
YOUNGMAN LLC  
80 ROUTE 4 EAST - SUITE 290  
PARAMUS, NEW JERSEY 07652-  
2661

**PROOF OF CLAIM FILED**

UNITED STATES SMALL BUSINESS  
ADMINISTRATION  
LOS ANGELES DISTRICT OFFICE  
330 N BRAND BLVD SUITE 1200  
GLENDALE, CA 91203

**COURT NOTICE MATRIX**

WELLS FARGO  
P.O. BOX 30086  
LOS ANGELES, CA 90030-0086

**NOTICE PURPOSES**

INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY  
OPERATIONS  
PO BOX 7346  
PHILADELPHIA, PA 19101-7346

**NOTICE PURPOSES**

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

**PROOF OF CLAIM FILED**

QUANTUM3 GROUP LLC AS  
AGENT FOR  
COMENITY BANK  
PO BOX 788  
KIRKLAND, WA 98083-0788

**RETURNED MAIL**

**NO ADDRESS**

SHIVMAN SI INC.

**RETURNED 3/3/2014, BOX  
CLOSED, NO FORWARDING**

**COURT NOTICE MATRIX**  
COLSON SERVICES CORP.  
P.O. BOX 1289  
NEW YORK, NY 10274-1289

**PER SUBSTITUTION OF  
ATTORNEY**

**10/17/14**

**FORMER COUNSEL FOR THE  
DEBTORS**

CAROLYN A DYE  
3435 WILSHIRE BLVD STE 990  
LOS ANGELES, CA 90010-1998