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**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:
 MICHAEL A. DAVIS,

CHAPTER 7
 CASE NUMBER 6:11-bk-38453-WJ
 DATE: 12/4/12
 TIME: 10:30 A.M.
 COURTROOM: 302

Debtor.

NOTICE OF MOTION FOR:

ORDER: (1) APPROVING THE SALE OF REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. §§ 363(b)(1) AND (f), SUBJECT TO OVERBIDS, COMBINED WITH NOTICE OF BIDDING PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES UTILIZED; (2) APPROVING PAYMENT OF REAL ESTATE COMMISSION; (3) DIRECTING TURNOVER OF REAL PROPERTY; AND (4) GRANTING RELATED RELIEF (*Specify name of Motion*)

- TO: THE HONORABLE WAYNE JOHNSON, UNITED STATES BANKRUPTCY JUDGE AND ALL INTERESTED PARTIES:
- NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
- Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

Hearing Date: 12/4/12	Time: 10:30 A.M.	Courtroom: 302	Floor:
<input type="checkbox"/> 255 East Temple Street, Los Angeles	<input type="checkbox"/> 411 West Fourth Street, Santa Ana		
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills	<input type="checkbox"/> 1415 State Street, Santa Barbara		
<input checked="" type="checkbox"/> 3420 Twelfth Street, Riverside			

- Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response with the Bankruptcy Court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
- Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the Judge's self-calendaring procedures.

Dated: 11/13/12

Shulman Hodges & Bastian LLP
 Law Firm Name

By: /s/ Mark Bradshaw

Name: Mark Bradshaw
 Attorney for Movant

1 Leonard M. Shulman – Bar No. 126349
Mark Bradshaw – Bar No. 192540
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6 Attorneys for Lynda T. Bui,
Chapter 7 Trustee
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

10
11 In re) Case No. 6:11-bk-38453-WJ
12) Chapter 7
MICHAEL A. DAVIS,)
13 Debtor.) **CHAPTER 7 TRUSTEE’S MOTION FOR**
14) **ORDER:**
15) (1) **APPROVING THE SALE OF REAL**
16) **PROPERTY OF THE ESTATE FREE**
17) **AND CLEAR OF LIENS PURSUANT**
18) **TO BANKRUPTCY CODE §§ 363(b)(1)**
19) **AND (f), SUBJECT TO OVERBIDS,**
20) **COMBINED WITH NOTICE OF**
21) **BIDDING PROCEDURES AND**
22) **REQUEST FOR APPROVAL OF THE**
23) **BIDDING PROCEDURES UTILIZED;**
24) (2) **APPROVING PAYMENT OF REAL**
25) **ESTATE COMMISSION;**
26) (3) **DIRECTING TURNOVER OF REAL**
27) **PROPERTY; AND**
28) (4) **GRANTING RELATED RELIEF;**
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
LYNDA T. BUI IN AND JONATHAN
STEELE IN SUPPORT THEREOF
[Property located at: 4711 Don Zarembo Drive,
Los Angeles, CA 90008]
Hearing
Date: December 4, 2012
Time: 10:30 a.m.
Place: Courtroom 302
3420 Twelfth Street
Riverside, CA 92501

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1 **TO THE HONORABLE WAYNE JOHNSON, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR AND ALL**
3 **INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

4 **I. INTRODUCTION**

5 Lynda T. Bui, the Chapter 7 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
6 Michael A. Davis (“Debtor”), brings this 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), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for
9 Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission;
10 (3) Directing Turnover of Real Property; and (4) Granting Related Relief (“Sale Motion”).

11 The Trustee has received an offer to purchase the real property located at 4711 Don
12 Zarembo Drive, Los Angeles, CA 90008 (“Property”) for \$507,000, subject to overbids. The
13 Property is a single family residence owned by the Debtor. The Preliminary Title Report on the
14 Property, a true and correct copy of which is attached as **Exhibit 1** to Declaration of Lynda T. Bui
15 (“Bui Declaration”), indicates that the Debtor owes \$315,000 pursuant to the first deed of trust
16 held by Dean E. Thayer; Jeffrey B. Pearson; Steven B. Schwartz and Linda C. Schwartz, Trustee
17 of the S&L Schwartz Revocable Trust U/A DTD 3/23/2000; City National Bank, Trustee FBO
18 Randal M. Babbush; Pensco Trust Company; Custodian FBO Maureen T. Drake Iradrlap; Michael
19 N. Klotz and Audrey G. Klotz, Co-Trustees of the Klotz Family Revocable Trust Dated March '27,
20 2003 (“First Deed Holder”).

21 The First Deed Holder filed for relief from the automatic stay in relation to the Property on
22 June 27, 2012, asserting it was owed \$395,736.22. On September 4, 2012, a hearing was held for
23 the First Deed Holder’s aforementioned motion for relief from stay. At the hearing, and in light of
24 the offer to purchase the Property for \$507,000 obtained by the Trustee, the First Deed Holder
25 withdrew its motion for relief from the automatic stay based on the proposed sale exceeding the
26 amount owed to the First Deed Holder.

27 The offer is the best offer the Estate has received for the Property. Through the sale, the
28 Trustee is expected to generate proceeds of approximately \$29,785.76 for the benefit of the Estate

1 and its creditors. Further, in the event the purchase price is increased by a successful overbid, the
2 estimated net proceeds will increase and provide a greater distribution to creditors.

3 Therefore, the Trustee believes that good cause exists to grant the Sale Motion so the
4 Trustee does not lose this favorable business opportunity.

5 **II. RELEVANT FACTS**

6 **A. Case Commencement**

7 The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on
8 September 6, 2011 ("Petition Date"). Pursuant to Court order entered on October 19, 2011, the
9 case was converted to Chapter 7 and the Trustee was thereafter appointed to administer the
10 Chapter 7 Estate.

11 **B. The Property**

12 Among the assets of the Estate is real property located at 4711 Don Zarembo Drive, Los
13 Angeles, California. The Property is legally described as follows:¹

14 LOT 35, TRACT 20870, IN THE CITY OF LOS ANGELES, COUNTY OF LOS
15 ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK
16 603 PAGES 97 TO 99 INCLUSIVE OF MAPS, IN THE OFFICE OF THE
17 COUNTY RECORDER OF SAID COUNTY;

18 EXCEPT THEREFROM ALL PETROLEUM, OIL, GAS, NAPHTHA,
19 ASPHALTUM, BREA, AND OTHER HYDROCARBONS AND ALL OTHER
20 MINERALS WITHIN OR UNDERLYING SAID LAND WITHOUT, HOWEVER,
21 ANY RIGHT TO REENTER OR USE THE SURFACE OF SAID LAND OR ANY
22 PORTION OF THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET
23 FROM THE SURFACE, AS RESERVED BY DEXTRO BALDWIN DERX,
24 BALDWIN M. BALDWIN AND RAYMOND L. KINSLEY, AS TRUSTEES
25 UNDER THE TRUST CREATED BY RAYMOND L. KINSLEY, AS TRUSTEES
26 UNDER THE TRUST CREATED BY THE LAST WILL AND TESTAMENT OF
27 AUITA M. BALDWIN, DECEASED, IN DEED RECORDED APRIL 22, 1947 IN
28 BOOK 24497 PAGE 230 OFFICIAL RECORDS.

29 ALSO EXCEPT THEREFROM AN UNDIVIDED ONE-QUARTER IN AND TO
30 ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR
31 AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR
32 PRODUCTIBLE THEREFROM, TOGETHER WITH THE FREE AND
33 UNLIMITED RIGHT TO MINE, DRILL AND BORE AND BORE BENEATH
34 THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR
35 REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE
36 OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES
37 SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED

¹ 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.

1 HEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE
2 ABOVE DESCRIBED REAL PROPERTY WITHIN ONE-HUNDRED FEET OF
3 THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE
4 SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED,
5 INCLUDING THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER
6 FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH
7 OPERATIONS AS RESERVED BY THE CAPITAL CO., A CORPORATION, IN
8 DEED RECORDED DECEMBER 30, 1949 IN BOOK 31851 PAGE 63,
9 OFFICIAL RECORDS.

10 ASSESSOR'S PARCEL NUMBER: 5027-010-001

11 Pursuant to Court order entered on July 9, 2012 (docket number 65), the Trustee was
12 authorized to employ Jonathan R. Steele of Rodeo Realty (the "Broker") to assist the Trustee in the
13 marketing and sale of the Property.

14 In his Bankruptcy Schedule A, the Debtor listed the value of the Property at \$523,204.00
15 with a lien in favor of the First Deed Holder in the amount of \$350,000.00. The Trustee is advised
16 that real property taxes are owed to the Los Angeles County Tax Collector (which is described
17 below) which was not listed on the Debtor's Schedules. As set forth below, the Trustee believes
18 there is equity in the Property for the benefit of the Estate and creditors.

19 The Trustee's Broker reviewed the Property and believed the Property had a lower fair
20 market value than the amount listed in the Debtor's Bankruptcy Schedule. The Property was thus
21 listed for the sale price of \$499,000.00. The Property has been listed on the MLS and advertised
22 for sale since August 2012. The Trustee received multiple offers on the Property for its list price,
23 and each interested party was instructed by the Broker to propose their "best and final offer." The
24 \$507,000.00 offer that is the subject of this Sale Motion represents the highest "best and final
25 offer" received by the Trustee.

26 The Debtor has claimed an exemption in the Property in the amount of \$23,225.00 pursuant
27 to C.C.P. § 703.140(b)(5).

28 **C. 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, a copy of which is attached as **Exhibit 1** to the Bui Declaration
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>
Los Angeles County Treasurer and Tax Collector	Real property taxes (estimated)	\$25,360.56	All outstanding real property taxes will be paid through escrow on the sale transaction.
Dean E. Thayer; Jeffrey B. Pearson; Steven B. Schwartz and Linda C. Schwartz, Trustee of the S&L Schwartz Revocable Trust U/A DTD 3/23/2000; City National Bank, Trustee FBO Randal M. Babbush; Pensco Trust Company; Custodian FBO Maureen T. Drake Iradrlap; Michael N Klotz and Audrey G. Klotz, Co-Trustees of the Klotz Family Revocable Trust Dated March 27, 2003	First priority deed of trust listed on the Debtor's Schedule D as owing \$350,000. (original lien recording date of June 5, 2009, Recording No. 2009-0839202).	\$395,736.22	This lien will be paid through escrow on the sale of the Property. Thus, this lien will be released, discharged and terminated at the close of escrow and the Property will be sold free and clear of this lien and the lien will not attach to the sale proceeds.

All costs of sale including escrow fees and real estate commissions will be paid at closing. In addition, all outstanding real property taxes will be paid through the sale.

D. The Purchase Offer and Summary of the Sale Terms

Through her Broker, the Trustee has received an offer from Zenzi Gadson, Justin Maurice, Theresa Papciak and Michael Papciak (collectively, the “Buyers”) to purchase the Property for \$507,000.00 The purchase price includes a deposit of \$15,210.00. Attached as **Exhibit 2** to the Bui Declaration is a true and correct copy of the Counter Offer No. 3 and related addendum (collectively, the “Agreement”).

A summary of the Agreement’s terms 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

1 inconsistency between the terms, provisions or effect of the Agreement and the description of it in
2 these pleadings, the Agreement alone shall govern and not these pleadings or the descriptions
3 herein.

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

6 Buyers	Zenzi Gadson, Justin Maurice, Theresa Papciak and Michael Papciak												
7 Purchase Price	\$507,000.00 subject to the Bidding Procedures set forth below. 8 \$15,210.00 paid as a deposit, balance of the purchase price to be paid at 9 closing.												
10 Escrow Holder and Escrow Closing Date	The escrow holder shall be A & A Escrow. Escrow is scheduled to close fourteen (14) days after Court approval of the sale.												
11 Escrow, Title and Other Costs	All real property taxes and assessments for the current tax year shown in the current county tax bill shall be prorated between Seller and Buyers and charged as of the closing date to the applicable accounts of Seller and Buyers. The sale shall be free and clear of any homeowner's association assessments and all real property taxes (other than those prorated as provided above) enforceable against the Property through the closing date of the sale. 14 Escrow fees shall be split between Buyers and Seller in the manner customary in the County where the Property is located.												
16 Bankruptcy Court Approval	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 confirm the sale. Payment of any and all real estate brokers' commissions is also subject to notice to creditors and approval by the Bankruptcy Court.												
19 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 Estate's agent in the amount of \$30,420 (6% of the purchase price) as follows: 21 <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;"><u>Agent</u></td> <td style="text-align: center;"><u>Commission²</u></td> </tr> <tr> <td>Trustee's Broker</td> <td></td> </tr> <tr> <td>Jonathan Steele and John P. Gould of</td> <td style="text-align: right;">\$15,210.00</td> </tr> <tr> <td>Rodeo Realty</td> <td></td> </tr> <tr> <td>Buyers' Broker</td> <td></td> </tr> <tr> <td>Sotheby's International Realty</td> <td style="text-align: right;">\$15,210.00</td> </tr> </table>	<u>Agent</u>	<u>Commission²</u>	Trustee's Broker		Jonathan Steele and John P. Gould of	\$15,210.00	Rodeo Realty		Buyers' Broker		Sotheby's International Realty	\$15,210.00
<u>Agent</u>	<u>Commission²</u>												
Trustee's Broker													
Jonathan Steele and John P. Gould of	\$15,210.00												
Rodeo Realty													
Buyers' Broker													
Sotheby's International Realty	\$15,210.00												
25 Purchase Without Warranties	Buyers acknowledge and agree that the sale of the Property shall be "as-is" and without any warranties whatsoever and the transfer of the Property to the Buyers shall be by a Bankruptcy Trustee's Deed or Quitclaim Deed.												

27
28 ² The Trustee has requested a reduction in commission to ensure there will be sufficient net profit to the Estate to make a meaningful distribution to unsecured creditors.

<p>1 Trustee's Liability</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p>	<p>The Buyers acknowledge 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 any addendums to the Agreement, the Property, 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 reason, then the limit of the Trustee's liability is only to return any money paid to the Trustee by the Buyers, 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 has 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.</p>
<p>7 Hold Harmless</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>	<p>The Buyers understand the terms and conditions of the entire purchase contact and hold the Estate and the realtors, brokers, agents, Lynda T. Bui, Trustee, and her attorneys including Shulman Hodges & Bastian LLP, agents and employees, harmless from any liabilities arising from this contact. All parties hereto further agree, jointly and severally, to pay on demand as well as to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of any kind or nature which in good faith, Escrow may incur or sustain in connection with or arising out of this Escrow and Escrow is hereby given a lien upon all the rights, titles and interest of each of the undersigned in all escrow papers and other property and monies deposited in this escrow, to protect the rights of escrow and to indemnify and reimburse Escrow under this Addendum. In the event this Escrow is not completed for any reason, Escrow is authorized to deduct and pay its fee, plus costs incurred from any funds on deposit.</p>
<p>14 Jurisdiction of the Bankruptcy Court</p> <p>15</p>	<p>Any and all disputes which involve in any manner the Estate or Lynda T. Bui, Trustee, arising from the Agreement and/or its addendums or relating in any manner to the Property, shall be resolved only in the United States Bankruptcy Court, Central District of California.</p>
<p>16 Sale Subject to Overbidding</p>	<p>The sale of the Property is subject to the Bidding Procedures described below.</p>
<p>17 Outstanding Real Property Taxes</p> <p>18</p>	<p>To be paid by through escrow.</p>
<p>19 Free and Clear of Liens and Encumbrances</p> <p>20</p>	<p>The Property shall be delivered to the Buyers free and clear of all liens and encumbrances.</p>
<p>21 Good Faith Finding</p> <p>22</p> <p>23</p>	<p>The proposed sale has been brought in good faith and has been negotiated on an "arms length" basis. The negotiations with the Buyers have resulted in an offer to sell the Estate's interest in the Property that will have substantial benefit. Accordingly, the sale is in good faith and should be approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.</p>
<p>24 Waiver of Rule 6004(h)</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>The Trustee requests that the Court waive the fourteen-day stay of the order approving the sale of the Property under Federal Rules of Bankruptcy Procedure 6004(h) such that the sale of the Property can close as soon as possible after entry of the Court order approving the Sale Motion and the Agreement.</p>

1 **E. Notice of Bidding Procedures**

2 The Trustee has determined that it would benefit the Estate to permit all interested parties
3 to receive information and bid for the Property instead of selling the Property to the Buyers on an
4 exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the
5 creditors of this Estate, the Trustee also seeks Court approval of the following bidding procedures
6 (“Bidding Procedures”):

7 1. Potential overbidders must bid an initial amount of at least \$5,000 over the
8 Purchase Price, or \$507,000.00. Minimum bid increments thereafter shall be \$1,000. The Trustee
9 shall have sole discretion in determining which overbid is the best for the Estate and will seek
10 approval from the Court of the same.

11 2. Overbids must be in writing and be received by the Trustee and the Trustee’s
12 counsel, Shulman Hodges & Bastian LLP to the attention of Ryan D. O’Dea on or before **4:00**
13 **p.m. (California time) on the date which is three days prior to the hearing on the Sale**
14 **Motion.**

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

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

22 5. The overbidder must seek to acquire the Property on terms and conditions not less
23 favorable to the Estate than the terms and conditions to which the Buyers have agreed to purchase
24 the Property as set forth in the Agreement attached as **Exhibit 2** to the Bui Declaration including
25 closing on the sale of the Property in the same time parameters as the Buyers.

26 6. All competing bids must acknowledge that the Property is being sold on an “AS IS”
27 basis without warranties of any kind, expressed or implied, being given by the Seller, concerning
28 the condition of the Property or the quality of the title thereto, or any other matters relating to the

1 Property. The competing bid buyer must represent and warrant that he/she is purchasing the
2 Property as a result of their own investigations and are not buying the Property pursuant to any
3 representation made by any broker, agent, accountant, attorney or employee acting at the direction,
4 or on the behalf of the Seller. The competing bidder must acknowledge that he/she has inspected
5 the Property, and upon closing of Escrow governed by the Agreement, the competing buyer
6 forever waives, for himself/herself, their heirs, successors and assigns, all claims against the
7 Debtor, their attorneys, agents and employees, the Debtor's Estate, Lynda T. Bui as Trustee and
8 individually, and her attorneys, agents and employees, arising or which might otherwise arise in
9 the future concerning the Property.

10 7. If overbids are received, the final bidding round for the Property shall be held at the
11 hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid and
12 purchase the Property. At the final bidding round, the Trustee or her counsel will, in the exercise
13 of their business judgment and subject to Court approval, accept the bidder who has made the
14 highest and best offer to purchase the Property, consistent with the Bidding Procedures
15 ("Successful Bidder").

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

20 9. In the event the Successful Bidder fails to close on the sale of the Property within
21 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
23 the Trustee may then sell the Property to the first back-up bidder approved by the Court at the
24 hearing on the Sale Motion ("First Back-Up Bidder").

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

6 **III. LEGAL BASIS FOR THE RELIEF SOUGHT**

7 **A. The Court May Authorize the Sale When There is a Good Faith Purchaser**

8 The Trustee, after notice and hearing, may sell property of the estate. Bankruptcy Code
9 Section 363(b). The standards to establish are that there is a sound business purpose for the sale,
10 that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that
11 there is accurate and reasonable notice to creditors and that the sale is made in good faith. *In re*
12 *Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722
13 F.2d 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale to
14 one of very few serious bidders where an asset has been marketed and a delay could jeopardize the
15 transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y.
16 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's
17 proposed sale of the Property meets the foregoing criteria.

18 **1. Sound Business Purpose**

19 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the
20 business purpose for a proposed sale justifies disposition of property of the estate under Section
21 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting the
22 reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986),
23 and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the following
24 standard to be applied under Bankruptcy Code Section 363(b):

25 Whether the proffered business justification is sufficient depends on
26 the case. As the Second Circuit held in *Lionel*, the bankruptcy judge
27 should consider all salient factors pertaining to the proceeding and,
28 accordingly, act to further the diverse interests of the debtor,
creditors and equity holders, alike. He might, for example, look to
such relevant factors as the proportionate value of the assets to the
estate as a whole, the amount of lapsed time since the filing, the

1 likelihood that a plan of reorganization will be proposed and
2 confirmed in the near future, the effect of the proposed disposition
3 on future plans of reorganization, the proceeds to be obtained from
4 the disposition vis-a-vis any appraisals of the property, which of the
alternatives of use, sale or lease the proposal envisions and, most
importantly perhaps, whether the asset is increasingly or decreasing
in value. This list is not intended to be exclusive, but merely to
provide guidance to the bankruptcy judge.

5 *Walter*, 83 B.R. at 19-20 (quoting *Continental*, 780 F.2d at 1226).

6 Here, the facts surrounding the sale of the Property support the Trustee's business decision
7 that the proposed sale is in the best interests of the Estate and its creditors. Through the sale, the
8 Trustee expects to generate net proceeds of approximately \$29,785.76 as follows (amounts are
9 estimated):

10 Sale Price	\$507,000.00
11 Less real estate commission and costs of sale (6%) ³	(\$30,420.00)
12 Less estimated real property taxes (estimated)	(\$25,360.56)
13 Less estimated capital gains tax (estimated) ⁴	(\$3,400.00)
14 Less estimated amounts due First Deed Holder	(\$395,736.22)
15 Less Debtor's Claimed Exemption in the Property	(\$23,225.00)
16 Estimated Net Sale Proceeds for the benefit of the Estate and its creditors. ⁵	\$29,785.76

17 The estimated net proceeds will benefit the Estate by providing funds for distribution to
18 creditors. If the Sale Motion is not approved, then there will be a substantial loss to the Estate. In
19 such event, the Estate will not receive any benefit from the Property.

20 Furthermore, the Trustee believes that the proposed sale, subject to overbids, will be at fair
21 market value because it is the best offer the Estate has received thus far for the Property after the
22 inspection date. Given that the sale is subject to overbids, it is anticipated the Trustee will receive
23 the best and highest value for the Property and therefore the proposed sale price of the Property is
24 fair and reasonable.

25 _____
26 ³ The Trustee has already requested a 1% reduction in commission.

27 ⁴ The Trustee has had the proposed sale analyzed by a CPA, who has informed the Trustee that the
28 maximum capital gains tax related to the proposed sale would be \$3,400.00. The Trustee is
currently analyzing whether a capital gains tax is applicable to the proposed sale.

⁵ The Estate will net approximately \$5,000 more if the Brokers agree to the 1% reduction of their commission.

1 Therefore, the Trustee respectfully submits that, if this Court applies the “good business
2 reason standard” suggested by the Second Circuit in *Lionel*, the sale should be approved.

3 **2. The Sale Serves the Best Interests of the Estate and Creditors**

4 The Trustee believes that it would be in the best interest of the Estate and its creditors to
5 sell the Property. The benefits to the Estate, as set forth above, are significant as the proposed sale
6 will yield an estimated \$29,785.76 to the Estate. If the Sale Motion is not approved, the Estate will
7 not receive the sale proceeds and will likely lose the Buyers. The Trustee does not want to lose
8 this beneficial business opportunity. Thus, the Trustee has made a business decision that it is in
9 the best interest of the creditors of the Estate that this Sale Motion be approved.

10 **3. Accurate and Reasonable Notice**

11 It is expected that notice of this Sale Motion will satisfy the requirements for accurate and
12 reasonable notice.

13 The notice requirements for sales are set forth in Federal Rules of Bankruptcy Procedure
14 (“FRBP”) 6004 and 2002. The notice must include the time and place of any public sale, the terms
15 and conditions of any private sale, the time fixed for filing on objections and a general description
16 of the property. Federal Rules of Bankruptcy Procedure 2002(c)(1).

17 In compliance with FRBP 2002 and Bankruptcy Code Section 102(1), the Trustee shall
18 provide notice of the proposed sale of the Property and the Bidding Procedures to creditors and
19 parties in interest. The Notice of Sale Motion will include a summary of the terms and conditions
20 of the proposed sale, the time fixed for filing objections, and a general description of the Property,
21 including the Bidding Procedures. The Trustee submits that the notice requirements will have
22 been satisfied, thereby allowing creditors and parties in interest an opportunity to object to the sale.
23 Hence, no further notice should be necessary.

24 **4. The Sale is Made in Good Faith**

25 The proposed sale has been brought in good faith and has been negotiated on an “arms
26 length” basis. The court, in *Wilde Horse Enterprises*, set forth the factors in considering whether a
27 transaction is in good faith. The court stated:

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1 'Good faith' encompasses fair value, and further speaks to the
2 integrity of the transaction. Typical 'bad faith' or misconduct,
3 would include collusion between the seller and buyer, or any attempt
4 to take unfair advantage of other potential purchasers. . . . And, with
respect to making such determinations, the court and creditors must
be provided with sufficient information to allow them to take a
position on the proposed sale.

5 *Id.* at 842 (citations omitted).

6 In the present case, the negotiation of the proposed sale was an arms-length transaction.
7 The negotiations with the Buyers resulted in a sale price for the Property that will have substantial
8 benefit to the Estate. As set forth in the Notice of the Sale Motion, the creditors will have been
9 provided with sufficient notice of the sale. Accordingly, the sale is in good faith and should be
10 approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m)
11 at the hearing on this Sale Motion.

12 **B. The Proposed Sale Should be Allowed Free and Clear of Liens**

13 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
14 "free and clear of any interest in such property of an entity," if any one of the following five
15 conditions is met:

- 16 (1) applicable non-bankruptcy law permits a sale of such
17 property free and clear of such interest;
- 18 (2) such entity consents;
- 19 (3) such interest is a lien and the price at which such property is
20 to be sold is greater than the aggregate value of all liens on
such property;
- 21 (4) such interest is in bona fide dispute; or
- 22 (5) such entity could be compelled, in a legal or equitable
proceeding, to accept money satisfaction of such interest.

23 11 U.S.C. § 363(f).

24 Section 363(f) is written in the disjunctive and thus only one of the enumerated conditions
25 needs to be satisfied for Court approval to be appropriate.

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1 **1. Section 363(f)(3)**

2 The sale of the Property is proper pursuant to Section 363(f)(3). The sales price is for a
3 sum that is greater than the aggregate value of the liens which show as attached to the Property
4 pursuant to the preliminary title report which is attached to the Bui Declaration as **Exhibit 1**.

5 Courts have approved sales under Bankruptcy Code Section 363(f) even where the sale
6 price did not exceed the value of the liens asserted on the property so long as the sale is for fair
7 market value. *In re Terrace Gardens Park Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989); *In*
8 *re Beker Indus. Corp.*, 63 B.R. 474, 477 (Bankr. S.D.N.Y. 1986).

9 Thus, approval for the sale free and clear of liens and encumbrances in the manner
10 provided herein is appropriate.

11 **C. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

12 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the
13 use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days
14 after entry of the order, unless the Court orders otherwise.” Fed. Rule Bankr. P. 6004 (h).

15 The Trustee desires to close the sale of the Property as soon as practicable after entry of an
16 order approving the sale. Accordingly, the Trustee requests that the Court, in the discretion
17 provided it under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay
18 requirement.

19 **D. The Court has the Authority to Approve the Bidding Procedures**

20 Implementation of the Bidding Procedures is an action outside of the ordinary course of the
21 business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and hearing,
22 may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11
23 U.S.C. § 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a), “[t]he court may issue
24 any order, process, or judgment that is necessary or appropriate to carry out the provisions of this
25 title.” 11 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this
26 Court may authorize the implementation of overbidding procedures.

27 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a
28 bankruptcy court to issue orders determining the terms and conditions for overbids with respect to

1 a sale of estate assets. *In re Crown Corporation*, 679 F.2d 774 (9th Cir. 1982). The *Crown*
2 *Corporation* court entered an order specifying the minimum consideration required for an overbid
3 as well as the particular contractual terms required to be offered by overbidders. *Id.* at 777. The
4 *Crown Corporation* decision also approves an order requiring and setting the amount of potential
5 overbidder's deposits and authorized courts to determine the disposition of such deposits. *Id.*
6 While the discussion is not extensive, the *Crown Corporation* decision recognizes the authority of
7 bankruptcy courts to order the implementation of bidding procedures such as those proposed in the
8 present case.

9 **1. The Overbid Procedures are Untainted by Self-Dealing**

10 The Bidding Procedures have been proposed in good faith and have been negotiated on an
11 "arms length" basis. Therefore, there is no prospective taint in dealings between Trustee and any
12 potential bidders.

13 **2. The Overbid Procedures Encourage Bidding and are Fair in Amount**

14 The Bidding Procedures are designed to encourage, not hamper bidding and are reasonable
15 under the circumstances. The Bidding Procedures are intended to provide potential overbidders
16 with adequate information to make an informed decision as to the amount of their bid and the
17 validity of their bid.

18 **3. The Overbid Procedures are Fair, Reasonable and Serve the Best Interests of**
19 **the Estate**

20 The proposed Bidding Procedures serve the Estate in several ways. First, the Bidding
21 Procedures themselves are fair, reasonable and productive; they will permit the Trustee to conduct
22 an orderly sale and obtain the best possible price on the best possible terms for the Property.

23 The Bidding Procedures will ensure that all bids will be comparable. The Trustee will
24 determine which bid is the highest and best for the Estate. The comparability requirement of the
25 Bidding Procedures will make it possible to accomplish this task.

26 The Bidding Procedures will help the Trustee to obtain the highest and best possible price
27 for the Property. The Bidding Procedures institute minimum overbid increments which the Trustee
28

1 believes are reasonable. Thus, the Trustee will be able to obtain substantial benefit for this Estate
2 from the sale of the Property from competing bids.

3 The Bidding Procedures require that potential bidders demonstrate their capacity to
4 complete the transaction. It would be a serious loss to the Estate if it surrendered its opportunity to
5 sell the Property to one buyer in favor of a competing bidder only to discover the successful bidder
6 incapable of consummating the transaction. Thus, requiring bidders to qualify as qualified bidders
7 will protect the Estate from such a loss.

8 Finally, the most important benefit of the Bidding Procedures to the Estate is that their
9 implementation will enable the consummation of the proposed sale. The proposed sale will be the
10 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
11 Implementation of the Bidding Procedures is an essential component of consummating the sale of
12 the Property and maximizing the value of the Property for the Estate and creditors.

13 The Bidding Procedures proposed by the Trustee are fair and provide for a “level playing
14 field” for all prospective bidders with respect to the Property. The proposed Bidding Procedures
15 establish a reasonable but expeditious timeline for allowing the Trustee to give notice of the
16 proposed sale and qualified bidders to conduct reasonable due diligence and submit competing
17 offers for the Property, thereby potentially generating additional value for the Property.
18 Furthermore, the notice that the Trustee proposes to provide to creditors and parties in interest in
19 connection with the Bidding Procedures and Sale Motion is designed to attract the most interest in
20 the acquisition of the Property and is sufficient under the circumstances of this case. Thus,
21 approval of the Bidding Procedures will serve the best interests of the Estate and its creditors.

22 **E. Request for Payment of Real Estate Commission**

23 Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ
24 professional persons, “that do not hold or represent an interest adverse to the estate, and that are
25 disinterested persons.” 11 U.S.C. § 327(a). By an Order entered on July 9, 2012, the Trustee was
26 authorized to employ the Broker to assist the Trustee in the marketing and sale of the Property.

27 Bankruptcy Code Section 328 allows employment of a professional person under Section
28 327 “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:

<u>Agent</u>	<u>Commission⁶</u>
Trustee’s Broker Jonathan Steele and John P. Gould of Rodeo Realty	Up to \$15,210.00
Buyers’ Broker Sotheby’s International Realty	Up to \$15,210.00

F. The Trustee is Entitled to Turnover of the Property

Bankruptcy Code Section 542 provides for the turnover of the property of the estate as follows:

(a) [A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease under section 363 of this title...shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C § 542(a).

Bankruptcy Code Section 541(a) defines property of the estate as including “all legal and equitable interests of a debtor as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Debtor was the owner of the Property on the Petition Date, and as such, the Property is property of estate as defined in section 541(a)(1).

Pursuant to section 542(a), the Trustee is entitled to recover any and all estate property in the possession, custody, or control of the Debtor unless such property is of inconsequential value or benefit to the estate. Here, the Debtor is in possession of the Property, and as detailed above, its sale will yield the Estate an estimated \$29,785.76. As such, the Property is not of inconsequential value or benefit to the Estate and Debtor is required to deliver the Property to the Trustee. Accordingly, the Court should order the Debtor to turn over the Property to the Trustee within 7 days following entry of the order granting this Motion. Moreover, in the event the Debtor fails to

⁶ For the reasons stated on page 5 of this Motion, the Trustee will be requesting a reduction of the Brokers’ commission.

1 turn over the Property within the aforementioned timeframe, the Court should authorize the
2 Trustee to obtain a Writ of Possession – Eviction upon ex parte application to the Court.

3 **IV. CONCLUSION**

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

- 6 1. Granting the Sale Motion.
- 7 2. Approving the Bidding Procedures set forth above for the sale of the Property.
- 8 3. Authorizing the Trustee to sell the Property to the Buyers (or Successful Bidder)
9 pursuant to the terms and conditions as set forth in the Agreement attached as **Exhibit 2** to the Bui
10 Declaration.
- 11 4. Authorizing the sale of the Property free and clear of liens.
- 12 5. Authorizing the Trustee to sign any and all documents convenient and necessary in
13 pursuit of the sale as set forth above, including but not limited to any and all conveyances
14 contemplated by the Agreement attached as **Exhibit 2** to the Bui Declaration.
- 15 6. Approving the payment of the real estate commission in the total amount not to
16 exceed six percent (6%) of the purchase price.
- 17 7. Authorizing the Trustee to disburse \$23,225 to the Debtor in full satisfaction of his
18 claimed exemption in the Property under C.C.P. 703.140(b)(5).
- 19 8. Authorizing the Trustee to pay from the proceeds of the sale of the Property through
20 escrow all amounts owing to the First Deed Holder and all real estate/property taxes owed to the
21 Los Angeles County Tax Collector.
- 22 9. Finding that the Buyers are in good faith pursuant to Bankruptcy Code Section
23 363(m).
- 24 10. Waiving the fourteen day stay of the order approving the sale of the Property under
25 Federal Rules of Bankruptcy Procedure 6004(h).
- 26 11. Approving the Trustee’s request for turnover of the Property.

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DECLARATION OF LYNDA T. BUI

I, Lynda T. Bui, declare:

1. I am the duly appointed, qualified and acting Chapter 7 Trustee for the bankruptcy estate of In re Michael A. Davis, Case No. 6:11-bk-38453-WJ (“Debtor”). I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify thereto, except where matters are stated on information and belief, in which case I am informed and believe that the facts so stated are true and correct.

2. I make this Declaration in support of my Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code § 363(b)(1) and (f), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission; (3) Directing Turnover of Real Property; and (4) Granting Related Relief (“Sale Motion”). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Sale Motion.

3. I have read and I am aware of the contents of the Sale Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Sale Motion and the Memorandum of Points and Authorities are true to the best of my knowledge.

4. The Property that is the subject of the Sale Motion is single family residence owned by the Debtor. The Preliminary Title Report on the Property (a true and correct copy of which is attached hereto as **Exhibit 1**) indicates that the Debtor was the owner on Petition Date.

5. Pursuant to Court order entered on July 9, 2012 (docket number 65), the Trustee was authorized to employ Jonathan R. Steele of Rodeo Realty (the “Broker”), to assist me in the marketing and sale of the Property.

6. In his Bankruptcy Schedule A, the Debtor listed the value of the Property at \$523,204.00 with a lien in favor of the First Deed Holder in the amount of \$350,000.00. I am advised that real property taxes are owed to the Los Angeles County Tax Collector which was not listed on the Debtor’s Schedules. As such, I believe there is equity in the Property for the benefit of the Estate and creditors.

1 7. My Broker reviewed the Property and believed the Property had a lower fair
2 market value than the amount listed in the Debtor's Bankruptcy Schedule. The Property was
3 listed for sale at \$499,000.00. The Property has been listed on the MLS and advertised for sale
4 since August 2012. I received multiple offers on the Property for its list price and each interested
5 party was instructed by the Broker to propose their "best and final offer." The \$507,000.00 offer
6 that is the subject of this Sale Motion represents the highest "best and final offer" I received.

7 8. The Debtor has claimed an exemption in the Property in the amount of \$23,225.00
8 pursuant to C.C.P. § 703.140(b)(5).

9 9. The Sale Motion sets forth the proposed treatment of all the liens and
10 encumbrances against the Property as detailed in Preliminary Title Report, a true and correct copy
11 of which is attached hereto as **Exhibit 1**.

12 10. Through my Broker, I received an offer from Zenzi Gadson, Justin Maurice,
13 Theresa Papciak and Michael Papciak (collectively, the "Buyers") to purchase the Property for
14 \$507,000.00. The purchase price includes a deposit of \$15,210.00. Attached as **Exhibit 2** to my
15 declaration is a true and correct copy of Counter Offer No. 3 and related addendum (collectively,
16 the "Agreement").

17 11. The Buyers' offer for the purchase of the Property is the best offer the Estate has
18 received. Through the sale, I expect to generate proceeds of \$29,785.76, or more if overbids are
19 received and/or the Brokers agree to a 1% reduction of their commission.

20 12. I am seeking to sell the Estate's interest in the Property free and clear of all liens,
21 claims, and encumbrances and subject to the Bidding Procedures described in the Sale Motion.

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1 13. For the reasons set forth in the Sale Motion and this Declaration, I respectfully
2 request that the Court grant the Sale Motion so that I do not lose this favorable business
3 opportunity to net a substantial amount of money for the Estate.

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

6 Executed on November 13, 2012, at Irvine, California.

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Lynda T. Bui

DECLARATION OF JONATHAN STEELE

I, Jonathan Steele, declare and state as follows:

1. The matters stated herein are true and correct and within my personal knowledge. If called as a witness, I could and would competently testify thereto. I am a licensed California Real Estate Broker and am employed as an Associate Broker with Rodeo Realty, Inc. located at 202 North Canon Drive, Beverly Hills, California 90210; telephone (310) 472-6404. I make this declaration in support of the Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code § 363(b)(1) and (f), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission; (3) Directing Turnover of Real Property; and (4) Granting Related Relief (“Motion”) filed by Lynda T. Bui, the Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Michael A. Davis (“Debtor”).

2. I have read the Motion and am familiar with the real property located at 4711 Don Zarembo Drive, Los Angeles, CA 90008 (the “Property”).

3. I have received an offer to purchase the Property for \$507,000.00 from potential buyers, Zenzi Gadson, Justin Maurice, Theresa Papciak and Michael Papciak. This offer represents the best and highest offer to date and is a fair representative of the market value of the Property.

4. I have been informed and understand that no sale of the Property may be consummated until after the following: (1) notice to creditors with the opportunity for a hearing on the proposed sale, and (2) entry of a Court order approving the sale.

5. I have been informed and understand that the Property is being sold on an “as is – where as” basis with all faults and conditions then existing, and thus understand that: (a) the Trustee is not making any representations, warranties, either express or implied, as to the condition of the Property, uses (prior, present and future), or otherwise; (b) the Trustee shall not provide the buyer with any reports as to the use or condition of the Property; (c) the Trustee shall not provide the buyer with any warranty protection plan with any building permits or plans; and

1 (d) the Trustee is selling the Property solely in her capacity as the Chapter 7 trustee of the
2 Debtor's bankruptcy estate.

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

5 Executed on November 13, 2012 at Beverly Hills, California.

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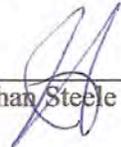

Jonathan Steele

EXHIBIT “1”

PRELIMINARY TITLE REPORT

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY 1990

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
 2. Any defect in or lien or encumbrance on the title;
 3. Unmarketability of the title;
 4. Lack of a right of access to and from the land;
- and in addition, as to an insured lender only:
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
 6. The priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority;
 7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

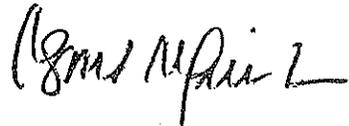
The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

Issued by:
CHICAGO TITLE
535 N. BRAND BOULEVARD, 4TH FLOOR
GLENDALE, CA 91203
(800) 880-9124

CHICAGO TITLE INSURANCE COMPANY

By:



President

ATTEST:



Secretary

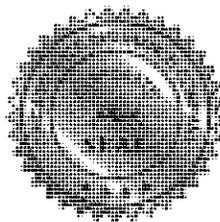


EXHIBIT "1"

Your Ref :
DAVIS

SCHEDULE A

Amount of Insurance: \$315,000.00

Policy No. 960079168 A43

Date of Policy: JUNE 5, 2009

at 8:00 AM

Premium: \$765.00

1. Name of Insured:

DEAN E. THAYER, JEFFREY B. PEARSON, STEVEN B. SCHWARTZ AND LINDA C. SCHWARTZ,
TRUSTEE OF THE S&L SCHWARTZ REVOCABLE TRUST U/A DTD 3/23/2000, CITY NATIONAL BANK,
TRUSTEE FBO RANDAL M. BABBUSH, PENSCO TRUST COMPANY CUSTODIAN FBO MAUREEN T DRAKE
IRADR1AP , MICHAEL N KLOTZ AND AUDREY G KLOTZ, CO-TRUSTEES OF THE KLOTZ FAMILY
REVOCABLE TRUST DATE MARCH 27, 2003

2. The estate or interest in the land which is covered by this policy is:

A FEE

3. Title to the estate or interest in the land is vested in:

MICHAEL A. DAVIS, A SINGLE MAN

4. The land referred to in this policy is situated in the State of California, County of LOS ANGELES
and is described as follows:

LOT 35 OF TRACT 20870, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF
CALIFORNIA, AS PER MAP RECORDED IN BOOK 603 PAGES 97 TO 99 INCLUSIVE OF MAPS, IN
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

This Policy valid only if Schedule B is attached.

ISSUED BY CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B

Your Ref:
DAVIS

Policy No. 960079168 A43

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

PART II

- A 1. PROPERTY TAXES, INCLUDING ANY ASSESSMENTS COLLECTED WITH TAXES, TO BE LEVIED FOR THE FISCAL YEAR 2009-2010 THAT ARE A LIEN NOT YET DUE.
- D 2. THE LIEN OF SUPPLEMENTAL OR ESCAPED ASSESSMENTS OF PROPERTY TAXES, IF ANY, MADE PURSUANT TO THE PROVISIONS OF PART 0.5, CHAPTER 3.5 OR PART 2, CHAPTER 3, ARTICLES 3 AND 4 RESPECTIVELY (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA AS A RESULT OF THE TRANSFER OF TITLE TO THE VESTEE NAMED IN SCHEDULE A; OR AS A RESULT OF CHANGES IN OWNERSHIP OR NEW CONSTRUCTION OCCURRING PRIOR TO DATE OF POLICY.
- E 3. WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT SHOWN BY THE PUBLIC RECORDS.
- F 4. COVENANTS, CONDITIONS AND RESTRICTIONS, IF ANY, APPEARING IN THE PUBLIC RECORDS.
- G 5. ANY EASEMENTS OR SERVITUDES APPEARING IN THE PUBLIC RECORDS.
- H 6. ANY LEASE, GRANT, EXCEPTION OR RESERVATION OF MINERALS OR MINERAL RIGHTS, IF ANY, APPEARING IN THE PUBLIC RECORDS.
- V 7. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE ORIGINAL AMOUNT SHOWN BELOW

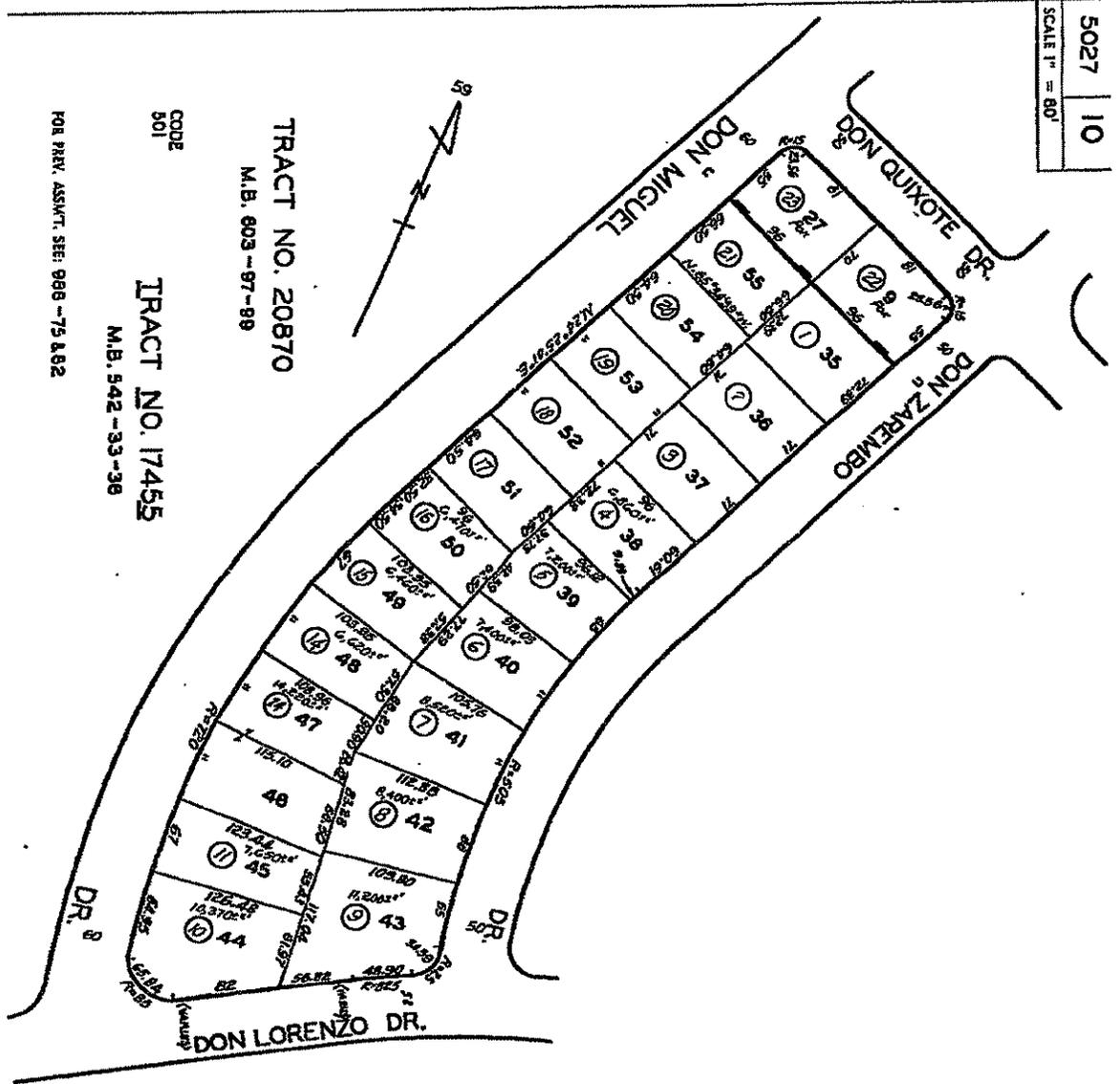
ISSUED BY CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B (CONT.)

Part II

AMOUNT: \$315,000.00
DATED: MAY 29, 2009
TRUSTOR: MICHAEL A. DAVIS, A SINGLE MAN
TRUSTEE: RESS FINANCIAL CORPORATION, A CALIFORNIA CORPORATION
BENEFICIARY: DEAN E. THAYER, A SINGLE MAN AS TO 57,500/315,000
INTEREST, JEFFREY B. PEARSON, A SINGLE MAN AS TO
57,500/315,000 INTEREST, STEVEN B. SCHWARTZ AND LINDA
C. SCHWARTZ, TRUSTEE OF THE S&L SCHWARTZ REVOCABLE
TRUST U/A DTD 3/23/2000 AS TO 50,000/315,000 INTEREST,
CITY NATIONAL BANK, TRUSTEE FBO RANDAL M. BABBUSH AS
TO 50,000/315,000 INTEREST, PENSICO TRUST COMPANY
CUSTODIAN FBO MAUREEN T DRAKE IRADR1AP AS TO
75,000/315,000 INTEREST, MICHAEL N KLOTZ AND AUDREY G
KLOTZ, CO-TRUSTEES OF THE KLOTZ FAMILY REVOCABLE TRUST
DATE MARCH 27, 2003 25,000/315,000 INTEREST, ALL AS
TENANTS IN COMMON
RECORDED: JUNE 5, 2009 AS INSTRUMENT NO. 09-839202 OFFICIAL
RECORDS
ORIGINAL LOAN
NUMBER: 09-1284

J
END OF SCHEDULE B



ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

4001354
9-22-62

EXHIBIT "1"

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "insured lender": the owner of an insured mortgage.

(d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.

(e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(f) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would prevent a purchaser of the estate or interest described in Schedule A or the insured

mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

(a) **After Acquisition of Title by Insured Lender.** If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title by an Insured.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from an insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) the amount of insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

An insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and

which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by an insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information

from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an insured lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or b(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to the insured property, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or, if applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable to an insured lender for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy as to any such insured except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the

insured claimant, the Company shall be subrogated (i) as to an insured owner, to all rights and remedies in the 3rd and 4th sections of the Code, and (ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of an insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage, or of the title to the estate or interest covered hereby, or by any action asserting such claim shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. SEVERABILITY

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at the issuing office or to:

EXHIBIT “2”

COUNTER OFFER



CALIFORNIA ASSOCIATION OF REALTORS®

COUNTER OFFER No. 3

For use by Seller or Buyer. May be used for Multiple Counter Offer. (C.A.R. Form CO, Revised 11/10)

Date August 28, 2012

This is a counter offer to the: [] California Residential Purchase Agreement, [X] Counter Offer, or [] Other ("Offer"), dated August 25, 2012, on property known as 4711 Don Zarembo Drive ("Property"), between Zenzi Gadson, Justin Maurice ("Buyer") and Lynda T. Bui, ATF Davis ("Seller").

- 1. TERMS: The terms and conditions of the above referenced document are accepted subject to the following: A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer. B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer. C. This Counter Offer and attached Addendum supersedes any and all prior agreements from the Seller.

D. The following attached addenda are incorporated into this Counter Offer: [] Addendum No. [X] Addendum to Counter Offer

- 2. RIGHT TO ACCEPT OTHER OFFERS: If this is a Seller Counter Offer, (i) Seller has the right to continue to offer the Property for sale or for another transaction, and to accept any other offer at any time prior to Acceptance, as described in paragraph 3 and (ii) Seller's acceptance of another offer prior to Buyer's Acceptance of this Counter Offer, shall revoke this Counter Offer. 3. EXPIRATION: This Counter Offer shall be deemed revoked and the deposits, if any, shall be returned unless this Counter Offer is signed by the Buyer or Seller to whom it is sent and a Copy of the signed Counter Offer is personally received by the person making this Counter Offer or by Jonathan R. Steele, who is authorized to receive it, by 5:00 PM on the third Day After the later date specified in paragraph 5 or, (if checked) by August 31, 2012 (date), at 5:00 AM [] PM. This Counter Offer may be executed in counterparts.

4. (If checked:) MULTIPLE COUNTER OFFER: Seller is making a Counter Offer(s) to another prospective buyer(s) on terms that may or may not be the same as in this Counter Offer. Acceptance of this Counter Offer by Buyer shall not be binding unless and until it is subsequently re-Signed by Seller in paragraph 7 below and a Copy of the Counter Offer Signed in paragraph 7 is personally received by Buyer or by [] who is authorized to receive it, by 5:00 PM on the third Day After the later date specified in paragraph 5 or, (if checked) by [] (date), at [] AM [] PM. Prior to the completion of all of these events, Buyer and Seller shall have no duties or obligations for the purchase or sale of the Property. NOTE TO SELLER: Sign and date in paragraph 5 to make this Counter Offer.

5. OFFER [] BUYER OR [X] SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY. Lynda T. Bui, ATF Davis Date

6. ACCEPTANCE: I/WE accept the above Counter Offer (If checked [] SUBJECT TO THE ATTACHED COUNTER OFFER) and acknowledge receipt of [] Justin Maurice DocuSigned by: Justin Maurice Date 8/31/2012 Time [] AM [] PM Zenzi Gadson Date 8/31/2012 Time [] AM [] PM Justin Maurice 7B42015CD1714D1...

7. MULTIPLE COUNTER OFFER SIGNATURE LINE: By signing below, Seller accepts this Multiple Counter Offer. NOTE TO SELLER: Do NOT sign in this box until after Buyer signs in paragraph 6. (Paragraph 7 applies only if paragraph 4 is checked.) Lynda T. Bui, ATF Davis Date Time [] AM [] PM

8. (/) (Initials) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by the maker of the Counter Offer, or that person's authorized agent as specified in paragraph 3 (or, if this is a Multiple Counter Offer, the Buyer or Buyer's authorized agent as specified in paragraph 4) on (date) at [] AM [] PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by the the maker of the Counter Offer, or that person's authorized agent (or, if this is a Multiple Counter Offer, the Buyer or Buyer's authorized agent) whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Acceptance has occurred.

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Reviewed by _____ Date _____ EQUAL HOUSING OPPORTUNITY

CO REVISED 11/10 (PAGE 1 OF 1) COUNTER OFFER (CO PAGE 1 OF 1) Agent: Jonathan Steele Phone: 310.472.6504 Fax: 310.724.7131 Prepared using zipForm® software Broker: Rodeo Realty 202 North Canon Drive Beverly Hills, CA 90210

EXHIBIT "2"

ADDENDUM TO COUNTER OFFER

This Addendum to Counter-Offer ("Addendum") is intended to set forth the terms and conditions of a contract for the purchase by and sale to Zenzi Gadson and Justin Maurice ("Buyer") from Lynda T. Bui, solely in her capacity as Chapter 7 Trustee for Michael Davis ("Seller" or "Trustee"), of the real property commonly known as 4711 Don Zarembo Dr., Los Angeles, CA 90008 ("Property"). When executed below, this Addendum together with Counter-Offer # 3 to the California Residential Purchase Agreement and Joint Escrow Instructions dated August 20, 2012 will constitute conclusive evidence and the exclusive terms and conditions of the contract for such purchase and sale ("Sale") of the Property.

PURCHASE PRICE; DEPOSIT; ESCROW. The purchase price for the Property shall be Five Hundred Seven Thousand Dollars (~~\$507,000.00~~) ("Purchase Price") subject to overbids. Buyer shall make an initial deposit of 3% of the purchase price, Fifteen Thousand Two Hundred Ten Dollars (\$15,210.00) ("Initial Deposit") in the form of cashier's check or wire transfer made payable and delivered to A & A Escrow Services ("Escrow Holder") within three (3) business days of acceptance of this Counter-Offer by Buyer, Seller's execution of the Affirmation Addendum in the form attached hereto as Exhibit "A", and Buyer's receipt of a copy of the fully executed Counter-Offer and the Affirmation Addendum.

Buyer shall deliver to the Trustee, within three (3) days of mutual execution of this Addendum upon this Counter Offer, proof of committed funds available to Buyer sufficient to enable Buyer to consummate the acquisition contemplated herein, which proof shall be in the form of a letter of credit; loan commitment or other form acceptable to the Trustee in the Trustee's sole discretion. In the event that either (i) Buyer fails timely to provide any such proof, or (ii) the Trustee determines, in the Trustee's sole discretion, that any proof of funds provided to Trustee by Buyer is unacceptable, the Trustee shall have the right, at the Trustee's option, to provide written notice to Buyer that this Counter-Offer is terminated. In the event that the Trustee exercises such termination right, this Counter-Offer shall terminate effective as of the date of Trustee's written notice to Buyer, whereupon the Initial Deposit (if theretofore deposited with the Escrow Holder) shall be returned to Buyer and Buyer and Trustee shall each be relieved of any further obligation hereunder.

Escrow instructions corresponding to the terms of this Addendum shall be provided by the Escrow Holder and signed by the parties within five (5) business days of the date of Buyer's and Seller's receipt of said escrow instructions. Buyer and Seller shall deposit such documents and instruments with the Escrow Holder as and when reasonably required to complete the sale. Buyer shall be free to assign this Addendum to another person or entity ("Assignee") subject to Seller's prior review and written approval (which approval Seller may grant or withhold in its sole discretion), but Buyer shall remain liable hereunder, together with such Assignee, in the event that such Assignee fails to perform any of Buyer's obligations hereunder.

1. **BUYER'S DUE DILIGENCE AND CANCELLATION RIGHT.** Buyer shall have ten (10) calendar days from the date of first inspection 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 may, not later than the end of that period, give Seller written notice of

Buyer's election to withdraw from this Addendum 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 this Addendum shall be terminated and Buyer shall receive a full refund of Buyer's deposit. If Buyer fails to give such Notice of Cancellation as within such period, all such contingencies shall be automatically removed as set forth in Paragraph 3 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 Property (as set forth in Paragraph 2), and (ii) Bankruptcy Court approval of this Addendum and the Sale (including as set forth in Paragraph 6.

2. **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 intended to be used. Such notice 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 such notice, Seller may, in Seller's sole discretion, either (i) cancel this Addendum and the sale, in which event Buyer's and Seller's obligations under this Addendum shall be terminated and Buyer shall receive a full refund of Buyer's deposit, or (ii) elect to correct the item(s) that were 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.

3. **REMOVAL OF CONTINGENCIES; COURT CONFIRMATION; CLOSING; DELIVERY OF POSSESSION.** If Buyer does not give Seller written Notice of Cancellation as and when provided in Paragraph 1, or Notice of Title Disapproval as and when provided in Paragraph 2, Buyer's silence shall be deemed acceptance and Buyer shall be deemed to have satisfied and removed all of Buyer's contingencies and to proceed with the Sale. Seller shall then file a motion with the Bankruptcy Court to confirm this sale. Upon such removal of contingencies, Buyer shall be unconditionally obligated to proceed with the sale, subject only to Bankruptcy Court confirmation as set forth below. If the Bankruptcy Court confirms the sale to Buyer, the closing shall take place as soon as practicable after entry of the order approving the sale, but no later than the first business day after fourteen (14) calendar days following the entry of such order. The closing shall occur on the date the deed transferring the Property to Buyer is recorded with the County Recorder where the Property is located. Occupancy shall be delivered to Buyer upon Escrow Holder's confirmation of recording.

4. **BANKRUPTCY SALE.** Buyer acknowledges that Seller is a Trustee appointed to administer the above referenced bankruptcy estate, and is a party to this Addendum solely in that capacity. Seller and Brokers 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 this Addendum

solely in the capacity as Trustee of the above referenced bankruptcy 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.

5. **TAXES; PRORATIONS; COSTS OF SALE.** All real property taxes and assessments for the current tax year shown in the current County Tax Bill shall be prorated between Seller and Buyer and charged as of the closing date to the applicable accounts of Seller and Buyer. The sale shall be free and clear of any homeowner's association assessments and all real property taxes (other than those prorated as provided above) enforceable against the Property through the closing date of the sale. Escrow fees shall be split between Buyer and Seller in the manner customary in the County where the Property is located. Seller shall pay any real property transfer tax. Seller shall pay the cost of a Natural Hazard Disclosure Report, from a vendor selected by Seller, to be furnished to Buyer through escrow. Buyer shall pay and have sole responsibility for compliance with any requirements imposed on the Property or this sale by any governmental agency(ies), including compliance with any applicable governmental retrofit requirements. Buyer shall pay the cost of recording the deed. Buyer and Seller shall each pay their own expenses of every other type except as specifically provided in this Addendum. Seller shall not be responsible to pay any one-year home warranty plan.

6. **BANKRUPTCY COURT APPROVAL; OVERBIDDING.** 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 confirm 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 bankruptcy estate not to do so.

7. **BROKERS.** Subject to Bankruptcy Court approval, Seller will pay a real estate agent's commission aggregating six (6%) percent of the purchase price of the Property to be split equally by the real estate Brokers. The Brokers are confirmed as follows: Rodeo Realty, Inc. representing the Seller exclusively, Sotheby's International Realty, representing the Buyers exclusively. All such Brokers and agents are collectively referred to herein as the "Brokers." No commission or compensation shall be due or payable to Brokers in connection with this Addendum or sale except from the cash proceeds of an actual Sale of the Property that closes to Buyer. Buyer hereby represents and warrants that, other than the Brokers, Buyer has not dealt with any broker, finder or other person entitled to any fee, commission or other compensation in connection with the Sale and Buyer shall indemnify, defend and protect and hold Seller and the related bankruptcy estate harmless of, from and against any claims, demands, actions, causes of action, losses, liabilities and costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as Seller may suffer or incur in the event that any claims for any such fees, commissions or other compensation of any kind are hereafter asserted.

8. **MATERIAL CHANGE OF CONDITION.** In the event of any material change in the condition of the Property after the date of acceptance of this Counter-Offer, if Buyer demands repair of any resulting actual damage to the Property, Seller may, at Seller's sole option: (a) elect to terminate this Addendum, in which event Buyer's and Seller's obligations to buy or sell shall terminate and the full Deposit shall be refunded to Buyer; or (b) make required repairs at the bankruptcy estate's expense; or

(c) assign any insurance proceeds for the damage to the Property to Buyer as of the close of the sale; or
(d) credit the cost of such repairs to Buyer through escrow, it being agreed that in the event that Seller elects and complies with subpart 8(b), (c) or (d), Buyer's obligation to proceed with the Sale shall be unaffected by any such material change in the condition of the Property.

9. REMEDY FOR BUYER'S OR SELLER'S FAILURE TO CLOSE. Buyer's sole remedy in the event that the sale fails to close as a result of Seller's inability or failure to close for any reason, including but not limited to the reason of failure to obtain approval of the sale by the Bankruptcy Court, shall be the mutual release of Buyer's and Seller's obligations to buy or sell and a full refund of the Deposit (plus any increased thereof by Buyer). In the event Buyer fails to close the sale for any reason other than Seller's default, after Buyer's contingencies have been removed as under Paragraphs 2 and 3, Buyer's Deposit (plus any increase, thereof by Buyer) shall be paid over to Seller and retained by Seller as liquidated damages without further legal action. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than three percent of the Purchase Price. This provision shall apply equally to the Deposit (and any increase, thereof by Buyer).

 [Buyer's Initials]

10. BANKRUPTCY COURT JURISDICTION. The U.S. Bankruptcy Court for the Central District of California shall have sole and exclusive jurisdiction to interpret and enforce the terms of this Addendum and Buyer hereby consents and submits to such exclusive jurisdiction. This Addendum shall be interpreted and enforced pursuant to the laws of the United States of America including the Bankruptcy Code, Title 11, United States Code.

11. "AS-IS," "WHERE-IS" CONDITION; NO WARRANTIES. Buyer acknowledges and agrees that, to the maximum extent permitted by law, the sale contemplated by this Addendum is made "as-is," "where-is," and "with all faults," except as specifically provided in this Addendum. 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, including Buyer's agreement to purchase their own home warranty and comply with any and all government requirements and retrofit, at Buyer's expense, prior to close of escrow; (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 this Addendum, be deemed to have been disclosed to Buyer by the Seller, as well.

12. **BROKERS.** Brokers and agents herein have not and will not perform any inspections, investigations, or due diligence on behalf of Buyer unless otherwise specified herein. Buyer must arrange for any inspections and investigations desired by Buyer utilizing suitable third party professionals selected and compensated by Buyer. In no event shall Seller have any liability or responsibility for any representation, warranty, statement made, or information furnished by Brokers or agents herein, or any other person or entity, concerning the Property, this Addendum, or any other matter, unless expressly set forth in writing and signed personally by Seller.

13. **OPPORTUNITY TO INSPECT; BUYER'S SOLE RELIANCE.** Buyer represents, warrants, acknowledges, and agrees that Buyer has been given the opportunity to inspect and investigate the Property and all other facts and circumstances deemed by Buyer relevant and significant, and to review information and documentation affecting the Property. In deciding to proceed with the sale, Buyer is relying solely on Buyer's own inspections and investigation of the Property (including by any outside professionals whom Buyer has elected to engage for such services) and review of such information and documentation, and not on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that neither Seller nor the Brokers and agents herein nor any other person has made or makes any representations as to the accuracy or completeness of such information. Buyer hereby fully and irrevocably releases all such sources and preparers of information and documentation affecting the Property which were retained or engaged by Seller or Brokers or agents from any and all claims that Buyer may now or hereafter have against such sources and preparers of information, for any costs, expenses, losses, liabilities, damages, demands, actions, or causes of action arising from any such information or documentation. **NEITHER SELLER NOR BROKERS HAVE PROVIDED OR WILL PROVIDE ANY LEGAL OR TAX ADVICE TO BUYER.** Buyer is informed that Buyer

must obtain any such advice, if desired by Buyer, from independent professionals selected and engaged by Buyer. THE SALE WILL NOT BE CONTINGENT ON ANY WRITTEN APPRAISAL OF THE PROPERTY.

14. PHYSICAL, GEOLOGICAL, PEST CONTROL, AND ENVIRONMENTAL INSPECTIONS AND INVESTIGATIONS.

A. BUYER SHALL CONDUCT THOROUGH PHYSICAL, GEOLOGICAL, PEST CONTROL, AND ENVIRONMENTAL INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS MAY BE DETERMINED BY BUYER, THROUGH QUALIFIED PROFESSIONALS SELECTED BY BUYER. Seller and Brokers and agents herein strongly recommend that Buyer fully exercise and not waive such inspections and investigations.

B. Buyer may at his sole discretion select and employ, at Buyer's expense, a licensed engineer(s), architect(s), contractor(s), geologist(s), pest control licensee(s), environmental consultant(s), or other qualified professional(s) to make inspection(s) and investigations of the Property, including, but not limited to, (i) its general structure, plumbing, heating, air conditioning (if any), electrical system, built-in appliances, cesspool/sewer/septic system, well, roof, soils, foundation, mechanical systems, pool, spa, related equipment and filters, sprinklers, and those other matters affecting the desirability of the Property (all if and only to the extent any such structures, systems, and components are presently a part of the Property); (ii) any actual or potential wood destroying pests or other conditions damaging to the Property or any portion thereof; (iii) environmental hazards, substances, products, or conditions, including without limitation, asbestos, formaldehyde, lead, lead-based paint, contaminated soil or water, fuel, chemical storage tanks, hazardous waste, electromagnetic fields, and radon gas, any of which may constitute a health risk; (iv) the presence or absence of any required governmental permits, inspections, applications, approvals, and certificates of occupancy, and compliance or lack of compliance with building codes and laws applicable to the Property; (v) plans and specifications for the Property; (vi) all applicable zoning, municipal, county, state, and federal, including those affecting the past, current, or any future use of the Property; (vii) deed restrictions and other matters of public record which may govern, restrict, condition, or prohibit the use, alteration, or development of the Property; and (viii) generally, without limitation, any and all other items and matters of whatsoever nature, character, or description, which Buyer deems material to Buyer's interests, in, on, or affecting the Property; and to approve or disapprove said inspection within the period and in the manner set forth in Paragraph 1

C. In the event Buyer is dissatisfied with the results of such inspection(s), Buyer may give written Notice of Cancellation to Seller strictly as and within the time provided in Paragraph 1. Buyer's failure to give such notice as and within the period specified therein shall conclusively be deemed Buyer's satisfaction and removal of such contingency and Buyer's election to proceed with the Sale.

15. COMPLETE AGREEMENT; NO OTHER REPRESENTATIONS OR WARRANTIES. Seller shall not be liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property or the operation thereof, furnished by any real estate broker, agent, employee, contractor, or other person. Buyer further acknowledges and agrees Seller has no obligations to make repairs, replacements or improvements except as may otherwise be expressly stated herein. Without limiting any other

provision hereof, Buyer represents, warrants and covenants to Seller that, except for Seller's express representations and warranties specified in this Addendum, Buyer is relying solely upon Buyer's own investigation of the Property.

16. **WRITTEN AFFIRMATION OF SELLER REQUIRED.** Buyer understands that Seller may continue to receive and respond to other offers on the Property and may be making several Counter-Offer concurrently containing the same or different terms. This Counter-Offer shall not be binding until accepted by Buyer and executed by Buyer and Seller on the signature page below; and then approved by Seller, in Seller's sole discretion, in the form of the Seller's Affirmation of Addendum attached hereto as Exhibit "A" which, if so executed by Seller, will constitute Seller's Addendum that Seller will sell the Property to Buyer, subject to Bankruptcy Court approval, the rights of any overbidding parties, and the terms and conditions of this Addendum. Buyer further acknowledges that it would be imprudent and unrealistic to rely upon the expectation of entering into a binding Addendum regarding the subject matter of this Counter-Offer prior to receipt of Seller's Affirmation of Addendum, and further represents to Seller that any efforts to complete due diligence, to negotiate or to perform any of the obligations provided herein shall not be considered as evidence of binding intent without Seller's Affirmation of Addendum, and understands that **BUYER'S ACCEPTANCE HEREOF SHALL HAVE NO FORCE OR EFFECT PRIOR TO BUYER'S RECEIPT OF SUCH AFFIRMATION OF ADDENDUM SIGNED BY SELLER.**

17. **ATTORNEYS' FEES.** In the event that either party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Addendum, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

18. If within fourteen (14) **business days** after acceptance, Buyer fails to give written Notice of Cancellation, the loan contingency shall be automatically removed, as set forth in Paragraph 3 and Buyer's obligation to proceed shall be non-contingent.

19. **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 Addendum, 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 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 Addendum; 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.

20. **HOLD HARMLESS.** The Buyer understands the terms and conditions of the entire purchase contract and holds the Estate and the realtors, brokers, agents, Lynda T. Bui, Trustee, and her attorneys including Schulman, Hodges & Bastian LLC, its agents and employees, harmless from any liabilities arising from this contract.

All parties hereto further agree, jointly and severally, to pay on demand as well as

to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of any kind or nature which in good faith, Escrow may incur or sustain in connection with or arising out of this Escrow and Escrow is hereby given a lien upon all the rights, titles and interest of each of the undersigned in all escrow papers and other property and monies deposited in this escrow, to protect the rights of escrow and to indemnify and reimburse Escrow under this Addendum. In the event this Escrow is not completed for any reason, Escrow is authorized to deduct and pay its fee, plus costs incurred from any funds on deposit.

21. EXPIRATION OF COUNTER-OFFER. This Counter-Offer shall expire if not accepted by Buyer by delivering a copy hereof, fully signed and initialed by Buyer, to Seller on or before close of business on August 31, 2012. Such acceptance shall nevertheless be subject to Paragraph 16.

I, the Buyer herein, have reviewed the foregoing Addendum and understand the terms and conditions set forth herein, and further agree to purchase the Subject Property pursuant to said terms and conditions.

Dated: 8/31/2012

DocuSigned by:
Zenzi Gadson

Zenzi Gadson, Buyer

Dated: 8/31/2012

Justin Maurice

Justin Maurice, Buyer

I, Seller, agree to sell the Subject Property pursuant to the terms and conditions set forth herein.

Dated: 8-30-12

By: [Signature]
Lynda T. Bui in her sole capacity as Bankruptcy Trustee for the Estate of Michael Davis, and not in her individual capacity

SO AGREED.

Dated: 9/2/12

[Signature]
Jonathan R. Steele, Trustee's Agent

Dated: _____

[Signature]
John P. Gould, Trustee's Agent

Dated: 8/31/2012

[Signature]
Tara Rodgers, Buyer's Agent

EXHIBIT "A"

SELLER'S AFFIRMATION OF ADDENDUM

Seller hereby acknowledges Buyer's acceptance of the foregoing Counter-Offer and affirmatively agrees to sell the Property to Buyer on the terms and conditions of the foregoing Addendum, but subject to Bankruptcy Court approval, rights of any overbidders and subject to the approval of all lender(s) secured by the property. Seller shall revoke any other outstanding Counter-Offer made to other prospective buyers or make the same subject and subordinate to this Addendum.

"SELLER"

Dated: 9/9/12

By:  _____

Lynda T. Bui, solely in her capacity as Chapter 7 Trustee for Michael Davis

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:
8105 Irvine Center Drive, Suite 600, Irvine, CA 92618

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: (1) APPROVING THE SALE OF REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS PURSUANT TO BANKRUPTCY CODE §§ 363(b)(1) AND (f), SUBJECT TO OVERBIDS, COMBINED WITH NOTICE OF BIDDING PROCEDURES AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES UTILIZED; (2) APPROVING PAYMENT OF REAL ESTATE COMMISSION; (3) DIRECTING TURNOVER OF REAL PROPERTY; AND (4) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF LYNDA T. BUI IN AND JONATHAN STEELE IN SUPPORT THEREOF**

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 13, 2012**, 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:

- Julian K Bach Julian@Jbachlaw.com
- Mark Bradshaw mbradshaw@shbllp.com, sswartzell@shbllp.com
- Lynda T. Bui (TR) trustee.bui@shbllp.com, C115@ecfbis.com
- Lynda T. Bui (TR) trustee.ltranbui@shbllp.com, C115@ecfbis.com
- Michael R Gonzales lbcecf@bvwlaw.com
- Paul Horn attorneypaul2000@yahoo.com
- Joe M Lozano notice@NBSDefaultServices.com
- John Patton jpatton@cookseylaw.com
- Kelly M Raftery bknotice@mccarthyholthus.com
- Leonard M Shulman lshulman@shbllp.com
- United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov

Service information continued on attached page

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

On (*date*) **November 13, 2012**, 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 13, 2012**, 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 Wayne Johnson, 3420 Twelfth Street, Bin Outside of Courtroom 302, Riverside, CA 92501

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 13, 2012 Erlanna Lohayza

Date

Printed Name

/s/ Erlanna Lohayza

Signature

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

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**3/16/12: NOT DELIVERABLE AS
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FORWARD**

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In re MICHAEL A. DAVIS,	CHAPTER: 7
Debtor(s).	CASE NO.: 6:11-bk-38453-WJ

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

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:
 8105 Irvine Center Drive, Suite 600, Irvine, CA 92618

A true and correct copy of the foregoing document described as Notice of Motion for: Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Liens, etc. 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 11/13/12 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 addressed indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
 On 11/13/12 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 follow. 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

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 11/13/12 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.

Judge's Copy (via Messenger): U.S. Bankruptcy Court; Attn: Honorable Wayne Johnson, 3420 Twelfth Street, Bin Outside of Courtroom 302, Riverside, CA 92501

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.

11/13/12 Erlanna Lohayza /s/ Erlanna Lohayza
 Date Type Name Signature

U.S. MAIL SERVICE LIST

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