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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - Riverside Division

In re: DAN LOUIS BERNSTEIN and PATRICIA AILEEN BERNSTEIN Debtor(s).	CASE NO.: 6:12-bk-31622-WJ CHAPTER: 7 <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p>
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Sale Date: December 10, 2013	Time: 10:30 am
Location: Courtroom 302, 3420 Twelfth Street, Riverside CA 92501	

Type of Sale: Public Private **Last date to file objections:** November 26, 2013

Description of property to be sold: Condominium in Rosarito Beach, Mexico located at No. 104, South Tower, La Jolla de Rosarito, Calle Abeto 110 Zona Centro, Playas de Rosarito, B.C., Mexico 22710 ("Real Property") together with personal property furnishings and appliances ("Personal Property").

Terms and conditions of sale: See attached Sale Motion

Proposed sale price: \$142,000

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 "Bidding Procedures" in the attached Sale Motion

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

Date: December 10, 2013
Time: 10:30 a.m.
Place: Courtroom 302
US Bankruptcy Court, 3420 Twelfth Street,
Riverside, CA 92501

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

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Date: 11/15/2013

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5
6 Attorneys for Lynda T. Bui, Chapter 7 Trustee

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

10
11 In re

12 **DAN LOUIS BERNSTEIN and**
PATRICIA AILEEN BERNSTEIN,

13 Debtors.

Case No. 6:12-bk-31622-WJ

Chapter 7

**CHAPTER 7 TRUSTEE'S MOTION FOR
ORDER:**

- 14
15 (1) **APPROVING THE SALE OF REAL
PROPERTY FREE AND CLEAR OF
LIENS PURSUANT TO BANKRUPTCY
CODE §§ 363(b)(1) AND (f) AND
SUBJECT TO OVERBIDS;**
16
17 (2) **APPROVING PAYMENT OF REAL
ESTATE COMMISSION;**
18 (3) **APPROVING PROPOSED BIDDING
PROCEDURES; AND**
19 (4) **GRANTING RELATED RELIEF;**

20 **MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
21 LYNDA T. BUI IN SUPPORT THEREOF**

22 [Real Property located at No. 104, South Tower,
23 La Jolla de Rosarito, Calle Abeto 110 Zona
Centro, Playas de Rosarito, B.C., Mexico 22710]

24 **Hearing:**

25 Date: December 10, 2013

26 Time: 10:30 a.m.

27 Place: Courtroom 302
3420 Twelfth Street
Riverside, CA 92501

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

4 **I. SUMMARY OF ARGUMENT**

5 Lynda T. Bui, the Chapter 7 trustee ("Trustee") for the bankruptcy estate ("Estate") of
6 Dan Louis Bernstein and Patricia Aileen Bernstein ("Debtors"), brings this Motion for Order: (1)
7 Approving the Sale of Real Property Free and Clear of Certain Liens Pursuant to Bankruptcy
8 Code §§ 363(b)(1) and (f) and Subject to Overbids; (2) Approving Payment of Real Estate
9 Commission; (3) Approving Proposed Bidding Procedures; and (4) Granting Related Relief
10 ("Sale Motion").

11 The Trustee has received an offer to purchase the Property (defined below), which
12 includes all furnishings and appliances, for the sum of \$142,000, subject to overbids. The offer
13 is the best offer that the Estate has received thus far for the Property. Through the sale, the
14 Trustee is expected to generate proceeds of over \$125,000 for the benefit of the Estate and its
15 creditors. Further, in the event the purchase price is increased by a successful overbid, the
16 estimated net proceeds will increase and provide greater distribution to creditors. Currently there
17 are claims totaling \$3.2 million, with Hallmark Marketing Company, LLC asserting a claim of
18 over \$3.0 million. It is difficult at this point to determine the percentage of distribution to
19 unsecured creditors. However, the alternative is much worse, i.e. the Trustee would lose this
20 favorable business opportunity and in particular, over \$125,000.

21 **II. BACKGROUND INFORMATION**

22 **A. Case Commencement.**

23 On September 19, 2012, the Debtors filed a voluntary petition under Chapter 7 of the
24 Bankruptcy Code. Lynda T. Bui is the duly appointed, qualified and acting Chapter 7 trustee in
25 the Debtors' bankruptcy case.

26 **B. The Property.**

27 One of the assets of the Estate is a condominium in Rosarito Beach, Mexico located at
28 No. 104, South Tower, La Jolla de Rosarito, Calle Abeto 110 Zona Centro, Playas de Rosarito,

1 B.C., Mexico 22710 (“Real Property”).

2 Pursuant to the Debtors’ Bankruptcy Schedules, their interest in the Real Property is held
3 by the Debtors as trustees of the Vida Comiso Trust.¹ The Debtors value the Real Property as
4 “unknown.” The Debtors’ Schedule D does not reflect any liens against the Real Property and
5 the Trustee believes the only liens against the Real Property are annual bank trust fees in the
6 approximate amount of \$500 and homeowners’ association fees in the approximate amount of
7 \$2,230.

8 The personal property furnishings and appliances (“Personal Property” and together with
9 the Real Property, the “Property”) located at the Real Property are not listed in the Debtors’
10 Bankruptcy Schedules. The Debtors’ children assert they own the Personal Property as they
11 purchased all such items over the past ten years. The Trustee has agreed to pay the children the
12 sum of \$3,000 for such Personal Property which is included with the sale of the Real Property.
13 The Trustee has requested the Court approve this resolution in a motion to approve a settlement
14 with the Debtors and their children filed concurrently herewith.

15 Pursuant to Court order entered on June 11, 2013, the Trustee was authorized to employ
16 Andrew Juvinal of Jordan & Juvinal Rosarito Beach Realty (“Agent”) to assist the Trustee in
17 the marketing and sale of the Property. Pursuant to the terms of the listing agreement, the Agent
18 is entitled to commission equal to 6% of the purchase price.

19 The Agent originally believed the Property had an estimated fair market value of
20 approximately \$140,000 to \$150,000 and as such, the Property was listed for sale at a price of
21 \$149,000. The Agent marketed the Property through online tools, flyers, etc. for approximately
22 two months and did not receive any offers for the purchase of the Property. The listing price was
23 then reduced to \$139,000 and the Agent received over four offers for the Property. The sale
24 price proposed herein was the highest price received for the Property.

25 ///

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28 ¹ Pursuant to Mexican real estate law, United States citizens cannot hold property in their
individual capacity and must instead hold title to real property through a trust.

1 **C. Liens and Encumbrances Against the Property and Their Proposed Treatment**
2 **Through the Sale.**

3 The following chart sets forth the liens and encumbrances against the Property as detailed
4 in the Buyer's Estimated Closing Cost Statement attached as **Exhibit "1"** to the Bui Declaration.
5 The proposed treatment of the liens and encumbrances through the sale is as follows:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
Bank Trust fees	Trust fees	\$500.00	All outstanding real fees will be paid through escrow on the sale transaction.
Home Owners Association la Jola de Rosarito A.C. ("HOA")	Homeowners' association dues	\$2,230.00	All outstanding fees will be paid through escrow on the sale transaction.
	Property taxes	\$0.00	To the extent any property taxes are owed, they will be paid in full through escrow.

14 All costs of sale including escrow fees and real estate commissions will be paid at
15 closing. In addition, all outstanding real property taxes and HOA fees will be paid through the
16 sale as discussed above.

17 **D. The Offer for the Purchase of the Property and Summary of the Sale Terms.**

18 Through her Agent, the Trustee has received an offer from Michelle and Vasile Todosi
19 ("Buyer") whose address is 4123 Huerfano Ave., San Diego, CA 92117, to purchase the Property
20 and the Personal Property for the total sum of \$142,000. The purchase price includes a deposit
21 of \$10,000. Attached as **Exhibit "2"** to the Bui Declaration is a true and correct copy of the
22 Offer Purchase Contract Counter Offer and all related counter offers and documents
23 (collectively, the "Agreement").

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

1 pleadings or the descriptions herein.

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

4 Buyer:	Michele and Vasile Todosi
5 Purchase Price:	\$142,000 subject to the bidding procedures set forth below \$10,000 down payment and the remainder to be paid in cash at closing
6 Escrow Closing Date:	Escrow is scheduled to close within ten to twenty (10-20) days from entry of 7 the Order granting the Sale Motion. The Trustee may extend this time under her sole discretion and based on her business judgment.
8 Bankruptcy Court Approval	The sale is expressly conditioned on approval of the United States 9 Bankruptcy Court for the Central District of California, Riverside Division and entry of final order approving the Agreement.
10 Real Estate Agent Commission	Through escrow on the sale of the Property, and subject to Court approval, the Trustee shall pay compensation for real estate agent services to the Agent 11 in the amount of six percent (6%) of the purchase price.
12 No Assignment	The Agreement is between the Buyer and the Trustee. The Buyer shall have no right to assign the Escrow, the Agreement, or transfer the Property concurrent with closing without consent of the Seller.
13 Title Insurance	The title insurance policy shall be subject only to liens, encumbrances, clouds 14 and other matters as may appear on the preliminary title report, that are not to be removed at the close of Escrow, and have not been objected to by the 15 Buyer. Should Seller be unwilling or unable to eliminate those title matters disapproved by the Buyer as above, the Seller may terminate the Agreement or; should Seller fail to deliver good and marketable title as provided above, 16 Seller and the Buyer may terminate the Agreement. In either case, the Buyer's deposit shall be returned to the Buyer, and the Buyer shall have no 17 recourse against Seller, Lynda T. Bui as Bankruptcy Trustee, individually, or the law firm of Shulman Hodges & Bastian LLP, the Estate or the Debtors, or any real estate agent, broker or attorney involved in the transaction.
18 Limitations of Sale	The parties acknowledge that the operation of the law has placed the Trustee 19 in a unique role as the Seller of the Property. Due to the nature of the Trustee's role in administering the Estate, there are limitations as to the 20 extent, type and character of the Agreement under which the Trustee can convey the Property. The Trustee proposes to sell Property under certain 21 limitations. The parties acknowledge that they understand the terms under which the Property is to be conveyed may vary substantially from the normal 22 customs and trade within the real estate industry. Except where expressly mandated by operation of law, the Buyer consents to any such modifications and amendments.

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1 2 3 4 5 6 7	Purchase Without Warranties	The Buyer acknowledges that they are purchasing the Property from the Seller "AS IS" without warranties of any kind, expressed or implied, being given by the Seller, concerning the condition of the Property or the quality of the title thereto, or any other matters relating to the Property. The Buyer represents and warrants that they are purchasing the Property as a result of their own investigations and are not buying the Property pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction, or on the behalf of the Seller. The Buyer acknowledges that the Buyer has inspected the Property, and upon closing of Escrow governed by this Agreement, the Buyer forever waives, for themselves, their heirs, successors and assigns, all claims against the Debtors, their attorneys, agents and employees, the Debtors' Estate, Lynda T. Bui as Trustee and individually, and her attorneys, agents and employees, arising or which might otherwise arise in the future concerning the Property.
8 9 10 11 12 13	Trustee's Liability	The Buyer acknowledges that the Trustee is acting in her official capacity only. No personal liability shall be sought or enforced against the Trustee with regard to the Agreement, including the Addendum to the Agreement, the assets, the sale of the Property, or the physical condition of the Property. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to return any money paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Property and the 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.
14 15 16 17 18 19 20 21	Hold Harmless	(a) The Buyer understands the terms and conditions of the entire purchase contact and holds the Estate and the realtors, brokers, agents, Lynda T. Bui, Trustee, and her attorneys including Shulman Hodges & Bastian LLP, agents and employees, harmless from any liabilities arising from the Agreement. (b) 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 Agreement. 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.
22 23	Jurisdiction of the Bankruptcy Court	Any and all disputes which involve in any manner the Estate or Lynda T. Bui, Trustee, arising from the Agreement and/or its Addendums or relating in any manner to the Property, shall be resolved only in the United States Bankruptcy Court, Central District of California.
24	Sale Subject to Overbidding	The sale of the Property is subject to the bidding procedures described below.
25 26	Outstanding Real Property Taxes	To be paid by through escrow.

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1 2 3	Free and Clear of Liens and Encumbrances	The Property shall be delivered to the Buyer free and clear of all liens and encumbrances. Any liens and interests against the Property that are not paid in full through escrow shall attach to the sale proceeds generated through the sale with the same force, effect, validity, and priority as such liens or interests had with respect to the Property prior to the sale.
4 5 6 7	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.
8 9	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).

10 **E. Bidding Procedures.**

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

16 1. Potential overbidders must bid an initial amount of at least \$2,000 over the
17 Purchase Price. Minimum bid increments thereafter shall be \$1,000. The Trustee shall have sole
18 discretion in determining which overbid is the best for the Estate and will seek approval from the
19 Court of the same.

20 2. Overbids must be in writing and be received by the Trustee and the Trustee's
21 counsel, Shulman Hodges & Bastian LLP to the attention of Melissa Davis Lowe on or before
22 **4:00 p.m. Pacific Standard Time on December 4, 2013.**

23 3. Overbids must be accompanied by certified funds in an amount equal to five
24 percent (5%) of the overbid purchase price.

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

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

6. If overbids are received, the final bidding round for the Property shall be held on
December 6, 2013 at 10:00 a.m. or if rescheduled, upon telephonic notice to the Buyer and

1 **the parties having submitted overbids**, at the Trustee's counsel's office located at 8105 Irvine
2 Center Drive, Suite 600, Irvine, CA 92603, in order to allow all potential bidders the opportunity
3 to overbid and purchase the Property. At the final bidding round to be conducted before the
4 Trustee and/or the Trustee's counsel (via telephone) and the Agent, the Trustee or her counsel
will, in the exercise of their business judgment and subject to Court approval, accept the bidder
who has made the highest and best offer to purchase the Property, consistent with the Bidding
Procedures ("Successful Bidder").

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

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

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

18 **III. ARGUMENT**

19 **A. The Court May Authorize the Sale of Assets When There is a Good Faith** 20 **Purchaser.**

21 The Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b).
22 The standards to establish are that there is a sound business purpose for the sale, that the sale is
23 in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that there is
24 accurate and reasonable notice to creditors, and that the sale is made in good faith. *In re Wilde*
25 *Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d
26 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale to one of
27 very few serious bidders where an asset has been shopped and a delay could jeopardize the
28 transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y.
1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's
proposed sale of Property meets the foregoing criteria.

1. Sound Business Purpose.

The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the
business purpose for a proposed sale justifies disposition of property of the estate under Section

1 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting
2 the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir.
3 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the
4 following standard to be applied under Bankruptcy Code Section 363(b):

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

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

22 Here, the facts surrounding the sale of the Property support the Trustee's business
23 decision that the proposed sale is in the best interests of the estate and its creditors. Through the
24 sale, the Trustee expects to generate net proceeds of approximately \$126,270 as follows
25 (amounts are estimated):

26 Sale Price	\$142,000
27 Less real estate commission and costs of sale	(\$10,000)
28 Less bank trust fees	(\$500)
Less HOA fees	(\$2,230)
Less monies to children for Personal Property	(\$3,000)
Estimated Net Sale Proceeds	\$126,270

29 The estimated net proceeds will benefit the Estate by providing funds for distribution to
30 creditors. If the Sale Motion is not approved, then there will be a substantial loss to the Estate.
31 In such event, the Estate will not receive any benefit from the Property. The Trustee has not yet
32 hired accountants to fully evaluate any adverse tax consequences of the sale but at this point,
33 expects that any tax liability on the sale will be minimal.

1 Furthermore, the Trustee believes that the proposed sale, subject to overbids, will be at
2 fair market value because it is the best offer the Estate has received thus far for the Property.
3 Given that the sale is subject to overbids, it is anticipated that the Trustee will receive the best
4 and highest value for the Property and therefore the proposed sale price of the Property is fair
5 and reasonable.

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

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

9 The Trustee believes that it would be in the best interest of the Estate and its creditors to
10 sell the Property. The benefits to the Estate, as set forth above, are tremendous due to the funds
11 to be generated from the sale that are anticipated to pay all unsecured claims. If the Sale Motion
12 is not approved, the Estate will not net over \$125,000. The Trustee does not want to lose this
13 beneficial business opportunity. Thus, the Trustee has made a business decision that it is in the
14 best interest of the creditors of the Estate that this Sale Motion be approved.

15 3. Accurate and Reasonable Notice.

16 It is expected that notice of this Sale Motion will satisfy the requirements for accurate
17 and reasonable notice and will be appropriate under the emergency circumstances of this case.

18 The notice requirements for sales are set forth in Federal Rule of Bankruptcy Procedure
19 (“FRBP”) 6004 and 2002. The notice must include the time and place of any public sale, the
20 terms and conditions of any private sale, the time fixed for filing on objections and a general
21 description of the property. Fed. R. Bankr. P. 2002(c)(1).

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

1 4. The Sale is Made in Good Faith.

2 The proposed sale has been brought in good faith and has been negotiated on an “arms
3 length” basis.

4 The court, in *Wilde Horse Enterprises*, set forth the factors in considering whether a
5 transaction is in good faith. The court stated:

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

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

11 In the present case, the negotiation of the proposed sale was an arms-length transaction.
12 The negotiations with the Buyer resulted in a sale price of \$142,000 for the Property that will
13 have substantial benefit to the Estate. As set forth in the Notice of the Sale Motion, the creditors
14 will have been provided with sufficient notice of the sale. Accordingly, the sale is in good faith
15 and should be approved. The Trustee shall request such a finding pursuant to Bankruptcy Code
16 Section 363(m) at the hearing on this Sale Motion.

17 **B. The Proposed Sale of the Purchased Assets Should be Allowed Free and Clear of**
18 **Liens.**

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

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

11 U.S.C. § 363(f).

1 Section 363(f) is written in the disjunctive and thus only one of the enumerated
2 conditions needs to be satisfied for Court approval to be appropriate. Based on the Buyer's
3 Estimated Closing Cost Statement attached as **Exhibit "1"** to the Bui Declaration, other than the
4 outstanding bank trust fees and HOA fees, the Trustee is not aware of any liens or encumbrances
5 impacting the Property. Out of an abundance of caution, the Trustee seeks to the sell the
6 Property free and clear of all such liens and encumbrances, with all such liens and encumbrances
7 not satisfied through the sale to attach to the proceeds of the sale with the same priority, validity,
8 force and effect as they existed with respect to the Property before the closing of the sale pending
9 further Court order or agreement with the parties. Accordingly, the Trustee seeks to sell the
10 Property under Bankruptcy Code Section 363(f)(3).

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

12 Federal Rule of Bankruptcy Procedure 6004(h) provides that "[a]n order authorizing the
13 use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days
14 after entry of the order, unless the Court orders otherwise." Fed. Rule Bankr. P. 6004. The
15 Trustee desires to close the sale of the Property as soon as practicable after entry of an order
16 approving the sale. Accordingly, the Trustee requests that the Court, in the discretion provided it
17 under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay requirement.

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

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

26 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a
27 bankruptcy court to issue orders determining the terms and conditions for overbids with respect
28 to a sale of estate assets. *In re Crown Corporation*, 679 F.2d 774 (9th Cir. 1982). The *Crown*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ
24 professional persons, “that do not hold or represent an interest adverse to the estate, and that are
25 disinterested persons.” 11 U.S.C. § 327(a). Pursuant to the Court order entered on June 11,
26 2013, the Trustee was authorized to employ the Agent to assist the Trustee in the marketing and
27 sale of the Property.

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

8 **IV. CONCLUSION**

9 Based upon the foregoing, the Trustee respectfully submits that good cause exists for
10 granting the Sale Motion and requests that the Court enters an order as follows:

- 11 1. Approving the Bidding Procedures set forth above for the sale of the Property.
- 12 2. Authorizing the Trustee to sell the Property to the Buyer (or Successful Bidder)
13 pursuant to the terms and conditions as set forth in the Agreement attached as **Exhibit “2”** to the
14 Bui Declaration.
- 15 3. Authorizing the sale of the Property free and clear of all liens, claims and
16 encumbrances.
- 17 4. Authorizing the Trustee to sign any and all documents convenient and necessary
18 in pursuit of the sale as set forth above, including but not limited to any and all conveyances
19 contemplated by the Agreement attached as **Exhibit “2”** to the Bui Declaration.
- 20 5. Approving the payment of the real estate commission in the amount of six percent
21 (6%) of the purchase price.
- 22 6. Authorizing payment of all bank trust fees owed on the property, all HOA fees,
23 and any real property or personal property taxes owed on the sale.
- 24 7. Authorizing payment to the Debtors’ children in the amount of \$3,000 to
25 compensate them for the sale of the Personal Property.
- 26 8. A determination by the Court that the Buyer is in good faith pursuant to
27 Bankruptcy Code Section 363(m).
- 28 9. Waiving the fourteen (14) day stay of the order approving the sale of the Property

1 under Federal Rule of Bankruptcy Procedure 6004(h).

2 10. For such other and further relief as the Court deems just and proper under the
3 circumstances of this case.

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Respectfully submitted,
SHULMAN HODGES & BASTIAN LLP

Dated: November 15, 2013

/s/ Melissa Davis Lowe
Leonard M. Shulman
Melissa Davis Lowe
Attorneys for Lynda T. Bui, the Chapter 7 Trustee for the
bankruptcy estate of Dan Louis Bernstein and Patricia Aileen
Bernstein

DECLARATION OF LYNDA T. BUI

I, Lynda T. Bui, 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 the Chapter 7 trustee for the bankruptcy estate of In re Dan Louis Bernstein and Patricia Aileen Bernstein, Case No. 6:12-bk-31622-WJ. I am also an attorney duly licensed in the State of California and licensed to practice before this Court.

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

3. I have read and I am aware of the contents of the Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Motion and the Memorandum of Points and Authorities are true to the best of my knowledge. All capitalized terms herein have the same meaning set forth in the Motion unless otherwise noted.

4. One of the assets of the Estate is a condominium in Rosarito Beach, Mexico located at No. 104, South Tower, La Jolla de Rosarito, Calle Abeto 110 Zona Centro, Playas de Rosarito, B.C., Mexico 22710.

5. Pursuant to the Debtors' Bankruptcy Schedules, their interest in the Real Property is held by the Debtors as trustees of the Vida Comiso Trust. The Debtors value the Real Property as "unknown." The Debtors' Schedule D does not reflect any liens against the Real Property and it appears the only liens against the Real Property are annual bank trust fees in the approximate amount of \$500 and HOA fees in the approximate amount of \$2,230. Attached hereto as **Exhibit "1"** is a true and correct copy of the Buyer's Estimated Closing Cost Statement showing the liens against the Property.

6. The personal property furnishings and appliances included in the Real Property are not listed in the Debtors' Bankruptcy Schedules. The Debtors' children assert they own the

1 personal property furnishings and appliances. I have agreed to pay the children the sum of
2 \$3,000 for the personal property to be sold with the Real Property. I am requesting the Court
3 approve this resolution in a motion to approve a settlement with the Debtors and their children
4 filed concurrently herewith.

5 7. Pursuant to the Court order entered on June 11, 2013, I was authorized to employ
6 Andrew Juvinal of Jordan & Juvinal Rosarito Beach Realty ("Agent") to assist me in the
7 marketing and sale of the Property. The Agent originally believed the Property had an estimated
8 fair market value of approximately \$140,000 to \$150,000 and the Property was listed for sale at a
9 price of \$149,000. Pursuant to the terms of the listing agreement, the Agent is entitled to
10 commission equal to 6% of the purchase price.

11 8. All costs of sale including escrow fees and real estate commissions will be paid at
12 closing. In addition, all outstanding real property taxes and bank trust fees will be paid.

13 9. Through my Agent, I received an offer from the Buyer to purchase the Property for
14 the total sum of \$142,000. The purchase price includes a deposit of \$10,000. Attached hereto as
15 **Exhibit "2"** is a true and correct copy of the Agreement.

16 10. I have determined that it would benefit the Estate to permit all interested parties to
17 receive information and bid for the Property instead of selling the Property to the Buyer on an
18 exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the
19 creditors of this Estate, I seek Court approval Bidding Procedures described in the Motion.

20 11. Through the sale, I expect to generate net proceeds of approximately \$126,270 as
21 follows (amounts are estimated):

Sale Price	\$142,000
Less real estate commission and costs of sale	(\$10,000)
Less bank trust fees	(\$500)
Less HOA fees	(\$2,230)
Less monies to children for Personal Property	(\$3,000)
Estimated Net Sale Proceeds	\$126,270

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27 12. The estimated net proceeds will benefit the Estate by providing funds for
28 distribution to creditors. If the Motion is not approved, then there will be a substantial loss to the

1 Estate to the tune of over \$125,000. In such event, the Estate will not receive any benefit from
2 the Property.

3 13. Furthermore, I believe that the proposed sale, subject to overbids, will be at fair
4 market value because it is the best offer the Estate has received thus far for the Property. Given
5 that the sale is subject to overbids, it is anticipated that the Estate will receive the best and highest
6 value for the Property in the current market and therefore the proposed sale price of the Property
7 is fair and reasonable.

8 14. For the reasons set forth in the Motion and this Declaration, I respectfully request
9 that the Court grant the Motion so that I do not lose this favorable business opportunity to net a
10 substantial amount of money for the Estate.

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

13 Executed on November 15, 2013 at Irvine, California.

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16 Lynda T. Bui

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EXHIBIT 1



First Title Services®

760-230-0229

Local 13, Puerto Nuevo
Km 44.5 Carretera Libre Tij-Ens
Playas de Rosarito, B.C., Mexico 22710

Buyer's Estimated Closing Cost Statement

Date: Nov. 12, 2013
Buyer: Michele Cintas-Todosi
 Seller: Dan & Patricia Bernstein
 Property: Unit 104-1 La Jolla de Rto
 Transfer Value: \$142,000
 Transaction Type: Assignment of Bank Trust
 Property Type: Condominium
 Neighborhood Type: Condo Regime - House/Condo

CLOSING COSTS		CHARGES	DEPOSITS	BALANCE
ISABI FEE (Local transfer tax)		\$2,840.00	\$0.00	\$2,840.00
Recorder's Office Registration fees (Bank Trust)		\$500.00	\$0.00	\$500.00
Notary Fee		\$1,752.00	\$0.00	\$1,752.00
Wire In		\$35.00	\$0.00	\$35.00
Wire Out		\$0.00	\$0.00	\$0.00
Administrative Fees (Closing Company) **		\$1,200.00	\$0.00	\$1,200.00
1. Certificate of no property taxes - (Recaudacion de Rentas del Estado)				
2. Certificate of no liens - (Registro Publico de la Propiedad)				
3. Certificate of no liens - (Water Company)				
Total Cost for the certificates above		\$180.00	\$0.00	\$180.00
Survey Fee		\$380.00	\$0.00	\$380.00
Appraisal Fee		\$350.00	\$0.00	\$350.00
Bank Trust/Permit from the Secretary of State		\$0.00	\$0.00	\$0.00
Bank Trust/Recording		\$350.00	\$0.00	\$350.00
Bank Trust Acceptance		\$555.00	\$0.00	\$555.00
Bank Trust/First Annual Fee		\$555.00	\$0.00	\$555.00
TOTAL CLOSING COSTS				\$8,697.00
			% of Purchase Price	6.12%
ADDITIONAL SERVICES REQUESTED (Check the applicable Boxes)		CHARGES	DEPOSITS	BALANCE
No	Bilingual Purchase Contract	\$0.00	\$0.00	\$0.00
	HOA fee	\$2,230.00	\$0.00	\$2,230.00
No	Title Search & Legal Title Opinion **	\$1,500.00	\$0.00	\$1,500.00
No	Title Insurance Policy	\$1,153.04 (Amount Insured)	\$0.00	\$1,153.04
Yes	Escrow Fee	\$750.00	\$0.00	\$750.00
TOTAL FOR THE ADDITIONAL SERVICES				\$5,633.04
TOTAL OVERALL COSTS				\$14,330.04
RETAINER REQUIRED TO START TRANSACTION				\$5,000.00
ESTIMATED BALANCE DUE PRIOR TO CLOSING				\$9,330.04

BUYER

DATE

** Taxable Item

* This is not a closing cost, it's only an estimate based on the property value provided, no documents have been reviewed.

* This estimate is subject to changing market conditions, fees may change without notice.

* Closing costs do not include any expenses charged by the developer to assign a property to a new buyer or to draft a new sales contract.

* By signing above, BUYER accepts this "ESTIMATE" and agrees to pay the associated fees for this transaction

EXHIBIT 1

EXHIBIT 2

OFFER TO PURCHASE PROPERTY

OFFER TO PURCHASE PROPERTY

CONTRATO DE OFERTA DE COMPRA-VENTA

Michele VT

DATE: 10/19/2013
PRICE: \$1,423,000.00

BUYER(S): Michele & Vasile Todosi
ADDRESS: Calle Costa Azul #110 Interior
#104-1 Condominios La Jolla de Rosarito
Playas de Rosarito B.C Mexico.

SELLER(S): Dan L. & Patricia Bernstein-Debtor
BUYER'S AGENT: Mario Navarro
SELLER'S AGENT: Drew Juvinall

Michele VT

FECHA: 10/19/2013
PRECIO: \$1,423,000.00

COMPRADOR(ES): Michele & Vasile Todosi
DIRECCION: Calle Costa Azul #110 Interior
#104-1 Condominios La Jolla de Rosarito
Playas de Rosarito B.C Mexico.

VENDEDOR(ES): Dan L. & Patricia
Bernstein-Deudor.
AGENTE COMPRADOR: Mario Navarro
AGENTE VENDEDOR: Drew Juvinall

TERMS / TERMINOS

Michele VT

1. \$10,000.00 Dollars is due upon acceptance and the opening of escrow as a good faith deposit made out to the order of the escrow company
2. \$132,000.00 U.S. Dollars will be delivered to the assigned escrow company at the close of Escrow.
3. Purchase price is for fully furnished unit to include all furnishings and appliances as of October 19 2013.
4. All funds will be held by escrow holder, until both parties have signed the transfer or beneficial rights and the title to the property.
5. Appointment of closing company. To be determine by buyer has been designated to act as the exclusive company to facilitate escrow services at buyer's expense. Administrative fee is non-refundable if cancel of either party of this transaction.

Michele VT

1. \$ 10,000.00 Dólares Americanos, los cuales deberán ser depositados al momento de la aceptación de esta propuesta y a la apertura de plica, y se acreditaran como depósito de buena fe (Escrow) después de la firma de la presente propuesta, elaborado a nombre de la compañía de plica (escrow).
2. \$132,000.00 Dólares Americanos, serán depositados directo al vendedor el dia del cierre de la transacción.
3. El precio de la compra incluye todo mueble y electro domesticos en unidad como visto el 19 de Octubre del 2013.
4. Todos los fondos serán retenidos por un tercero, (Escrow) hasta que ambas partes hayan firmado la cesión de derechos y de título de propiedad.
5. Designación de compañía de cierre de ventas. Sera determinada por el comprador Para actuar como su coordinador de cierre de ventas exclusivo, títulos de propiedad, y servicios de plica, gastos los cuales serán cubiertos por el comprador para facilitar

Michele VT

6. **Contingencies:** This offer is contingent upon
- The buyer's option to have a Real Estate attorney reviews the paperwork within (14) days of acceptance of this offer. In addition, buyer is to have the same fourteen days to renew the possibility of acquiring Title Insurance.
 - A home inspection including structural, roof, plumbing and electrical systems, at Buyer's expense within eight (8) days of acceptance, and to approve or disapprove finding within four (4) days of receipt.
 - All repairs agreed upon between buyer and seller should be completed to buyer's satisfaction.
 - Conditions: Seller warrants property to be clear and free of any and all items, included but not limited to property taxes, utilities, homeowner's fees, special assessments.
 - Commissions: Seller agrees to pay Real Estate Company(s) commissions plus I.V.A. plus agreed upon in their commissions instructions with the proceeds of this transaction thru escrow and distributed at the closing to brokerage firms.

7. Buyer and Seller agree to execute transfer for the Beneficial Rights to Property hereinafter the Contract, on or before **90 days** after acceptance, in order to initiate the actions necessary to transfer to the buyer the rights to the property described herein. Notary and Attorney fees and Acquisition fees and taxes in connection with said transfer. Seller is responsible to pay Mexican Capital Gains Tax.



dichos servicios. Los pagos administrativos son no reembolsables en caso de cualquiera de las partes decida cancelar la transacción.

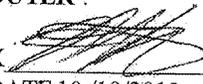
6. **Cláusulas:** Esta oferta es condicionada a:
- Los derechos del comprador a sujetar a revisión, por parte de un abogado, la documentación durante un periodo de (14) días de la firma de la presente oferta. Además el comprador podrá gozar de los mismos catorce días (14) para renovar la posibilidad de adquirir aseguranza de título de propiedad.
 - La inspección del bien inmueble, incluyendo su escritura, plomería y sistemas eléctricos, deberán estar a cargo del comprador dentro de un periodo de ocho (8) días por aceptar, y de aprobar y desaprobar los resultados dentro de un periodo de cuatro (4) días de haberlo recibido.
 - Todas las reparaciones acordadas entre el comprador y el vendedor deberán ser completadas de acuerdo a la satisfacción y acuerdo del Comprador.
 - Condiciones: La parte vendedora garantiza que la propiedad es libre de cualquier gravámenes, incluyendo cualquier tipo de impuesto, utilidades y mantenimiento de avalúos.
 - Comisiones: El vendedor acuerda en pagar a la compañía comercializadora las comisiones mas I.V.A. acordadas en las instrucciones de comisión con las ganancias de esta transacción por medio de plica y distribuido al momento de cierre a comercializadoras.
7. El Comprador y el Vendedor acuerdan a realizar la transferencia de los Derechos sobre la propiedad mencionados en el contrato, antes o durante los **90 días** después de aceptar la presente oferta para poder iniciar las acciones necesarias para transferir a el comprador los derechos sobre la propiedad descrita en el presente. Los honorarios del Notario, legales y de impuestos sobre la adquisición de bienes correspondientes a la

- 8. The buyer agrees to purchase the **beneficial rights through a Bank Trust (Fideicomiso) or Escriturato** the property described herein on the terms and conditions stated above and acknowledges receipt of a copy thereof.
- 9. This offer is good for **3 business days** as of the date this offer is presented.

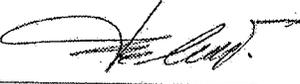
transferencia del bien inmueble. El vendedor es responsable del pago de Impuestos generados por ganancias debido a la enajenación del bien inmueble.

- 8. El comprador acuerda en comprar los derechos por medio de un fideicomiso o una escritura con anterioridad, sujeto a los términos y condiciones mencionadas anteriormente, y acuerda en recibir una copia.
- 9. esta oferta es válida por **3 días hábiles** desde la fecha en la cual se presenta la misma.
- 10. Tres mil dólares de los \$138,000.dolares

BUYER :

X  
DATE: 10/19/2013

COMPRADOR :

X  
FECHA: 10/19/2013

SELLER :

X _____
DATE: 10/19/2013

VENDEDOR:

X _____
FECHA: 10/19/2013

TRUSTEE CASE ADMINISTRATOR

X _____
DATE:

ADMINISTRADOR DEL CASO

X _____
FECHA:

____ OFFER ACCEPTANCE

____ OFFER DECLINED

ADDENDUM TO COUNTER-OFFER

This agreement ("Agreement" or "Counter-Offer") is intended to set forth the terms and conditions of a contract for the purchase by and sale to Michele and Vasile Todosi (the "Buyer") from Lynda T. Bui, solely in her capacity as Chapter 7 Trustee for Dan Louis and Patricia Aileen Bernstein (the "Seller"), of the real property commonly known as Calle Costa Azul#110 Interior #104-1 Condominios La Jolla de Rosarito Playas de Rosarito B.C. Mexico (the "Property"). When executed below, this Agreement will constitute conclusive evidence and the exclusive terms and conditions of the contract for such purchase and sale (the "Sale") of the Property and will supersede and replace in its entirety the Purchase and Sale Agreement (the "Offer"), and any oral or written negotiations since then.

PURCHASE PRICE; DEPOSIT; ESCROW. The purchase price for the Property shall be One Hundred Forty-Two Thousand Dollars \$142,000.00 ("Purchase Price"). Buyer shall make an initial deposit in the amount of \$10,000.00 ("Initial Deposit") in the form of a cashier's check or wire transfer made payable and delivered to the escrow company of Seller's choice within two (2) business days of acceptance of this Counter-Offer by Buyer, Seller's execution of the Affirmation Agreement in the form attached hereto as Exhibit "A", and Buyer's receipt of a copy of the fully executed Counter-Offer and the Affirmation Agreement.

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

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

1. **BUYER'S DUE DILIGENCE AND CANCELLATION RIGHT.** Buyer shall have fourteen (14) calendar days from the date of execution hereof to perform, complete, and satisfy all contingencies, inspections, investigations, tests and reviews of reports, and to complete all due diligence which the Buyer desires for this purchase of the Property, including, but not limited to and performing and completing any geological, soil, structural, environmental, or other tests, inspections, and investigations desired by Buyer. Buyer may, not later than the end of that period, give Seller written

notice of Buyer's election to withdraw from this Agreement because of Buyer's inability to complete or dissatisfaction with the results of any of those matters ("Notice of Cancellation"), in which event Buyer's and Seller's obligations under this Agreement shall be terminated and Buyer shall receive a full refund of Buyer's deposit. If Buyer fails to give such Notice of Cancellation as within such period, all such contingencies shall be automatically removed as set forth in Paragraph 4 and Buyer's obligation to proceed shall be non-contingent except as provided herein for, (i) Buyer's review of a preliminary report and underlying documents respecting the title to the Property (as set forth in Paragraph 2), and (ii) Bankruptcy Court approval of this Agreement and the Sale (including as set forth in Paragraph 6).

2. **TITLE; TITLE INSURANCE.** Within three (3) business days after acceptance of this Counter Offer, Lawyers Title Company (the "Title Company") or Title Company of Seller's choice will be instructed to provide a preliminary report of the condition of title to the Property, including copies of underlying documents referred to in Schedule B thereof, for Buyer's review. Buyer may, not later than the end of the period in this paragraph, or until three (3) days after receipt of the preliminary report and underlying documents, whichever occurs later, in which to give Seller written notice ("Notice of Title Disapproval") that Buyer disapproves the condition of title with respect to a material matter(s) that interfere with the use of the Property for the purpose for which it is currently used or intended to be used. Such notice must refer to the specific exception(s) in Schedule B of the preliminary report and the specific underlying document(s) which are the basis for Buyer's disapproval. Within five (5) business days after receipt of such notice, Seller may, in Seller's sole discretion, either (i) cancel this Agreement and the sale, in which event Buyer's and Seller's obligations under this Agreement shall be terminated and Buyer shall receive a full refund of Buyer's deposit, or (ii) elect to correct the item(s) that were disapproved by Buyer, in which event the sale shall proceed. Seller may correct such item by any means that will result in the Title Company either removing the disapproved exception(s) from the preliminary report or providing title insurance coverage by endorsement against such exception(s). At the close of the sale, Seller shall convey and Buyer shall accept title to the Property as shown in Schedule B of the preliminary report, subject to any corrections as in this paragraph above, free and clear of all monetary liens, subject to the terms of the within contract. Seller shall pay the costs of a CLTA Standard Owner's policy of title insurance.

3. **REMOVAL OF CONTINGENCIES; COURT CONFIRMATION; CLOSING; DELIVERY OF POSSESSION.** If Buyer does not give Seller written Notice of Cancellation as and when provided in Paragraph 1, or Notice of Title Disapproval as and when provided in Paragraph 2, Buyer's silence shall be deemed acceptance and Buyer shall be deemed to have satisfied and removed all of Buyer's contingencies and to proceed with the Sale. Seller shall then file a motion with the Bankruptcy Court to confirm this sale. Upon such removal of contingencies, Buyer shall be unconditionally obligated to proceed with the sale, subject only to Bankruptcy Court confirmation as set forth below. If the Bankruptcy Court confirms the sale to Buyer, the closing shall take place as soon as practicable after entry of the order approving the sale, but no later than the first business day after eleven (11) calendar days following the entry of such order. The closing shall occur on the date the deed transferring the Property to Buyer is recorded with the County Recorder where the Property is located. Occupancy shall be delivered to Buyer upon Escrow Holder's confirmation of recording.

4. **BANKRUPTCY SALE.** Buyer acknowledges that Seller is a Trustee appointed to administer the above referenced bankruptcy estate, and is a party to this Agreement solely in that capacity. Seller and Brokers and agents have not and will not determine the condition or fitness for use of the Property for any particular purpose. The sale shall be "as is," "where is," "with all faults," and

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with no warranty by or recourse whatsoever to Seller or Brokers or agents herein. Transfer of the Property shall be by Quit Claim Deed. All parties acknowledge that Seller is a party to this Agreement solely in the capacity as Trustee of the above referenced bankruptcy estate and that in the event of any default in the performance of any of Seller's obligations under the Offer (as modified hereby) or in the event that any other claim is asserted against the Seller, Trustee or the estate in connection with this transaction, the Trustee shall in no event have any personal liability whatsoever (whether in her individual capacity or otherwise), it being expressly understood and agreed that Buyer's sole recourse, if any, in such event shall be to the assets of such estate.

5. **TAXES; PRORATIONS; COSTS OF SALE.** All real property taxes and assessments for the current tax year shown in the current County Tax Bill shall be prorated between Seller and Buyer and charged as of the closing date to the applicable accounts of Seller and Buyer. The sale shall be free and clear of any homeowner's association assessments and all real property taxes (other than those prorated as provided above) enforceable against the Property through the closing date of the sale. Escrow fees shall be split between Buyer and Seller in the manner customary in the County where the Property is located. Seller shall pay any real property transfer tax. Seller shall pay the cost of a Natural Hazard Disclosure Report, from a vendor selected by Seller, to be furnished to Buyer through escrow. Buyer shall pay and have sole responsibility for compliance with any requirements imposed on the Property or this sale by any governmental agency(ies), including compliance with any applicable governmental retrofit requirements. Buyer shall pay the cost of recording the deed. Buyer and Seller shall each pay their own expenses of every other type except as specifically provided in this Agreement.

6. **BANKRUPTCY COURT APPROVAL.** The sale is subject to notice to creditors, approval by the Bankruptcy Court. Payment of any and all real estate brokers' commissions is also subject to notice to creditors and approval by the Bankruptcy Court. Buyer acknowledges and agrees that Seller may not seek to obtain the Bankruptcy Court's approval if Seller has determined that it would be in the best interest of the bankruptcy estate not to do so.

7. **BROKERS.** Subject to Bankruptcy Court approval, Seller will pay a real estate commission in the amount of 6% of the purchase price of the Property to be split equally by the real estate Brokers, unless the Brokers are willing to decrease the amount of commission in order to provide sufficient equity to the bankruptcy estate of the Debtor from the sale. All such Brokers and Agents are collectively referred to herein as the "Brokers." No commission or compensation shall be due or payable to Brokers in connection with this Agreement or sale except from the cash proceeds of an actual Sale of the Property that closes to Buyer. Buyer hereby represents and warrants that, other than the Brokers, Buyer has not dealt with any broker, finder or other person entitled to any fee, commission or other compensation in connection with the Sale and Buyer shall indemnify, defend and protect and hold Seller and the related bankruptcy estate harmless of, from and against any claims, demands, actions, causes of action, losses, liabilities and costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as Seller may suffer or incur in the event that any claims for any such fees, commissions or other compensation of any kind are hereafter asserted.

8. **MATERIAL CHANGE OF CONDITION.** In the event of any material change in the condition of the Property after the date of acceptance of this Counter-Offer, if Buyer demands repair of any resulting actual damage to the Property, Seller may, at Seller's sole option: (a) elect to terminate this

Agreement, in which event Buyer's and Seller's obligations to buy or sell shall terminate and the full Deposit shall be refunded to Buyer; or (b) make required repairs at the bankruptcy estate's expense; or (c) assign any insurance proceeds for the damage to the Property to Buyer as of the close of the sale; or (d) credit the cost of such repairs to Buyer through escrow, it being agreed that in the event that Seller elects and complies with subpart 8(b), (c) or (d), Buyer's obligation to proceed with the Sale shall be unaffected by any such material change in the condition of the Property.

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

_____ [Buyer's Initials]

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

11. "AS-IS," "WHERE-IS" CONDITION; NO WARRANTIES. Buyer acknowledges and agrees that, to the maximum extent permitted by law, the sale contemplated by this Agreement is made "as-is," "where-is," and "with all faults," except as specifically provided in this Agreement. Seller and Brokers and agents herein have not made, do not make, and specifically negate and disclaim any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, concerning or respecting (i) value of the Property; (ii) income to be derived from the Property; (iii) suitability of the Property, or lack thereof for any activity or use which Buyer may intend to conduct thereon, including any possibilities or limitations for future development; (iv) habitability, merchantability, marketability, profitability, or fitness for a particular purpose, of the Property, or lack thereof; (v) manner, quality, state of repair, or lack of repair of the Property; (vi) nature, quality, or condition of the Property, or any portion, system, or component thereof, including without limitation, water, soil, and geology; (vii) compliance of the Property or its operation, or lack thereof, with any laws, ordinances, regulations, rules, or orders of any applicable governmental authority or body; (viii) manner or quality of engineering, design, construction or materials, if any, incorporated into the Property; (ix) compliance or lack of compliance with any land use, building and safety, or other laws, ordinances, regulations, rules, orders, or other requirements imposed or enforced by any governmental or non-governmental body, including without limitation the Americans with Disabilities Act of 1990; (x) the presence or absence at, on, under, or adjacent to the Property, of materials described as "hazardous

substances, hazardous materials, or toxic substances" or by similar terms under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S. Code §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S. Code §§1801, et seq.), the Resource Conservation and Recovery Act (42 U.S. Code §§6901, et seq.), the Toxic Substance Control Act (15 U.S. Code §2601, et seq.), the Clean Water Act (33 U.S. Code §1251, et seq.), California Health and Safety Code §25117 or 25316), or other statutes and laws, all as amended and including all regulations issued thereunder; (xi) the content, completeness or accuracy of any Due Diligence materials or Preliminary Report regarding Title to the Property; (xii) the conformity or lack of conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to Buyer; (xiii) the conformity or lack of conformity of the Property to past, current, or future applicable zoning or building requirements; (xiv) any deficiency of any undershoring, drainage, or other aspects, systems, or components of or affecting the Property; (xv) the fact, if applicable, that all or a portion of the Property may be located on or near any natural hazard zone as determined by any governmental agency or body; (xvi) the existence of vested land use, zoning, or building entitlements affecting the Property or any other property; or (xvii) any other matter. Without in any manner limiting the foregoing, Buyer hereby acknowledges and agrees that (i) Seller's Broker, has provided (and will hereafter provide) to Buyer various materials and information relating to the Property, including, without limitation, information and materials relating to the condition of the Property, and (ii) all such materials and information so provided to Buyer by Seller's Broker shall, for all purposes of this Agreement, be deemed to have been disclosed to Buyer by the Seller, as well.

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

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

losses, liabilities, damages, demands, actions, or causes of action arising from any such information or documentation. NEITHER SELLER NOR BROKERS HAVE PROVIDED OR WILL PROVIDE ANY LEGAL OR TAX ADVICE TO BUYER. Buyer is informed that Buyer must obtain any such advice, if desired by Buyer, from independent professionals selected and engaged by Buyer.

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

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

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

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

15. **COMPLETE AGREEMENT; NO OTHER REPRESENTATIONS OR WARRANTIES.** Seller shall not be liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property or the operation thereof, furnished by any real estate broker, agent, employee, contractor, or other person. Buyer further acknowledges and agrees Seller has no obligations to make repairs, replacements or improvements except as may otherwise be expressly stated herein. Without limiting any other provision hereof, Buyer represents, warrants and covenants to Seller that, except for Seller's express representations and warranties specified in this Agreement, Buyer is relying solely upon Buyer's own investigation of the Property.

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

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

18. **TRUSTEE'S LIABILITY.** The Buyer acknowledges that the Trustee is acting in her official capacity only. No personal liability shall be sought or enforced against the Trustee with regard to the Agreement, including the Agreement, the assets, the sale of the Property, or the physical condition of the Property. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to return any money paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Property and the Agreement; and all disputes arising before and after closing shall be resolved in said Court. Further, the Trustee and the Buyer have agreed that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.

19. **HOLD HARMLESS.** The Buyer understands the terms and conditions of the entire purchase contract and holds the Estate and the realtors, brokers, agents, Lynda T. Bui,

19. **HOLD HARMLESS.** The Buyer understands the terms and conditions of the entire purchase contract and holds the Estate and the realtors, brokers, agents, Lynda T. Bui, Trustee, and her attorneys including 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 Agreement. 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.

20. **OVERBIDS.** The sale of the Property shall be subject to overbidding. Potential overbidders must bid an initial amount of at least \$5,000 over the Purchase Price. Minimum bid increments thereafter shall be \$1,000.00. The Trustee shall have sole discretion in determining which overbid is the best for the Estate and will seek approval from the Court of the same. All overbidders must provide evidence of having sufficient specifically committed funds to complete the transaction or a lending commitment for the bid amount and such other documentation relevant to the bidder's ability to qualify as the purchaser of the Property and ability to close the sale and immediately and unconditionally pay the winning bid purchase price at closing. Any overbidders must also seek to acquire the Property on terms and conditions not less favorable to the Estate than the terms and conditions contained herein.

21. **EXPIRATION OF COUNTER-OFFER.** This Counter-Offer shall expire if not accepted by Buyer by delivering a copy hereof, fully signed and initialed by Buyer, to Seller on or before November 13, 2013. Such acceptance shall nevertheless be subject to Paragraph 16.

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

Dated:



Michele Todosi



Vasile Todosi

Trustee, and her attorneys including Shulman Hodges & Bastian LLP, agents and employees, harmless from any liabilities arising from this contact.

All parties hereto further agree, jointly and severally, to pay on demand as well as to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of any kind or nature which in good faith, Escrow may incur or sustain in connection with or arising out of this Escrow and Escrow is hereby given a lien upon all the rights, titles and interest of each of the undersigned in all escrow papers and other property and monies deposited in this escrow, to protect the rights of escrow and to indemnify and reimburse Escrow under this Agreement. 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.

20. **OVERBIDS.** The sale of the Property shall be subject to overbidding. Potential overbidders must bid an initial amount of at least \$5,000 over the Purchase Price. Minimum bid increments thereafter shall be \$1,000.00. The Trustee shall have sole discretion in determining which overbid is the best for the Estate and will seek approval from the Court of the same. All overbidders must provide evidence of having sufficient specifically committed funds to complete the transaction or a lending commitment for the bid amount and such other documentation relevant to the bidder's ability to qualify as the purchaser of the Property and ability to close the sale and immediately and unconditionally pay the winning bid purchase price at closing. Any overbidders must also seek to acquire the Property on terms and conditions not less favorable to the Estate than the terms and conditions contained herein.

21. **EXPIRATION OF COUNTER-OFFER.** This Counter-Offer shall expire if not accepted by Buyer by delivering a copy hereof, fully signed and initialed by Buyer, to Seller on or before November 10, 2013. Such acceptance shall nevertheless be subject to Paragraph 16.

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

Dated:

Michele Todosi

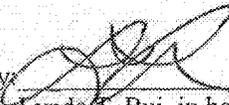
Vasile Todosi

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

Dated:

11/6/13

By:



Lynda T. Bui, in her sole capacity as Bankruptcy
Trustee for the Estate of Dan Louis and Patricia
Aileen Bernstein

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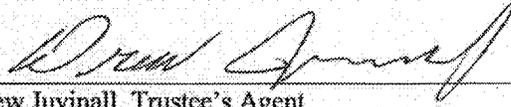
I, Seller, agree to sell the Property pursuant to the terms and conditions set forth herein.

Dated: _____

By: _____
Lynda T. Bui, in her sole capacity as Bankruptcy
Trustee for the Estate of Dan Louis and Patricia
Aileen Bernstein

SO AGREED.

Dated: 11-12-13



Drew Juvinal, Trustee's Agent

Dated: _____

Buyer's Agent

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

Dated: _____

By: _____

Lynda T. Bui, in her sole capacity as Bankruptcy
Trustee for the Estate of Dan Louis and Patricia
Aileen Bernstein

SO AGREED.

Dated: _____

Drew Juvinall, Trustee's Agent

Dated: 11/12/13

Marie Navarra
Buyer's Agent

EXHIBIT "A"

SELLER'S AFFIRMATION OF AGREEMENT

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

"SELLER"

Dated: 11/12/13

By: 
Lynda T. Bui, solely in her capacity as
Chapter 7 Trustee for the bankruptcy estate of
Dan Louis and Patricia Aileen Bernstein

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
8105 Irvine Center Drive, Suite 600, Irvine CA 92618

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 11/15/13, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

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

On (date) 11/15/2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 11/15/2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PERSONAL DELIVERY: Honorable Wayne Johnson, USBC/Central, 3420 Twelfth St.,
Crtrm 302, Riverside CA 92501

Service information continued on attached page

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

11/15/2013
Date

Laurie Verstegen
Printed Name

/s/Laurie Verstegen
Signature

VIA NEF:

Lynda T. Bui (TR)

trustee.bui@shbllp.com, C115@ecfbis.com

Lynda T. Bui (TR) on behalf of Trustee Lynda T. Bui (TR)

trustee.ltranbui@shbllp.com, C115@ecfbis.com

Michael J Bujold on behalf of U.S. Trustee United States Trustee (RS)

Michael.J.Bujold@usdoj.gov

Melissa Davis on behalf of Trustee Lynda T. Bui (TR)

mdavis@shbllp.com

Robert A Kumin on behalf of Creditor Hallmark Marketing Company, LLC and Plaintiff Hallmark Marketing Company, LLC a Kansas limited liability company

rkumin@kuminlaw.com

Robert L Rentto on behalf of Creditor Hallmark Marketing Company, LLC and Plaintiff Hallmark Marketing Company, LLC a Kansas limited liability company

rentto@sbcglobal.net

Leonard M Shulman on behalf of Trustee Lynda T. Bui (TR)

lshulman@shbllp.com

Arthur F Stockton on behalf of Defendant/Debtor Dan Louis Bernstein, Defendant/Debtor Patricia Aileen Bernstein

art@stocktonlawoffices.com, stockton.thornton@gmail.com

United States Trustee (RS)

ustpregion16.rs.ecf@usdoj.gov