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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION**

<p>In re:</p> <p>CARL P. SMITH and NANCY J. SMITH dba Benchmark Roofing Co., Inc.</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 6:11-bk-48829-MH CHAPTER: 7</p> <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p>
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<p>Sale Date: 05/29/2013</p>	<p>Time: 11:00 am</p>
<p>Location: Courtroom 303, 3420 Twelfth Street, Riverside, CA 92501</p>	

Type of Sale: Public Private **Last date to file objections:** 05/15/2013

Description of property to be sold: See attached Motion.

Terms and conditions of sale: See attached Motion.

Proposed sale price: \$ 140,000.00

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

Overbid procedure (if any): See attached Motion.

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

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

SHULMAN HODGES & BASTIAN LLP
c/o Ryan D. O'Dea
8105 Irvine Center Drive, Suite 600
Irvine, CA 92618
Telephone: (949) 340-3400 Facsimile: (949) 340-3000

Date: 05/02/2013

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6 Attorneys for R.L. Goodrich,
Chapter 7 Trustee

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

9 In re) Case No. 6:11-bk-48829-MH
10)
11 **CARL P. SMITH and**) Chapter 7
12 **NANCY J. SMITH**)
13 **dba Benchmark Roofing Co., Inc.,**) **CHAPTER 7 TRUSTEE’S MOTION FOR**
14 **Debtors.**) **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 DECLARATIONS OF
ROBERT L. GOODRICH AND DARLENE
SHADDOX IN SUPPORT THEREOF
[Declaration of prospective buyer Mark Weston
filed concurrently herewith]
[Property located at: 3700 Techachapi Drive, Lake
Havasu City, AZ 86403]
Date: May 29, 2013
Time: 11:00 a.m.
Place: Courtroom 303
3420 Twelfth Street
Riverside, CA 92501

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1 **TO THE HONORABLE MARK HOULE, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTORS AND ALL**
3 **INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

4 **I. INTRODUCTION**

5 R.L. Goodrich, the Chapter 7 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
6 Carl and Nancy Smith (“Debtors”), 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 3700 Techachapi
12 Drive, Lake Havasu City, AZ 86403 (“Property”) for \$140,000, subject to overbids. The Property
13 is a single family residence owned by the Debtors. The Preliminary Title Report on the Property, a
14 true and correct copy of which is attached as **Exhibit 1** to Declaration of R.L. Goodrich
15 (“Goodrich Declaration”), indicates that the Property is owned free and clear of liens.

16 The offer is the best offer the Estate has received for the Property. Through the sale, the
17 Trustee is expected to generate proceeds of approximately \$109,449.08 for the benefit of the Estate
18 and its creditors. Further, in the event the purchase price is increased by a successful overbid, the
19 estimated net proceeds will increase and provide a greater distribution to creditors.

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

22 **II. RELEVANT FACTS**

23 **A. Case Commencement**

24 The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on
25 December 29, 2011 (“Petition Date”). Robert L. Goodrich is the duly appointed, qualified and
26 acting Chapter 7 Trustee for the Estate.

27 ///

28 ///

1 **B. The Property**

2 The Debtors' Bankruptcy Schedule A lists a fee simple community property interest in the
3 Property, which is legally described as follows:

4 Lot 5, Block 9, Lake Havasu City, Tract No. 2235, according to the Plat thereof, recorded
5 July 22, 1969 at Fee No. 64412, in the Office of the County Recorder of Mohave County,
6 Arizona.

7 EXCEPT all oil, gas, and minerals whatsoever already found or which may hereafter be
8 found in or under said land and all underground water in, under or flowing through said
9 land and water-rights appurtenant thereto as reserved in mesne instruments of record.

10 EXCEPT an undivided 1/16th of all gases and other hydrocarbon substances, coal or stone,
11 metals, minerals, fossils and fertilizer of every name and description, together with all
12 uranium, thorium or any other material which is or may be determined by the laws of the
13 United States, the State of Arizona or decisions of Courts to be peculiarly essential to the
14 production of fissionable materials, whether or not of commercial value, as reserved by the
15 State of Arizona, in Section 37-231, Arizona Revised Statutes and in Patent of Record.

16 In the Debtors' Bankruptcy Schedule C, the Debtors claimed a homestead exemption in the
17 Arizona Property pursuant to C.C.P. § 704.730 in the amount of \$100,000. The Trustee filed an
18 objection to the Debtors' homestead exemption claim, which was granted pursuant to Court order
19 (the "Exemption Order") entered on January 9, 2013 (docket number 44). Pursuant to the
20 Exemption Order, the Debtors' homestead exemption was disallowed in its entirety.

21 Pursuant to Court order entered on April 22, 2013 (docket number 55), the Trustee was
22 authorized to employ Darlene Shaddox of Coldwell Banker Residential Brokerage (the "Broker")
23 to assist the Trustee in the marketing and sale of the Property.

24 In the Debtors' Bankruptcy Schedule A the value of the Property was asserted to be
25 \$100,000.00. The Trustee's Broker reviewed the Property and believed that the Property had a
26 higher fair market value than the amount listed in the Debtors' Bankruptcy Schedule. The
27 Property was thus listed for the sale price of \$125,000.00. The Property was listed on the MLS
28 and advertised for sale since March 2012. The Trustee received multiple offers on the Property for
or above its list price. The \$140,000.00 all-cash offer that is the subject of this Sale Motion
represents the highest received by the Trustee. As set forth below, the Trustee believes there is
substantial equity in the Property for the benefit of the Estate and creditors.

///

1 **C. The Basis for Value of the Property**

2 The Estate does not have the funds to obtain a formal written appraisal for the estimated
3 value of the Property. The Debtors valued the Property in their Bankruptcy Schedule A at
4 \$100,000.00. After her review of the Property, the Broker advised the Trustee that the Property
5 has a fair market value of \$125,000.00 based on the condition and location of the Property. As
6 such, the property was listed for sale at \$125,000.00.

7 **D. Marketing of the Property**

8 The Property has been marketed for approximately two months by the Trustee with the
9 assistance of the Broker. The marketing by the Broker has included listing the Property on the
10 Multiple Listing Service for publication on the Internet and related subscriber websites.

11 **E. Liens and Encumbrances Against the Property and Their Proposed Treatment**
12 **Through the Sale**

13 The following chart sets forth the only encumbrance against the Property, as detailed in the
14 Preliminary Title Report, a copy of which is attached as **Exhibit 1** to the Goodrich Declaration and
15 the proposed treatment of the encumbrance through the sale:

16

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
Mohave County Tax Collector	Real property taxes (estimated)	\$1,054.92	All amounts owed in relation to property taxes will be paid in full through escrow.

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21 In addition to the real property taxes listed above, all ordinary and customary costs of sale,
22 including escrow fees and real estate commissions, will be paid at closing. Escrow fees shall be
23 split between the Buyer and the Estate as the seller in the manner customary in Mohave County,
24 Arizona where the Property is located.

25 **F. Tax Consequences**

26 At the this time, the Trustee does not know what the capital gains tax liability will be, if
27 any, generated by the sale. The Trustee has had the proposed sale analyzed by a CPA, who has
28 informed the Trustee that the maximum state capital gains tax related to the proposed sale would

1 be \$6,696.00, and the maximum federal capital gains tax would be \$14,440.00. This is based on
2 the Debtors' purchase of the Property for \$68,000 and the Trustee's proposed a sale of the Property
3 herein for \$140,000.00. The Trustee is currently analyzing whether a capital gains tax is
4 applicable to the proposed sale or whether there are grounds for a reduction from the maximum
5 amount stated above. In the event that there is any tax liability generated from the sale of the
6 Property that is a liability of the Estate, it is anticipated that such taxes will be paid from the
7 proceeds of the sale.

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

9 Through his Broker, the Trustee has received an offer from Mark A. Weston (the "Buyer")
10 to purchase the Property for \$140,000.00 The purchase price includes a deposit of \$5,000.00.
11 Attached as **Exhibit 2** to the Goodrich Declaration is a true and correct copy of the purchase
12 agreement and addendum thereto (collectively, the "Agreement").

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

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

21 Buyer	Mark A. Weston
22 Purchase Price	\$140,000.00 subject to the Bidding Procedures set forth below. 23 \$5,000.00 paid as a deposit, balance of the purchase price to be paid at closing.
24 Escrow Holder and 25 Escrow Closing Date	The escrow holder shall be Stewart Title. Escrow is scheduled to close seven to fourteen (7-14) days after Court approval of the sale.

<p>1 Escrow, Title and 2 Other Costs</p>	<p>All real property taxes and assessments for the current tax year shown in the current county tax bill shall be prorated between Seller and the Buyer and charged as of the closing date to the applicable accounts of Seller and the 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.</p> <p>Escrow fees shall be split between the Buyer and Seller in the manner customary in the County where the Property is located.</p>						
<p>5 Bankruptcy Court 6 Approval</p>	<p>The sale is subject to notice to creditors, approval by the Bankruptcy Court, and higher and better bids received by Seller through and including the Bankruptcy Court hearing to 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.</p>						
<p>8 Real Estate Agent 9 Commission</p>	<p>Through escrow on the sale of the Property, and subject to Court approval, the Trustee shall pay compensation for real estate agent services to the Estate's agent in the amount of \$8,400.00 (6% of the purchase price) as follows:</p> <table border="0" data-bbox="678 724 1372 934"> <thead> <tr> <th style="text-align: center;"><u>Agent</u></th> <th style="text-align: center;"><u>Commission</u></th> </tr> </thead> <tbody> <tr> <td>Darlene Shaddox, broker for the Trustee.</td> <td style="text-align: right;">\$4,200.00</td> </tr> <tr> <td>The Collins Team, broker for the Buyer</td> <td style="text-align: right;">\$4,200.00</td> </tr> </tbody> </table>	<u>Agent</u>	<u>Commission</u>	Darlene Shaddox, broker for the Trustee.	\$4,200.00	The Collins Team, broker for the Buyer	\$4,200.00
<u>Agent</u>	<u>Commission</u>						
Darlene Shaddox, broker for the Trustee.	\$4,200.00						
The Collins Team, broker for the Buyer	\$4,200.00						
<p>14 Purchase Without 15 Warranties</p>	<p>The Buyer acknowledges and agrees that the sale of the Property shall be "as-is" and without any warranties whatsoever and the transfer of the Property to the Buyer shall be by a Bankruptcy Trustee's Deed or Quitclaim Deed.</p>						
<p>16 Trustee's Liability</p>	<p>The Buyer acknowledges that the Trustee is acting in his 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 Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Property and the Agreement; and all disputes arising before and after closing shall be resolved in said Court. Further, the Trustee 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>						

1 2 3 4 5 6 7 8	Hold Harmless The Buyer understands the terms and conditions of the entire purchase contact and hold the Estate and the realtors, brokers, agents, Robert L. Goodrich, Trustee, and his 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.
9 10	Jurisdiction of the Bankruptcy Court Any and all disputes which involve in any manner the Estate or Robert L. Goodrich, 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.
11	Sale Subject to Overbidding The sale of the Property is subject to the Bidding Procedures described below.
12	Outstanding Real Property Taxes To be paid by through escrow.
13 14	Free and Clear of Liens and Encumbrances The Property shall be delivered to the Buyer free and clear of all liens and encumbrances.
15 16 17 18	Good Faith Finding The proposed sale has been brought in good faith and has been negotiated on an "arms-length" basis. The negotiations with the Buyer 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.
19 20 21	Waiver of Rule 6004(h) 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.

H. Notice of Bidding Procedures

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

1. Potential overbidder(s) must bid an initial amount of at least \$5,000.00 over the

1 Purchase Price, or \$145,000.00. Minimum bid increments thereafter shall be \$1,000.00. The
2 Trustee shall have sole discretion in determining which overbid is the best for the Estate and will
3 seek approval from the Court of the same.

4 2. Overbids must be in writing and be received by the Trustee and the Trustee's
5 counsel, Shulman Hodges & Bastian LLP to the attention of Ryan D. O'Dea on or before **4:00**
6 **p.m. (California time) on the date which is three (3) days prior to the hearing on the Sale**
7 **Motion.**

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

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

15 5. The overbidder must seek to acquire the Property on terms and conditions not less
16 favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase the
17 Property as set forth in the Agreement attached as **Exhibit 2** to the Goodrich Declaration including
18 closing on the sale of the Property in the same time parameters as the Buyer.

19 6. All competing bids must acknowledge that the Property is being sold on an "AS IS"
20 basis without warranties of any kind, expressed or implied, being given by the Seller, concerning
21 the condition of the Property or the quality of the title thereto, or any other matters relating to the
22 Property. The competing bid buyer must represent and warrant that he/she is purchasing the
23 Property as a result of their own investigations and are not buying the Property pursuant to any
24 representation made by any broker, agent, accountant, attorney or employee acting at the direction,
25 or on the behalf of the Seller. The competing bidder must acknowledge that he/she has inspected
26 the Property, and upon closing of Escrow governed by the Agreement, the competing buyer
27 forever waives, for himself/herself, their heirs, successors and assigns, all claims against the
28 Debtors, their attorneys, agents and employees, the Debtors' Estate, Robert L. Goodrich as Trustee

1 and individually, and his attorneys, agents and employees, arising or which might otherwise arise
2 in the future concerning the Property.

3 7. If overbids are received, the final bidding round for the Property shall be held at the
4 hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid and
5 purchase the Property. At the final bidding round, the Trustee or his counsel will, in the exercise
6 of their business judgment and subject to Court approval, accept the bidder who has made the
7 highest and best offer to purchase the Property, consistent with the Bidding Procedures
8 (“Successful Bidder”).

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

13 9. In the event the Successful Bidder fails to close on the sale of the Property within
14 the time parameters approved by the Court, the Trustee shall retain the Successful Bidder’s
15 Deposit and will be released from his obligation to sell the Property to the Successful Bidder and
16 the Trustee may then sell the Property to the first back-up bidder approved by the Court at the
17 hearing on the Sale Motion (“First Back-Up Bidder”).

18 10. In the event First Back-Up Bidder fails to close on the sale of the Property within
19 the time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder’s
20 Deposit and will be released from his obligation to sell the Property to the First Back-Up Bidder
21 and the Trustee may then sell the Property to the second back-up bidder approved by the Court at
22 the hearing on the Sale Motion (“Second Back-Up Bidder”).

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

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

25 The Trustee, after notice and hearing, may sell property of the estate. Bankruptcy Code
26 Section 363(b). The standards to establish are that there is a sound business purpose for the sale,
27 that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that
28 there is accurate and reasonable notice to creditors and that the sale is made in good faith. *In re*

1 *Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722
2 F.2d 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale to
3 one of very few serious bidders where an asset has been marketed and a delay could jeopardize the
4 transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y.
5 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's
6 proposed sale of the Property meets the foregoing criteria.

7 **1. Sound Business Purpose**

8 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the
9 business purpose for a proposed sale justifies disposition of property of the estate under Section
10 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting the
11 reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986),
12 and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the following
13 standard to be applied under Bankruptcy Code Section 363(b):

14 Whether the proffered business justification is sufficient depends on the case. As
15 the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient
16 factors pertaining to the proceeding and, accordingly, act to further the diverse
17 interests of the debtor, creditors and equity holders, alike. He might, for example,
18 look to such relevant factors as the proportionate value of the assets to the estate as
19 a whole, the amount of lapsed time since the filing, the likelihood that a plan of
20 reorganization will be proposed and confirmed in the near future, the effect of the
21 proposed disposition on future plans of reorganization, the proceeds to be obtained
22 from the disposition vis-a-vis any appraisals of the property, which of the
23 alternatives of use, sale or lease the proposal envisions and, most importantly
24 perhaps, whether the asset is increasingly or decreasing in value. This list is not
25 intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

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

27 Here, the facts surrounding the sale of the Property support the Trustee's business decision
28 that the proposed sale is in the best interests of the Estate and its creditors. Through the sale, the
Trustee expects to generate net proceeds of approximately \$109,449.08 as follows (amounts are
estimated):

Sale Price	\$140,000.00
Less real estate commission and costs of sale (6%)	(\$8,400.00)
Less estimated real property taxes (estimated)	(\$1,054.92)

1	Less estimated California capital gains tax (estimated) ¹	(\$6,696.00)
2	Less estimated federal capital gains tax (estimated) ²	(\$14,440.00)
3	Estimated Net Sale Proceeds for the benefit of the Estate and its creditors.	\$109,449.08

4
5 The estimated net proceeds will benefit the Estate by providing funds for distribution to
6 creditors. If the Sale Motion is not approved, then there will be a substantial loss to the Estate. In
7 such event, the Estate will not receive any benefit from the Property.

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

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

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

16 The Trustee believes that it would be in the best interest of the Estate and its creditors to
17 sell the Property. The benefits to the Estate, as set forth above, are significant as the proposed sale
18 will yield an estimated \$109,449.08 to the Estate. If the Sale Motion is not approved, the Estate
19 will not receive the sale proceeds and will likely lose the Buyer. The Trustee does not want to lose
20 this beneficial business opportunity. Thus, the Trustee has made a business decision that it is in
21 the best interest of the creditors of the Estate that this Sale Motion be approved.

22 ///

23 _____
24 ¹ The Trustee has had the proposed sale analyzed by a CPA, who has informed the Trustee that the
25 maximum state capital gains tax related to the proposed sale would be \$6,696.00. This is based on
26 the Debtors’ purchase of the Property for \$68,000 and the Trustee’s proposed a sale of the Property
herein for \$140,000.00. The Trustee is currently analyzing whether a capital gains tax is applicable
to the proposed sale or whether there are grounds for a reduction from the maximum amount stated
above.

27 ² See footnote 1 above. The CPA has informed the Trustee that the maximum federal capital gains
28 tax from the sale proposed in this Motion is \$14,440.00. The Trustee is currently analyzing
whether a capital gains tax is applicable to the proposed sale or whether there are grounds for a
reduction from the maximum amount stated above.

1 **3. Accurate and Reasonable Notice**

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

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

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

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

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

19 ‘Good faith’ encompasses fair value, and further speaks to the integrity of the
20 transaction. Typical ‘bad faith’ or misconduct, would include collusion between the
21 seller and buyer, or any attempt to take unfair advantage of other potential
22 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.

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

24 In the present case, the negotiation of the proposed sale was an arms-length transaction.
25 The negotiations with the Buyer resulted in a sale price for the Property that will have substantial
26 benefit to the Estate. As set forth in the Notice of the Sale Motion, the creditors will have been
27 provided with sufficient notice of the sale. Accordingly, the sale is in good faith and should be
28

1 approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m)
2 at the hearing on this Sale Motion.

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

4 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
5 “free and clear of any interest in such property of an entity,” if any one of the following five
6 conditions is met:

- 7 (1) applicable non-bankruptcy law permits a sale of such property free
8 and clear of such interest;
- 9 (2) such entity consents;
- 10 (3) such interest is a lien and the price at which such property is to be
11 sold is greater than the aggregate value of all liens on such property;
- 12 (4) such interest is in bona fide dispute; or
- 13 (5) such entity could be compelled, in a legal or equitable proceeding, to
14 accept money satisfaction of such interest.

15 11 U.S.C. § 363(f).

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

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

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

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

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

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

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

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

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

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

17 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a
18 bankruptcy court to issue orders determining the terms and conditions for overbids with respect to
19 a sale of estate assets. *In re Crown Corporation*, 679 F.2d 774 (9th Cir. 1982). The *Crown*
20 *Corporation* court entered an order specifying the minimum consideration required for an overbid
21 as well as the particular contractual terms required to be offered by overbidders. *Id.* at 777. The
22 *Crown Corporation* decision also approves an order requiring and setting the amount of potential
23 overbidder’s deposits and authorized courts to determine the disposition of such deposits. *Id.*
24 While the discussion is not extensive, the *Crown Corporation* decision recognizes the authority of
25 bankruptcy courts to order the implementation of bidding procedures such as those proposed in the
26 present case.

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

2 The Bidding Procedures have been proposed in good faith and have been negotiated on an
3 “arms-length” basis. Therefore, there is no prospective taint in dealings between Trustee and any
4 potential bidders.

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

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

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

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

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

18 The Bidding Procedures will help the Trustee to obtain the highest and best possible price
19 for the Property. The Bidding Procedures institute minimum overbid increments which the Trustee
20 believes are reasonable. Thus, the Trustee will be able to obtain substantial benefit for this Estate
21 from the sale of the Property from competing bids.

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

27 Finally, the most important benefit of the Bidding Procedures to the Estate is that their
28 implementation will enable the consummation of the proposed sale. The proposed sale will be the

1 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
2 Implementation of the Bidding Procedures is an essential component of consummating the sale of
3 the Property and maximizing the value of the Property for the Estate and creditors.

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

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

14 Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ
15 professional persons, “that do not hold or represent an interest adverse to the estate, and that are
16 disinterested persons.” 11 U.S.C. § 327(a). By an Order entered on April 22, 2013, the Trustee
17 was authorized to employ the Broker to assist the Trustee in the marketing and sale of the
18 Property.

19 Bankruptcy Code Section 328 allows employment of a professional person under Section
20 327 “on any reasonable terms and conditions of employment, including on a retainer, on an hourly
21 basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a)
22 (emphasis added). Through this Sale Motion, as provided in the Agreement, the Trustee seeks
23 authorization to pay a real estate broker commission in the amount of six percent (6%) of the
24 purchase price. Through escrow on the sale of the Property, and subject to Bankruptcy Court
25 approval, the Trustee shall pay a real estate broker’s commission as follows:

<u>Agent</u>	<u>Commission</u>
Trustee’s Broker Darlene Shaddox, Coldwell Banker Residential	Up to \$4,200
The Buyer’s Broker	Up to \$4,200

The Collins Team, Selman and Associates

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2 **F. The Trustee is Entitled to Turnover of the Property**

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

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

9 11 U.S.C § 542(a).

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

14 Pursuant to section 542(a), the Trustee is entitled to recover any and all estate property in
15 the possession, custody, or control of the Debtors unless such property is of inconsequential value
16 or benefit to the estate. Here, the Debtors are in possession of the Property, and as detailed above,
17 its sale will yield the Estate an estimated \$109,449.08. As such, the Property is not of
18 inconsequential value or benefit to the Estate and the Debtors are required to deliver the Property
19 to the Trustee. Accordingly, the Court should order the Debtors to turn over the Property to the
20 Trustee within seven (7) days following the scheduled hearing on this Motion. Moreover, in the
21 event the Debtors fail to turn over the Property within the aforementioned timeframe, the Court
22 should authorize the Trustee to obtain a Writ of Possession – Eviction upon ex parte application to
23 the Court.

24 **IV. CONCLUSION**

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

- 27 1. Granting the Sale Motion.
28 2. Approving the Bidding Procedures set forth above for the sale of the Property.

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1 3. Authorizing the Trustee to sell the Property to the Buyer (or Successful Bidder)
2 pursuant to the terms and conditions as set forth in the Agreement attached as **Exhibit 2** to the
3 Goodrich Declaration.

4 4. Authorizing the sale of the Property free and clear of liens.

5 5. Authorizing the Trustee to sign any and all documents convenient and necessary in
6 pursuit of the sale as set forth above, including but not limited to any and all conveyances
7 contemplated by the Agreement attached as **Exhibit 2** to the Goodrich Declaration.

8 6. Approving the payment of the real estate commission in the total amount not to
9 exceed six (6%) percent of the purchase price.

10 7. Authorizing the Trustee to pay from the proceeds of the sale of the Property through
11 escrow all amounts owing to the Mohave County Tax Collector.

12 8. Authorizing the Trustee to pay from the proceeds of the sale of the Property all
13 ordinary and customary costs of sale, including escrow fees.

14 9. Finding that the Buyer is a good faith pursuant to Bankruptcy Code Section 363(m).

15 10. Waiving the fourteen (14) day stay of the order approving the sale of the Property
16 under Federal Rules of Bankruptcy Procedure 6004(h).

17 11. Approving the Trustee's request for turnover of the Property.

18 12. Authorizing the Trustee to obtain a Writ of Possession – Eviction upon ex parte
19 application to the Court if the Debtors fail to turn over the Property.

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

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24 **SHULMAN HODGES & BASTIAN LLP**

25 Dated: May 1, 2012

26 By: /s/ Ryan D. O'Dea
27 Leonard M. Shulman
28 Lynda T. Bui
Ryan D. O'Dea
Attorneys for Robert L. Goodrich, chapter 7 trustee
for the bankruptcy estate of Carl and Nancy Smith

DECLARATION OF ROBERT L. GOODRICH

I, Robert L. Goodrich, declare:

1. I am the duly appointed, qualified and acting Chapter 7 Trustee for the bankruptcy estate of In re Carl and Nancy Smith, Case No. 6:11-bk-48829-MH (“Debtors”). 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 Debtors. The Preliminary Title Report on the Property indicates that the Debtors were the owners on Petition Date. See **Exhibit 1** attached hereto.

5. Pursuant to Court order entered on April 22, 2013 (docket number 55), I was authorized to employ Darlene Shaddox of Coldwell Banker (the “Broker”), to assist me in the marketing and sale of the Property.

6. In their Bankruptcy Schedule A, the Debtors listed the value of the Property at \$100,000.00. Further, the Debtors’ schedules reflect that there are no liens or encumbrances on the Property. I am is advised that real property taxes are owed to the Mohave County Tax Collector which was not listed on the Debtors’ Schedules. As such, I believe there is substantial 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 higher fair
2 market value than the amount listed in the Debtors' Schedules. The Property was listed for sale
3 at \$125,000.00. The Property has been listed on the MLS and advertised for sale since March
4 2013. I received multiple offers on the Property for its list price and each interested party was
5 instructed by the Broker to propose their "best and final offer." The \$140,000.00 offer that is the
6 subject of this Sale Motion represents the highest "best and final offer" I received.

7 8. The Debtors claimed a homestead exemption in the Property in the amount of
8 \$100,000.00. However, I objected to the Debtors' claimed homestead exemption on the basis
9 that the Debtors' did not reside at the Property on the Petition Date. The Court sustained my
10 objection to the Debtors' homestead exemption and disallowed said exemption in full.

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

14 10. Through my Broker, I received an offer from Mark A. Weston (the "Buyer") to
15 purchase the Property for \$140,000.00. The purchase price includes a deposit of \$5,000.00.
16 Attached as **Exhibit 2** to my declaration is a true and correct copy of Counter Offer No. 3 and
17 related addendum (collectively, the "Agreement").

18 11. The Buyer's offer for the purchase of the Property is the best offer the Estate has
19 received. Through the sale, I expect to generate proceeds of \$109,449.08, or more if overbids
20 are received.

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

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DECLARATION OF DARLENE SHADDOX

I, Darlene Shaddox, 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 Arizona Real Estate Broker and am employed as an Associate Broker with Coldwell Banker located at 321 South Lake Havasu Avenue, Lake Havasu City, AZ 86403; telephone 928-855-2191. 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 Robert L. Goodrich, the Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Carl and Nancy Smith (“Debtors”).

2. I have read the Motion and am familiar with the real property located at 3700 Techachapi Drive Lake Havasu City, AZ 86403 (the “Property”).

3. The Property was listed on the MLS and advertised for sale since March 2012. I received multiple offers on the Property for or above its list price. The \$140,000.00 all-cash offer that is the subject of this Sale Motion represents the highest I received.

4. I have received an all-cash offer to purchase the Property for \$140,000.00 from Mark A. Weston (the “Buyer”). 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

1 provide the buyer with any reports as to the use or condition of the Property; (c) the Trustee shall
2 not provide the buyer with any warranty protection plan with any building permits or plans; and
3 (d) the Trustee is selling the Property solely in his capacity as the Chapter 7 trustee of the
4 Debtors' Estate.

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

7 Executed on April 14, 2013 at Lake Havasu, California.

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9 Darlene Shaddox

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EXHIBIT “1”

PRELIMINARY TITLE REPORT

ALTA Commitment Form
COMMITMENT FOR TITLE INSURANCE
Issued by



STEWART TITLE®
GUARANTY COMPANY

STEWART TITLE GUARANTY COMPANY, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned by:

Craig A Leonard

Authorized Signature
Stewart Title & Trust of Phoenix, Inc.
Company
Phoenix, AZ 85013
City, State



Stewart Morris Jr.
Senior Chairman of the Board
Malcolm S. Morris
Chairman of the Board
Nicholas Stalks
President

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

As to ALTA 2006 Policy forms:

5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

STEWART TITLE®
GUARANTY COMPANY

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

SCHEDULE A

Order Number: 13650376

Escrow Officer: Cindy Hyde

Effective Date: March 19, 2013 at 5:00 p.m.

Title Officer: Pamela Litzenburg / pjl / pjl

- | 1. Policy or Policies to be issued: | Amount of Insurance |
|-----------------------------------------------|---------------------|
| (a) Owner's: ALTA Homeowner's Policy 01-01-08 | \$ 140,000.00 |
| Proposed Insured:
Mark A. Weston, A _____ | |
| (b) Lender's: None | \$ 0.00 |
| Proposed Insured: | |
| (c) Lender's: None | \$ 0.00 |
| Proposed Insured: | |

2. The estate or interest in the land described or referred to in this Commitment and covered herein is:
FEE

3. Title to said estate or interest in said land is at the effective date hereof vested in:
Carl P. Smith and Nancy J. Smith, Husband and Wife as Joint Tenants with right of Survivorship

4. The land referred to in this Commitment is described as follows:
See Exhibit A attached hereto and made a part hereof.

5. The Deed of Trust to be insured and the assignments thereof, if any are described as follows:
None

Order Number: 13650376

Exhibit A

Lot 5, Block 9, Lake Havasu City, Tract No. 2235, according to the Plat thereof, recorded July 22, 1969 at Fee No. 64412, in the Office of the County Recorder of Mohave County, Arizona.

EXCEPT all oil, gas, and minerals whatsoever already found or which may hereafter be found in or under said land and all underground water in, under or flowing through said land and water-rights appurtenant thereto as reserved in mesne instruments of record.

EXCEPT an undivided 1/16th of all gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, together with all uranium, thorium or any other material which is or may be determined by the laws of the United States, the State of Arizona or decisions of Courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved by the State of Arizona, in Section 37-231, Arizona Revised Statutes and in Patent of Record.

SCHEDULE B

Order Number: 13650376

Showing matters which will be excepted in the Policy unless the same are disposed of to the satisfaction of the Company.

- i. Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- ii. Subject to the usual printed exclusions and exceptions contained in the regular form of policy, reprinted for reference on the Addendum attached hereto.

The following matters will be excepted in Schedule B of the policy to be issued:

1. Any action by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.
2. Taxes and assessments collectible by the County Treasurer, a lien not yet due and payable for the year 2013.
3. Any claim that arises out of the transaction by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is:
 1. a fraudulent conveyance or fraudulent transfer; or
 2. a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.
4. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
5. Water rights, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.

This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.

6. Easements, restrictions, reservations, conditions, set-back lines and all other matters as set forth on the plat of said subdivision, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin.

SCHEDULE B (Continued)

Order Number: 13650376

7. Restrictions, Conditions, Covenants, Reservations, including but not limited to any recitals creating easements, liabilities, obligations or party walls, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin contained in instrument recorded in Docket 160, Page 350.

REQUIREMENTS

Order Number: 13650376

The County Recorder may not accept documents for recording which do not comply with Arizona Revised Statutes 11-480 which, among other things, requires the following:

- a) Print must be ten-point type (pica) or larger.
- b) Margins of at least one-half inch along the left and right sides, one-half inch across the bottom, and on the first page at least two inches on top for recording and return address information. (NOTE: Nothing must be contained in the margin areas, including initials.)
- c) Each instrument shall be no larger than 8-1/2 inches in width and 14 inches in length.

Due to changes in Arizona Revised Statutes the County Recorder may not accept for recording any documents containing any more than five numbers that are reasonably identifiable as being part of an individual's Social Security Number, Credit Card, Charge Card or Debit Card Numbers, Retirement Account Numbers, Savings, Checking or Securities Entitlement Account Numbers.

The following requirements must be met and completed to the satisfaction of the Company before its policy of title insurance will be issued:

1. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation(s), please contact the Title Department immediately for further review prior to closing.

Upon confirmation by the owner of no open Deeds of Trust or Mortgages encumbering the Land described herein, furnish the Company with Affidavit of No Open Deeds of Trust or Mortgages.

2. PAY Full Year 2010 taxes, Parcel No. 113-05-144.
3. PAY Full Year 2011 taxes, Parcel No. 113-05-144.
4. PAY Full Year 2012 taxes, Parcel No. 113-05-144.
5. FURNISH an Indemnity Agreement for the benefit of Stewart Title & Trust Company of Phoenix, Inc. and Stewart Title Guaranty executed by the seller/borrower that no work or material has been done or furnished within the statutory lien period which could give rise to a mechanic's or materialman's lien.
6. PROPER SHOWING as to the marital status of **Mark A. Weston** prior to the close of escrow. THE RIGHT IS RESERVED to make additional exceptions or requirements based upon information furnished.

REQUIREMENTS (Continued)

Order Number: 13650376

7. PROPER PROCEEDINGS in the United States District Court, Arizona District, in the matter of the Estate of Carl P. Smith and Nancy J. Smith, debtors, Case No. 6:11-bk-48829-MH, leading to the recordation of a certified copy of an Order authorizing or approving this transaction.

NOTE: Escrow shall not close and policy issue until 14 days from the date of said Order confirming sale has been entered with the Clerk of the Bankruptcy Court, with no appeal from said Order or request to extend the 14 day period having been filed. Prior to close of escrow and no sooner than 14 days subsequent to entry of the Order, Escrow must request a Company employee to verify that the appeal period has expired and no appeal or request to extend the 14 day period has been filed.

8. RECORD Deed from Robert L. Goodrich, Trustee of the Estate of Carl P. Smith and Nancy J. Smith, debtors, Case No. 6:11-bk-48829-MH to the parties to be insured herein.

COMPLIANCE with A.R.S. 11-1133, which states that an affidavit must be completed by a seller and a buyer and appended to a deed or contract for the sale of real estate which is presented for recording. Pursuant to A.R.S. 1134 A & B, the affidavit and fee required by this article may not apply to certain deeds and/or transfers of title. If a document is exempt, the Exemption Code must appear on the face of the document.

NOTE: 2012 Tax Parcel # 113-05-144

PRIOR to recording, obtain current tax information from:	Mohave County Treasurer PO Box 7000 700 W. Beale Street Kingman, AZ 86402-7000	Phone: (928) 753-0737 http://www.co.mohave.az.us/depts/ assessor/assessor_default.asp
----------------------------------------------------------------	-----------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

NOTE: There is located on said land Single Family Residence , commonly known as:

3700 Tehachapi Dr., Lake Havasu City, AZ 86403

NOTE: Arizona Revised Statutes Section 6-483 regulates the disbursement of funds by escrow agents. Funds received by Stewart Title & Trust of Phoenix via wire transfer may be disbursed upon receipt. Other types of payments may delay closing of your transaction. You should contact your escrow officer directly to obtain wiring instructions.

THIS COMMITMENT IS NOT AN ABSTRACT, EXAMINATION, REPORT, OR REPRESENTATION OF FACT OR TITLE AND DOES NOT CREATE AND SHALL NOT BE THE BASIS OF ANY CLAIM FOR NEGLIGENCE, NEGLIGENT MISREPRESENTATION OR OTHER TORT CLAIM OR ACTION. THE SOLE LIABILITY OF COMPANY AND ITS TITLE INSURANCE AGENT SHALL ARISE UNDER AND BE GOVERNED BY THE CONDITIONS OF THE COMMITMENT.

ADDENDUM TO COMMITMENT FOR TITLE INSURANCE

The policy or policies to be issued will contain exceptions to or exclusions from coverage as to the following matters unless the same are disposed of to the satisfaction of or by agreement with the Company.

EXCEPTIONS TO STANDARD POLICIES AND ALTA OWNER'S POLICIES

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, interest or claims which are not shown by the Public Records but which could be ascertained by an inspection of the land or by making inquiry of 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.
6. Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in Schedule A, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing in this paragraph shall modify or limit the extent to which the ordinary right of an abutting owner for access to a physically open street or highway is insured by this policy.
7. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

EXCLUSIONS FROM STANDARD POLICIES, ALTA OWNER'S POLICIES AND ALTA LOAN POLICIES (EXCEPT 2006 POLICY FORMS)

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 the violation of any 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 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) 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 estate or interest insured by this policy.
4. Any claim, which arises out of the transaction (vesting in the insured the estate or interest)(creating the interest of the mortgagee) insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the (estate or interest insured by this policy)(interest of the insured mortgagee) being deemed a fraudulent conveyance or fraudulent transfer, or
 - (b) the subordination of the insured mortgage (if applicable) as a result of the application of the doctrine of equitable subordination; or
 - (c) the transaction creating the (estate or interest insured by this policy)(interest of the insured mortgagee) being deemed a preferential transfer except where the preferential transfer results from the failure:

- (i) to timely record the instrument of transfer, or
- (ii) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

In addition, as to an ALTA Loan Policy only:

- 5. 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.
- 6. 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.
- 7. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

NOTE: Exceptions numbered 1 through 7 above will be eliminated from an ALTA (Extended Coverage) Owner's or Loan Policy. Exclusions 1 through 7 are exclusions from coverage in the regular form of the policy and said items cannot be eliminated.

EXCLUSIONS FROM ALTA 2006 OWNER'S POLICY:

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 that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) 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 (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attached between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

NOTE: Exceptions numbered 1 through 7 above will be eliminated from an ALTA (Extended Coverage) Owner's or Loan Policy. Exclusions 1 through 5 are exclusions from coverage in the regular form of the policy and said items cannot be eliminated.

EXCLUSIONS FROM ALTA 2006 LOAN POLICY:

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 that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) 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 (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that 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, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

NOTE: Exceptions numbered 1 through 7 above will be eliminated from an ALTA (Extended Coverage) Owner's or Loan Policy. Exclusions 1 through 7 are exclusions from coverage in the regular form of the policy and said items cannot be eliminated.

(All references to ALTA policies shall mean those as revised 10/17/92, unless otherwise noted)

EXCLUSIONS FROM 10/22/03 ALTA HOMEOWNER'S POLICIES

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
 - a. building
 - b. zoning
 - c. land use
 - d. improvements on the land
 - e. land division
 - f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
 - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
 - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records,
 - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date.
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in Paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

EXCLUSIONS FROM 01/01/08 ALTA HOMEOWNER'S POLICIES

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation concerning:
 - a. building
 - b. zoning
 - c. land use
 - d. improvements on the land
 - e. land division
 - f. environmental protection

This Exclusion does not limit the coverage described in Covered Risk 8a, 14, 15, 16, 17, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8e, 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in Paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

Stewart Title & Trust of Phoenix

STG Privacy Notice 1 (Rev 01/26/09) Stewart Title Companies

WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the **Stewart Title Guaranty Company** and its affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver’s license number.

All financial companies, such as the Stewart Title Companies, need to share customers’ personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers’ personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information	Do we share?	Can you limit this sharing?
For our everyday business purposes —to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
For our marketing purposes – to offer our products and services to you.	Yes	No
For joint marketing with other financial companies	No	We don’t share
For our affiliates’ everyday business purposes —information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and nonfinancial companies. <i>Our affiliates may include companies with a Stewart name: financial companies, such as Stewart Title Company.</i>	Yes	No
For our affiliates’ everyday business purposes —information about your creditworthiness.	No	We don’t share
For our affiliates to market to you	Yes	No
For nonaffiliates to market to you. Nonaffiliates are companies not related by common ownership or control. They can be financial and nonfinancial companies.	No	We don’t share

We may disclose your personal information to our affiliates or to nonaffiliates as permitted by law. If you request a transaction with a nonaffiliate, such as a third party insurance company, we will disclose your personal information to that nonaffiliate. (We do not control their subsequent use of information, and suggest you refer to their privacy notices.)

Sharing practices	
How often do the Stewart Title Companies notify me about their practices?	We must notify you about our sharing practices when you request a transaction
How often do the Stewart Title Companies protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal and state law. These measures include computer, file, and building safeguards.
How often do the Stewart Title Companies collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> • request insurance-related services • provide such information to us <p>We also collect you personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.</p>
What sharing can I limit?	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

Contact Us	If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056
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EXHIBIT “2”

COUNTER OFFER

Selman & Associates

RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

Document updated:
February 2011



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. PROPERTY

- 1a. 1. BUYER: Mark A Weston
BUYER'S NAME(S)
2. SELLER: _____
SELLER'S NAME(S) or as identified in section 9c.
3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
 4. or incidental thereto, plus the personal property described herein (collectively the "Premises").
- 1b. 5. Premises Address: 3700 Tehachapi Assessor's #: 113-05-144
 6. City: Lake Havasu City County: Mohave AZ, Zip Code: 86403
 7. Legal Description: TRACT 2235 BLK 9 Lot 5
- 1c. 8. \$ 140,000.00 Full Purchase Price, paid as outlined below
 9. \$ 5,000.00 Earnest money wired 48 hours after executed contract
 10. \$ 135,000.00 Cash Wired 48 hours before COE
 11. \$ _____
 12. _____
 13. _____
 14. _____
- 1d. 15. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office. Buyer
 16. and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing documents.
 17. and perform all other acts necessary in sufficient time to allow COE to occur on
 18. April 30, 2013 ("COE Date"). If Escrow Company or recorder's office is closed on COE Date,
MONTH DAY YEAR
 19. COE shall occur on the next day that both are open for business.
20. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down
 21. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds to
 22. Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.
- 1e. 23. Possession: Seller shall deliver possession, occupancy, existing keys and/or means to operate all locks, mailbox, security
 24. system/alarms, and all common area facilities to Buyer at COE or _____
 25. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding
 26. the risks of pre-possession or post-possession of the Premises.
- 1f. 27. Addenda Incorporated: AS IS Additional Clause Assumption and Carryback Buyer Contingency Domestic Water Well
 28. H.O.A. Lead-Based Paint Disclosure On-site Wastewater Treatment Facility Short Sale
 29. Other: _____
- 1g. 30. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Premises, and any existing personal property
 31. specified herein, shall be included in this sale, including the following:
- | | | |
|----------------------------------------------------|------------------------------------------------|-----------------------------------------|
| 32. • free-standing range/oven | • light fixtures | • draperies and other window coverings |
| 33. • ceiling fans | • towel, curtain and drapery rods | • shutters and awnings |
| 34. • attached floor coverings | • flush-mounted speakers | • water-misting systems |
| 35. • window and door screens, sun screens | • storm windows and doors | • solar systems |
| 36. • garage door openers and controls | • attached media antennas/
satellite dishes | • mailbox |
| 37. • outdoor landscaping, fountains, and lighting | • attached fireplace equipment | • central vacuum, hose, and attachments |
| 38. • pellet, wood-burning or gas-log stoves | • timers | • built-in appliances |
| 39. • storage sheds | | |

SELLER | SELLER

Initials

Residential Resale Real Estate Purchase Contract • Updated: February 2011
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Initials >

M.A.W.
 BUYER | BUYER



Residential Resale Real Estate Purchase Contract >>

- 40. If owned by the Seller, the following items also are included in this sale:
- 41. • pool and spa equipment (including any mechanical or other cleaning systems)
- 42. • security and/or fire systems and/or alarms
- 43. • water softeners
- 44. • water purification systems
- 45. Additional existing personal property included in this sale (if checked): refrigerator washer dryer as described:
- 46. _____
- 47. _____
- 48. Other: _____
- 49. _____
- 50. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no monetary
- 51. value, and free and clear of all liens or encumbrances.
- 52. Fixtures and leased items NOT included: _____
- 53. IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.

2. FINANCING

- 2a. 54. Pre-Qualification: A completed AAR Pre-Qualification Form is is not attached hereto and incorporated herein by reference.
- 2b. 55. Loan Contingency: Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described
- 56. in the AAR Loan Status Update ("LSU") form without Prior to Document ("PTD") conditions no later than three (3) days prior to the
- 57. COE Date. If Buyer is unable to obtain loan approval without PTD conditions, Buyer shall deliver a notice of the inability to obtain
- 58. loan approval without PTD conditions to Seller or Escrow Company no later than three (3) days prior to the COE Date.
- 2c. 59. Unfulfilled Loan Contingency: This Contract shall be cancelled and Buyer shall be entitled to a return of the earnest money if after
- 60. diligent and good faith effort, Buyer is unable to obtain loan approval without PTD conditions no later than three (3) days prior to the
- 61. COE Date. Buyer acknowledges that prepaid items paid separately from earnest money are not refundable.
- 2d. 62. Interest Rate / Necessary Funds: Buyer agrees that (i) the inability to obtain loan approval due to the failure to lock the interest
- 63. rate and "points" by separate written agreement with the lender during the Inspection Period or (ii) the failure to have the down
- 64. payment or other funds due from Buyer necessary to obtain the loan approval without conditions and close this transaction is not
- 65. an unfulfilled loan contingency.
- 2e. 66. Loan Status Update: Buyer shall deliver to Seller the LSU with at a minimum lines 1-40 completed describing the current status
- 67. of the Buyer's proposed loan within five (5) days after Contract acceptance and instruct lender to provide an updated LSU to
- 68. Broker(s) and Seller upon request.
- 2f. 69. Loan Application: Unless previously completed, during the Inspection Period, Buyer shall (i) complete, sign and deliver to the
- 70. lender a loan application and grant lender permission to access Buyer's Trimerged Residential Credit Report; and (ii) provide
- 71. to lender all initial requested signed disclosures and Initial Requested Documentation listed in the LSU on lines 32-35.
- 2g. 72. Loan Processing During Escrow: Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all
- 73. additional documentation required. Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.
- 2h. 74. Type of Financing: Conventional FHA VA USDA Assumption Seller Carryback _____
- 75. (If financing is to be other than new financing, see attached addendum.)
- 2i. 76. Loan Costs: All costs of obtaining the loan shall be paid by the Buyer, unless otherwise provided for herein.
- 2j. 77. Seller Concessions (if any): In addition to the other costs Seller has agreed to pay herein, Seller agrees to pay up to _____ %
- 78. of the Purchase Price or \$ _____ for Buyer's loan costs including pre-pays, impounds and Buyer's title / escrow closing costs.
- 2k. 79. VA Loan Costs: In the event of a VA loan, Seller agrees to pay the escrow fee and up to \$ _____ of loan costs not
- 80. permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein, including Seller's concessions.
- 2l. 81. Changes: Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the
- 82. Pre-Qualification Form if attached hereto or LSU provided within five (5) days after Contract acceptance and shall only make any
- 83. such changes without the prior written consent of Seller if such changes do not adversely affect Buyer's ability to obtain loan
- 84. approval without PTD conditions, increase Seller's closing costs, or delay COE.
- 2m. 85. Appraisal Contingency: Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises acceptable to
- 86. lender for at least the purchase price. If the Premises fails to appraise for the purchase price in any appraisal required by lender,
- 87. Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the
- 88. appraisal contingency shall be waived.
- 2n. 89. Appraisal Fee(s): Appraisal Fee(s), when required by lender, shall be paid by Buyer Seller Other _____
- 90. Appraisal Fee(s) are are not included in Seller's Concessions, if applicable.

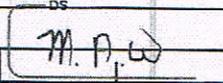
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SELLER	SELLER
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Initials>

	
BUYER	BUYER



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3. TITLE AND ESCROW

3a. 91. **Escrow:** This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the
92. terms of this Contract shall be:

93. **Stewart Title**
ESCROW/TITLE COMPANY*

94. ADDRESS CITY STATE ZIP

95. EMAIL PHONE FAX

3b. 96. **Title and Vesting:** Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax
97. consequences. Buyer should obtain legal and tax advice.

3c. 98. **Title Commitment and Title Insurance:** Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller directly,
99. addressed pursuant to 8t and 9c or as otherwise provided, a Commitment for Title Insurance together with complete and legible copies
100. of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title Commitment"), including but not limited to
101. Conditions, Covenants and Restrictions ("CC&Rs"); deed restrictions; and easements. Buyer shall have five (5) days after receipt of the
102. Title Commitment and after receipt of notice of any subsequent exceptions to provide notice to Seller of any items disapproved. Seller
103. shall convey title by warranty deed, subject to existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements
104. and all other matters of record. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's
105. Title Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language"/"1-4 units") or, if not available, a
106. Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage at Buyer's own additional
107. expense. If applicable, Buyer shall pay the cost of obtaining the ALTA Lender Title Insurance Policy.

3d. 108. **Additional Instructions:** (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and address of the
109. Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is also acting as the title agency
110. but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the Buyer and Seller, upon deposit of
111. funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to fraudulent acts or breach
112. of escrow instructions by the Escrow Company. (iii) All documents necessary to close this transaction shall be executed promptly by
113. Seller and Buyer in the standard form used by Escrow Company. Escrow Company shall modify such documents to the extent
114. necessary to be consistent with this Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally
115. between Seller and Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications
116. directed to Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information
117. regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.

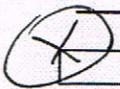
3e. 118. **Tax Prorations:** Real property taxes payable by the Seller shall be prorated to COE based upon the latest tax information available.

3f. 119. **Release of Earnest Money:** In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with
120. Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of
121. this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against
122. any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or
123. relating in any way to the release of Earnest Money.

3g. 124. **Prorations of Assessments and Fees:** All assessments and fees that are not a lien as of the COE, including homeowner's
125. association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on encumbrances,
126. and service contracts, shall be prorated as of COE or Other: _____

3h. 127. **Assessment Liens:** The amount of any assessment, other than homeowner's association assessments, that is a lien as of the
128. COE, shall be paid in full by Seller prorated and assumed by Buyer. Any assessment that becomes a lien after COE is
129. the Buyer's responsibility.

3i. 130. **IRS and FIRPTA Reporting:** Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign,
131. and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the
132. Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person, the
133. Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.



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SELLER SELLER <Initials>

Initials> M. P. W.
BUYER BUYER

