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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

In re: JAMES W. ROYER          Debtor(s).	CASE NO.: 7 CHAPTER: 8:10-bk-10857-ES   <p style="text-align: center;"><b>NOTICE OF SALE OF ESTATE PROPERTY</b></p>
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<b>Sale Date:</b> March 12, 2015	<b>Time:</b> 10:30 AM
<b>Location:</b> COURTROOM 5A, United States Courthouse, 411 West Fourth Street, Santa Ana, CA 92701-4593	

**Type of Sale:**  Public  Private      **Last date to file objections:** February 26, 2015

**Description of property to be sold:** Judgment against multiple defendants in the amount of \$400,000.00

**Terms and conditions of sale:** See Chapter 7 Trustee's Motion attached hereto.

**Proposed sale price:** \$20,000.00

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

Overbid procedure (if any): See attached Motion.

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

March 12, 2015 at 10:30 am in Courtroom 5A of  
the US Bankruptcy Court located at 411 West  
Fourth Street, Santa Ana, CA 92701-4593

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

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Date: 2/19/2015

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7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

10  
11 In re

12 **JAMES W. ROYER,**

13 Debtor.

Case No. 8:10-bk-10857-ES

Chapter 7

**CHAPTER 7 TRUSTEE’S MOTION FOR ORDER  
APPROVING THE SALE OF ESTATE  
PROPERTY TO POLARIS DEVELOPMENT,  
LLC AND GRANTING RELATED RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
RICHARD A. MARSHACK IN SUPPORT  
THEREOF**

[Request for Judicial Notice filed concurrently  
herewith]

[No hearing pursuant to LBR 9013-1(o)]

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1 TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE;  
2 OFFICE OF THE UNITED STATES TRUSTEE; DEBTOR; DEBTOR’S ATTORNEY AND  
3 ALL INTERESTED PARTIES:

4 **I. INTRODUCTION**

5 Richard A. Marshack (“Trustee”), the Chapter 7 trustee for the bankruptcy estate  
6 (“Estate”) of James W. Royer (“Debtor”), brings this Motion for Order Approving the Sale of  
7 Estate Property to Polaris Development, LLC and Granting Related Relief (“Motion”).

8 The Trustee has received an offer from Polaris Development, LLC (“Polaris”) to  
9 purchase the judgment obtained by the Trustee against Jennifer Vanderham, Joshua Vanderham,  
10 Suzanne Taylor, Centerpointe Electronics, Inc. and Centerpointe Components, Inc.  
11 (“Centerpointe Entities”) in the amount of \$400,000 (“Judgment”) for the sum of \$20,000 and to  
12 purchase the Estate’s interest in a settlement payment to be made on June 30, 2015 which would  
13 otherwise net the Estate approximately \$62,000 for the sum of \$52,000. Additional  
14 consideration for the sale includes the reduction of over \$5 million in proofs of claim filed in the  
15 case. Polaris has already paid to the Trustee the \$72,000 as required pursuant to the agreement.  
16 The Trustee believes the Judgment is not collectible or that any further expenditure of Estate  
17 funds to collect on the Judgment will outweigh what the Trustee is able to collect. Sale of the  
18 settlement payment owed to the Estate will allow the Trustee to avoid the risk of non-payment of  
19 the settlement payment and will ensure funds to the Estate five months earlier than as required  
20 under the settlement. This will allow the Trustee to move to close this case sooner and make  
21 distributions to unsecured creditors.

22 If the Motion is not approved, the Estate will have to expend further funds to collect the  
23 Judgment, wait for the settlement payment to be made on June 30, 2015, and take the risk that  
24 the settlement payment will not be paid. In addition, the Estate will not benefit from the  
25 reduction of over \$5 million in claims without having to expend any fees or costs in objecting to  
26 such claims. Through this Motion, the Trustee will preserve a benefit for creditors which will be  
27 lost if the Motion is not granted. Thus, good cause exists to grant the Motion so that the Trustee  
28 does not lose this favorable business opportunity.

1 In support of the Motion, the Trustee respectfully represents as follows:

2 **II. BACKGROUND INFORMATION**

3 **A. Case Commencement**

4 The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code  
5 on January 25, 2010.

6 Richard A. Marshack is the duly appointed, qualified and acting Chapter 7 Trustee for the  
7 Debtor's bankruptcy estate ("Estate").

8 **B. Claims to Be Waived or Reduced**

9 Polaris filed a proof of claim in this case on October 27, 2010 claiming sums owed to it  
10 by the Debtor for "Partnership Agreement/Fraud" in the amount of \$4,952,726.00 and appearing  
11 on the Bankruptcy Court's claims register as Claim No. 38 ("Polaris Claim"). A true and correct  
12 copy of the Polaris Claim is attached to the Request for Judicial Notice filed concurrently  
13 herewith ("RJN") as Exhibit "1."

14 Monique Gibson ("Gibson") filed a proof of claim on October 26, 2010 claiming sums  
15 owed to her by the Debtor for "loan/fraud" in the amount of \$150,000.00 and appearing on the  
16 Bankruptcy Court's claims register as Claim No. 35 ("Monique Claim"). A true and correct  
17 copy of the Monique Claim is attached to the RJN as Exhibit "2."

18 Patricia Rusche ("Rusche") filed a proof of claim on October 27, 2010 claiming sums  
19 owed to her by the Debtor for "money judgment/loan/fraud" in the amount of \$944,392.24 and  
20 appearing on the Bankruptcy Court's claims register as Claim No. 37 ("Patricia Claim" and  
21 collectively with the Polaris Claim and the Monique Claim, the "Claims"). A true and correct  
22 copy of the Patricia Claim is attached to the RJN as Exhibit "3."

23 **C. Litigation on Promissory Notes in Bankruptcy Court**

24 On August 19, 2011, Polaris filed a Complaint against the Estate to Determine the  
25 Validity, Nature, and Extent of the Parties' Interests in Two Promissory Notes Pursuant to  
26 Federal Rule of Bankruptcy Procedure 7001(2) ("Notes Complaint"), commencing Adversary  
27 Case No. 8:11-01352-ES ("Notes Adversary").

28 The Notes Complaint asserted that two promissory notes ("Promissory Notes") were

1 issued to the Debtor and/or Polaris dated May 14, 2008 as follows and that a controversy exists  
2 as to each of the Debtor's and Polaris' interest in the Promissory Notes:

3 a) One in the amount of \$1,000,000 made payable to the Debtor and Polaris by World  
4 Trading 23, Inc. ("World Trading"); and

5 b) The other in the amount of \$500,000 made payable to the Debtor or Polaris by  
6 Toyrrific, LLC ("Toyrrific").

7 Pursuant to an Order entered by the Bankruptcy Court on September 13, 2012, the Notes  
8 Adversary was resolved by a settlement whereby the parties agreed that the Estate and Polaris  
9 each have a 50% interest in the Promissory Notes.

10 **D. Litigation on Promissory Notes in State Court**

11 A complaint to collect on the Promissory Notes was commenced in the Los Angeles  
12 Superior Court on September 2, 2008, Case No. PC043563. Various additional claims and cross-  
13 complaints were asserted and separate lawsuits commenced relating to the Promissory Notes and  
14 the case was eventually consolidated with Case Number PC051852 and Case Number BC  
15 420422 (collectively, the "Lawsuit").

16 A trial was conducted in the Lawsuit and a verdict rendered by the jury impaneled  
17 therein. The verdict was in favor of Polaris and the Estate and against Toyrrific, World Trading,  
18 and Kevork Kouyoumjian jointly and severally for breach of contract in the amount of  
19 \$1,597,019.18 and in favor of Gibson and against Toyrrific and Kevork Kouyoumjian for  
20 defamation in the amount of \$116,634.55.

21 Thereafter, the parties in the Lawsuit reached a settlement ("Lawsuit Settlement") which  
22 was approved by the Bankruptcy Court pursuant to an order entered on August 25, 2014  
23 ("Settlement Order"). The settlement requires payments to be made by Toyrrific to Gibson,  
24 Polaris and the Trustee as follows:

- 25 1. \$300,000.00 on August 11, 2014 which has been paid.
- 26 2. \$200,000.00 on October 15, 2014 which has been paid.
- 27 3. \$500,000.00 on December 25, 2014 which has been paid.
- 28 4. \$200,000.00 on June 30, 2015 ("Final Settlement Payment").

1 A true and correct copy of the Settlement Order is attached to the RJN as Exhibit “4.”

2 The Estate is entitled to 46.6% of each payment to be made in the Lawsuit Settlement set  
3 forth above<sup>1</sup> and from each payment, the Trustee must pay a portion of the contingency fee to his  
4 special counsel, the Law Offices of Kenneth D. Worth (“Worth”). In particular as to the Final  
5 Settlement Payment, the Estate is owed a total of \$93,200.00, of which the Estate must pay the  
6 sum of \$31,130.00 to Worth pursuant to the Settlement Order, leaving \$62,070.00 net for the  
7 Estate (“Net Final Settlement Payment”).

8 **E. Judgment Against Centerpointe Entities**

9 On December 2, 2013, the Trustee obtained a Judgment against defendants Centerpointe  
10 Electronic Components, Inc., Centerpointe Electronics, Jennifer Vanderham, Joshua Vanderham,  
11 and Suzanne Taylor in Adversary Case No. 8:10-ap-01435-ES pending in the Bankruptcy Court  
12 in the amount of \$400,000 (“Judgment”). A true and correct copy of the Judgment is attached to  
13 the RJN as Exhibit “5.”

14 The Trustee has since commenced collection efforts on the Judgment, including but not  
15 limited to, taking the judgment debtor examination of Jennifer Vanderham and obtaining  
16 documents from Centerpointe and Ms. Vanderham. Based on the information gathered thus far,  
17 the Judgment appears to be largely uncollectible.

18 **F. The Offer for the Purchase of the Judgment and the Net Final Settlement Payment**

19 The Trustee received an offer from Polaris to purchase the Judgment and the Net Final  
20 Settlement Payment (“Assets”) for the collective sum of \$72,000 plus a reduction of the Patricia  
21 Claim and a waiver of the Monique Claim and Polaris Claim. Attached as **Exhibit “A”** to the  
22 Declaration of Richard A. Marshack is a true and correct copy of the Purchase and Sale  
23 Agreement (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  
28 <sup>1</sup> 93.2% of the judgment amount entered in the Lawsuit is attributable to the breach of  
contract cause of action and 6.8% is attributable to the defamation cause of action. The  
Estate is entitled to one-half of the 93.2% portion of the judgment.

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

4 In summary, the principal terms are as follows:

- 5 1. The Agreement shall become effective (“Effective Date”) and binding on the Parties  
6 hereto upon the date of entry of an order of the Bankruptcy Court approving the  
7 Agreement (“Approval Order”).
- 8 2. The Trustee shall sell, assign, transfer, convey and deliver to Polaris, and Polaris shall  
9 pay the consideration discussed below, acquire and accept from the Trustee, all of the  
10 Trustee’s right, title and interest in and to the Judgment and the Net Final Settlement  
11 Payment (collectively, the “Assets”).
- 12 3. Polaris will pay to the Trustee the sum of Twenty Thousand Dollars (\$20,000.00) no  
13 later than January 5, 2014. As consideration for such payment, within ten (10) days  
14 of entry of the Approval Order, the Trustee will file an Assignment of Judgment.
- 15 4. Polaris will pay to the Trustee the sum of Fifty-Two Thousand Dollars (\$52,000.00)  
16 by no later than January 5, 2014. As consideration for such payment, Polaris will  
17 receive the Final Settlement Payment in full but will be responsible for paying the  
18 contingency fee owed to worth from the Final Settlement Payment of \$31,130.00  
19 (“Contingency Fee”). The Trustee and the Estate will be relinquished from any  
20 liability to pay any contingency fee and in the event Polaris does not pay the  
21 contingency fee due to Worth from the Final Settlement Payment, the Trustee and the  
22 Estate shall have no liability relating to the Contingency Fee.
- 23 5. Upon entry of the Approval Order, the Polaris Claim and the Monique claim will be  
24 deemed waived in their entirety. Polaris, Monique and Gibson shall waive any and  
25 all claims they may have in the Bankruptcy Case.
- 26 6. Upon entry of the Approval Order, the Patricia Claim will be an allowed general  
27 unsecured non-priority claim in the amount of \$762,026.82. Other than such amount,  
28 Patricia will waive any and all claims she may have in the Bankruptcy Case.
7. The purchase is without warranties and the assets are being sold on an as is – where is  
basis.
8. The parties exchange mutual general releases related to the claims and the assets  
being sold.

### 23 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

#### 24 **A. COURT MAY AUTHORIZE THE SALE OF THE PROPERTY WHEN THERE IS** 25 **A GOOD FAITH PURCHASER**

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

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

8 **A. Sound Business Purpose**

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

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

27 Walter, supra, at 19-20 [quoting In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir.  
28 1986)].

29 Here, the facts surrounding the sale of the Assets support the Trustee's business decision  
30 that the proposed sale is in the best interests of the Estate and its creditors. The alternative to the  
31 sale would be the Estate having to expend funds to collect the Judgment and taking the risk that  
32 the Final Settlement Payment will not be paid by Toyrrific, not to mention having to wait another  
33 five months to receive the Final Settlement Payment.

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

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

4 The benefits to the Estate, as set forth above, are great due to the funds to be generated  
5 from the sale to help make a meaningful distribution to unsecured creditors of the Estate. The  
6 Trustee does not want to lose this beneficial business opportunity. The alternative to the sale  
7 would be the Estate having to expend funds to collect the Judgment and taking the risk that the  
8 Final Settlement Payment will not be paid, not to mention having to wait another five months to  
9 receive the payment.

10 There is no guarantee that the Estate will be able to collect on the Judgment and in fact,  
11 there is a high possibility that the Estate would not collect anything based on the information the  
12 Trustee has been able to collect thus far. In particular, the Centerpointe entities are no longer  
13 doing business and the value of the remaining assets appears to be quite small. The individual  
14 defendants appear to have none, or very few, assets with any equity. The Trustee believes that  
15 any fees and costs spent in attempts to collect on the Judgment would outweigh any recovery. .

16 As to the sale of the Final Settlement Payment, the sale will result in guaranteed funds to  
17 the Estate five months sooner for just a \$10,000 net discount. In fact, the Trustee has already  
18 received the total \$72,000 to be paid by Polaris under the Agreement. As such, the Trustee  
19 believes the total sale price of \$72,000 plus the reduction of over \$5 million in claims filed in the  
20 case for the Judgment is fair and reasonable.

21 Thus, the Trustee has made a business decision that it is in the best interest of the  
22 creditors of this Estate that this Motion be approved.

23 **C. Accurate and Reasonable Notice**

24 It is expected that notice of this Motion will satisfy the requirements for accurate and  
25 reasonable notice.

26 The Trustee shall provide notice of the proposed sale of the Assets to creditors and  
27 parties in interest. The Notice of this Motion will include a summary of the terms and conditions  
28 of the proposed sale, the time fixed for filing objections, and a general description of the Assets.

1 The Trustee submits that the notice requirements will have been satisfied, thereby allowing  
2 creditors and parties in interest an opportunity to object to the sale. Hence, no further notice  
3 should be necessary.

4 **D. The Sale is Made In Good Faith**

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

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

9 ‘Good faith’ encompasses fair value, and further speaks to the integrity of the  
10 transaction. Typical ‘bad faith’ or misconduct, would include collusion between  
11 the seller and buyer, or any attempt to take unfair advantage of other potential  
12 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. (citations omitted)

13 Id. at 842.

14 In the present case, the negotiation of the proposed sale was an arms-length transaction  
15 with each party having its own counsel. The negotiations with Polaris have resulted in an offer  
16 to sell the Assets that will have substantial benefit. As set forth in the Notice of the Motion, the  
17 creditors will have been provided with sufficient notice of the sale under the circumstances of  
18 this case. Accordingly, the sale is in good faith and should be approved.

19 **II. THE COURT HAS AUTHORITY TO WAIVE THE FOURTEEN-DAY**  
20 **STAY OF SALE**

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

24 The Trustee desires to close the sale of the Assets as soon as practicable after entry of an  
25 order approving the sale and in fact, has already received the consideration for the sale from  
26 Polaris. Accordingly, the Trustee requests that the Court in the discretion provided it under  
27 Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day of the order approving  
28 the sale of the Assets to Polaris.

1 **III. APPROVAL OF THE MOTION WITHOUT A HEARING IS APPROPRIATE**

2 Local Bankruptcy Rule (“LBR”) 9013-1(o) provides as follows:

3 (o) Motions and Matters Not Requiring a Hearing

4 (1) Matters That May Be Determined Upon Notice of Opportunity to  
5 Request Hearing. Except as to matters specifically noted in paragraph  
6 (o)(2) below, and as otherwise ordered by the court, any matter that  
7 may be set for hearing in accordance with LBR 9013-1 may be  
8 determined upon notice of opportunity to request a hearing.

9 (A) Notice. When the notice of opportunity for hearing procedure is used,  
10 the notice must:

11 (i) Succinctly and sufficiently describe the nature of the relief  
12 sought and set forth the essential facts necessary for a party  
13 in interest to determine whether to file a response and  
14 request a hearing;

15 (ii) State that LBR 9013-1(o)(1) requires that any response and  
16 request for hearing must be filed with the court and served  
17 on the movant and the United States trustee within 14 days  
18 after the date of service of the notice; and

19 (iii) Be filed with the court and served by the moving party on  
20 all creditors and other parties in interest who are entitled to  
21 notice of the particular matter.

22 (B) Motion. The motion and supporting papers must be filed with the  
23 notice, but must be served only on the United States Trustee and those  
24 parties who are directly affected by the requested relief.

25 A sale motion is not included in the matters that may not be determined upon notice of  
26 opportunity to request a hearing. Further, Bankruptcy Code Section 102(1)(B) provides that  
27 “after notice and a hearing,” or a similar phrase-

28 (B) authorizes an act without an actual hearing if such notice is  
given properly and if-

(i) such a hearing is not requested timely by a party in  
interest; or

(ii) there is insufficient time for a hearing to be commenced  
before such act must be done, and the court authorizes such act;

The Trustee believes the LBR 9013-1(o) procedure is appropriate in this case as the  
Trustee does not anticipate any opposition to the Motion and as such, this procedure will save the  
Estate administrative costs and fees.

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**V. CONCLUSION**

**WHEREFORE**, the Trustee prays that the Court enter an order which provides:

1. Approving the Agreement related to and authorizing the Trustee to sell the Assets to Polaris.
2. Authorizing the Trustee to sign any and all documents necessary to complete the sale of the Assets to Polaris, including but not limited to the Agreement.
3. A determination by the Court that Polaris is in good faith pursuant to Bankruptcy Code Section 363(m).
4. Ordering that Claim No. 35 of Monique Gibson is waived and to receive no distribution in this case.
5. Ordering that Claim No. 38 of Polaris Development LLC is waived and to receive no distribution in this case.
6. Ordering that Claim No. 37 of Patricia Rusche is allowed as a general unsecured claim in the reduced amount of \$762,026.82.
7. Waiving the fourteen-day stay of the order approving the sale of the Assets under Federal Rules of Bankruptcy Procedure 6004(h).
8. For such other and further relief as the Court deems just and proper under the circumstances of this case.

**SHULMAN HODGES & BASTIAN LLP**

Dated: January 29, 2015

By: /s/ Melissa Davis Lowe  
Leonard M. Shulman  
Melissa Davis Lowe  
Attys for Richard A. Marshack, the Ch 7 Trustee

**DECLARATION OF RICHARD A. MARSHACK**

I, Richard A. Marshack, declare:

1. I am the duly appointed, qualified and acting Chapter 7 trustee for the bankruptcy estate (“Estate”) of In re James W. Royer (“Debtor”), Case No. 8:10-bk-10857-ES. If called upon as witness, I could and would competently testify to the following of my own personal knowledge, information and belief.

2. I am familiar with the Debtor’s bankruptcy proceeding and make this Declaration in support of my Motion for Order Approving the Sale of Estate Property to Polaris Development, LLC and Granting Related Relief (“Motion”). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

3. I received an offer from Polaris Development LLC to purchase the Judgment and the Final Settlement Payment under the settlement of the Lawsuit for the collective sum of \$72,000 plus a waiver of the Polaris Claim and Monique Claim and a reduction of the Patricia Claim. Attached hereto as **Exhibit “A”** is a true and correct copy of the Agreement. A summary of the Agreement’s terms and highlights are discussed in the Motion, but the summary and discussion are not meant to be a complete review of every provision of the Agreement. The Agreement itself is the legally binding document I am seeking approval of and, in the event of any inconsistency between the terms, provisions or effect of the Agreement and the description of it in the Motion, the Agreement alone shall govern and not the Motion or the descriptions therein.

4. I have discussed the terms of the sale with my counsel and I believe the sale is in the best interest of the Estate. The alternative to the sale would be the Estate having to expend funds to collect the Judgment and taking the risk that the Final Settlement Payment will not be paid, not to mention having to wait another five months to receive the final payment.

5. There is no guarantee that the Estate will be able to collect on the Judgment and in fact, there is a high possibility that the Estate would not be able to collect on the Judgment. The Centerpointe entities are no longer doing business and the value of the remaining assets appears to be quite small. The individual defendants appear to have none, or very few, assets with any

1 equity. It is my belief that any fees and costs spent in attempts to collect the Judgment would  
2 outweigh any recovery.

3 6. I have already received the total \$72,000 to be paid by Polaris as provided for  
4 under the Agreement.

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

7 Executed on January 29 2015 at Irvine, California.

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9 \_\_\_\_\_  
Richard A. Marshack

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EXHIBIT A

## **PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between Richard A. Marshack, the Chapter 7 Trustee (“Trustee”) of the bankruptcy estate of James W. Royer (“Debtor”), on the one hand, and Polaris Development, LLC, a Utah limited liability company (“Polaris”), Timothy Gibson (“Gibson”), Monique Gibson (“Monique”), and Lois Patricia Rusche (“Patricia” and collectively with Polaris, Gibson, and Monique, “Creditors”), on the other hand (the aforementioned parties together shall be collectively referred to herein as the “Parties”).

### **RECITALS**

**WHEREFORE**, on January 25, 2010, the Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (“Bankruptcy Court”), commencing Case No. 8:10-10857-ES (“Bankruptcy Case”).

**WHEREFORE**, Richard A. Marshack is the duly appointed, qualified and acting Chapter 7 trustee in the Bankruptcy Case.

**WHEREFORE**, Polaris filed a proof of claim in the Bankruptcy Case on October 27, 2010 claiming sums owed to it by the Debtor for “Partnership Agreement/Fraud” in the amount of \$4,952,726.00 and appearing on the Bankruptcy Court’s claims register as Claim No. 38 (“Polaris Claim”).

**WHEREFORE**, Monique filed a proof of claim in the Bankruptcy Case on October 26, 2010 claiming sums owed to her by the Debtor for “loan/fraud” in the amount of \$150,000.00 and appearing on the Bankruptcy Court’s claims register as Claim No. 35 (“Monique Claim”).

**WHEREFORE**, Patricia filed a proof of claim in the Bankruptcy Case on October 27, 2010 claiming sums owed to her by the Debtor for “money judgment/loan/fraud” in the amount of \$944,392.24 and appearing on the Bankruptcy Court’s claims register as Claim No. 37 (“Patricia Claim” and collectively with the Polaris Claim and the Monique Claim, the “Claims”).

**WHEREFORE**, on August 19, 2011, Polaris filed a Complaint against the Estate to Determine the Validity, Nature, and Extent of the Parties’ Interests in Two Promissory Notes Pursuant to Federal Rule of Bankruptcy Procedure 7001(2) (“Notes Complaint”), commencing Adversary Case No. 8:11-01352-ES (“Notes Adversary”).

**WHEREFORE**, the Notes Complaint asserted that two promissory notes (“Promissory Notes”) were issued to the Debtor and/or Polaris dated May 14, 2008 as follows and that a controversy exists as to each of the Debtor’s and Polaris’ interest in the Promissory Notes:

a) One in the amount of \$1,000,000 made payable to the Debtor and Polaris by World Trading 23, Inc. (“World Trading”); and

b) The other in the amount of \$500,000 made payable to the Debtor or Polaris by Toyrrific, LLC (“Toyrrific”).

**WHEREFORE**, pursuant to an Order entered by the Bankruptcy Court on September 13, 2012, the Notes Adversary was resolved by a settlement whereby the parties agreed that the Estate and Polaris each have a 50% interest in the Promissory Notes.

**WHEREFORE**, various claims have been asserted by and between various parties including Polaris, Gibson, and the Estate in the complaints and cross-complaints filed in the Los Angeles Superior Court Case Number PC 043563, which includes the consolidated matters of Case Number PC051852 and Case Number BC 420422 (collectively, the “Lawsuit”).

**WHEREFORE**, a trial was conducted in the Lawsuit and a verdict rendered by the jury impaneled therein. The verdict was in favor of Polaris and the Estate and against Toyrrific, World Trading, and Kevork Kouyoumjian jointly and severally for breach of contract in the amount of \$1,597,019.18 and in favor of Gibson and against Toyrrific and Kevork Kouyoumjian for defamation in the amount of \$116,634.55.

**WHEREFORE**, thereafter, the parties in the Lawsuit reached a settlement (“Lawsuit Settlement”) which was approved by the Bankruptcy Court pursuant to an order entered on August 25, 2014 (“Settlement Order”). The settlement requires payments to Gibson, Polaris and the Trustee as follows:

1. \$300,000.00 on August 11, 2014 which has already been paid.
2. \$200,000.00 on October 15, 2014 which has already been paid.
3. \$500,000.00 on December 25, 2014.
4. \$200,000.00 on June 30, 2015 (“Final Settlement Payment”).

**WHEREFORE**, the Estate is entitled to 46.6% of each payment to be made in the Lawsuit Settlement set forth above and from each payment, the Trustee must pay a portion of the contingency fee to his special counsel, the Law Offices of Kenneth D. Worth (“Worth”). In particular as to the Final Settlement Payment, the Estate is owed a total of \$93,200.00, of which the Estate must pay the sum of \$31,130.00 to Worth pursuant to the Settlement Order, leaving \$62,070.00 net for the Estate (“Net Final Settlement Payment”).

**WHEREFORE**, on December 2, 2013, the Trustee obtained a Judgment against defendants Centerpointe Electronic Components, Inc., Centerpointe Electronics, Jennifer Vanderham, Joshua Vanderham, and Suzanne Taylor in Adversary Case No. 8:10-ap-01435-ES pending in the Bankruptcy Court in the amount of \$400,000 (“Judgment”).

### **AGREEMENT**

1.1 **Approval Order.** This Agreement shall become effective (“Effective Date”) and binding on the Parties hereto upon the date of entry of an order of the Bankruptcy Court approving this Agreement (“Approval Order”). The Trustee will file a motion seeking entry of the Approval

Order within ten (10) days after receipt of the consideration discussed in Section 1.3 below. Polaris, Gibson, Monique, and Patricia will cooperate with the Trustee in obtaining the Approval Order.

1.2 Agreement to Purchase. Subject to the terms and conditions of this Agreement, the Trustee shall sell, assign, transfer, convey and deliver to Polaris, and Polaris shall pay the consideration discussed below, acquire and accept from the Trustee, all of the Trustee's right, title and interest in and to the Judgment and the Net Final Settlement Payment (collectively, the "Assets").

1.3 Consideration for Purchase.

1.3.1. Sale of Judgment.

1.3.1.1 Polaris will pay to the Trustee the sum of Twenty Thousand Dollars (\$20,000.00) no later than January 5, 2014. Payment shall be made by wire or cashier's check and if by check, payable to "Richard A. Marshack, Chapter 7 Trustee" and sent to Richard A. Marshack, 870 Roosevelt Avenue, Irvine, CA 92620 with a copy to his counsel, Melissa Lowe at [mlope@shbllp.com](mailto:mlope@shbllp.com).

1.3.1.2 Within ten (10) days of entry of the Approval Order, the Trustee will file an Assignment of Judgment in the Bankruptcy Case in substantially the same form as attached hereto as **Exhibit "A."**

1.3.2 Sale of Net Settlement Payment.

1.3.2.1 Polaris will pay to the Trustee the sum of Fifty-Two Thousand Dollars (\$52,000.00) by no later than January 5, 2014. Payment shall be made by wire or cashier's check and if by check, payable to "Richard A. Marshack, Chapter 7 Trustee" and sent to Richard A. Marshack, 870 Roosevelt Avenue, Irvine, CA 92620 with a copy to his counsel, Melissa Lowe at [mlope@shbllp.com](mailto:mlope@shbllp.com). This will have no effect on the payment due under the Lawsuit Settlement on December 25, 2014.

1.3.2.2 Polaris will receive the Final Settlement Payment in full but will be responsible for paying the contingency fee owed to Worth from the Final Settlement Payment of \$31,130.00 ("Contingency Fee"). The Trustee and the Estate will be relinquished from any liability to pay the Contingency Fee and in the event Polaris does not pay the Contingency Fee to Worth, the Trustee and the Estate shall have no liability relating to the Contingency Fee.

1.3.3 Upon entry of the Approval Order, the Polaris Claim and the Monique claim will be deemed waived in their entirety. Polaris, Monique and Gibson shall waive any and all claims they may have in the Bankruptcy Case.

1.3.4 Upon entry of the Approval Order, the Patricia Claim will be an allowed general unsecured non-priority claim in the amount of \$762,026.82. Other than such amount, Patricia will waive any and all claims she may have in the Bankruptcy Case.

1.4. Purchase Without Warranties. Polaris acknowledges that he is purchasing the Assets from the Trustee on an "AS IS - WHERE IS" basis without representations or warranties of any kind, express or implied, being given by the Trustee, concerning the value, condition or fitness of purpose for any use thereof. Polaris represents and warrants that it is purchasing the Assets as a result of his own investigations and is not buying the Assets pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction or on behalf of the Trustee. Upon the Effective Date, Polaris forever waives, for himself and his successors and assigns, any and all claims against the Debtor, the Debtor's Estate, Richard A. Marshack, as the Trustee of the Estate and in his individual capacity, and his attorneys, agents, and employees, arising or which might otherwise arise in the future concerning the Assets.

1.5 The Trustee is signing this Agreement in his capacity solely as Chapter 7 Trustee for the Estate. Nothing contained herein shall in any way impute liability to the Trustee, personally or as a member of any professional organization, or anyone acting on his behalf, including but not limited to his counsel, Shulman Hodges & Bastian LLP.

1.6 The Parties agree that they will execute any and all further and additional documents and take all further and additional steps, which may be necessary or convenient to consummate the terms of this Agreement.

### RELEASES

2.1 Except as otherwise provided in this Agreement and subject to Bankruptcy Court approval and only upon full payment by Polaris of the sums discussed above, the Trustee, both in his individual capacity and in his capacity as the Chapter 7 trustee of the Debtor's Estate, and the Chapter 7 Estate herein (collectively, "Trustee"), his executors, administrators, insurance companies, predecessors, successors, assigns, agents, servants, employees, corporations, officers, directors, partnerships, partners, associates, attorneys, representatives, principals, joint ventures, parents, trustees, subsidiaries, shareholders, past and present, or anyone else claiming by and through them, do hereby acknowledge full and complete satisfaction of and do hereby fully and forever release and discharge the Creditors, as well as their administrators, predecessors, successors, assigns, agents, servants, employees, corporations, insurance companies, officers, directors, partnerships, partners, associates, attorneys, representatives, principals, joint ventures, parents, trustees, subsidiaries, shareholders, past and present, and each of them, from any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, whether concealed or hidden, which the Trustee now owns, holds or may hereafter have against the Creditors, by reason of any matter relating to the Claims and the Assets.

2.2 The Creditors, on behalf of themselves, their heirs, spouses, offspring, administrators, insurance companies, predecessors, successors, assigns, agents, servants, employees, corporations, officers, directors, partnerships, partners, associates, attorneys, representatives, principals, joint ventures, parents, trustees, subsidiaries, shareholders, past and present, or anyone else claiming by and through it, does hereby acknowledge full and complete satisfaction of and does hereby fully and forever release and discharge the Trustee, both

individually and in his capacity as the Chapter 7 trustee of the Debtor's Estate, as well as his heirs, spouses, offspring, executors, administrators, predecessors, successors, assigns, agents, servants, employees, corporations, officers, directors, partnerships, partners, associates, attorneys, including but not limited to Shulman Hodges & Bastian LLP, representatives, principals, joint ventures, parents, trustees, subsidiaries, shareholders, past and present, and each of them, from any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, whether concealed or hidden, which the Creditors now own, hold or may hereafter have against the Trustee, by reason of any matter relating to the Claims and the Assets.

2.3 It is a condition hereof, and it is the intention of the Parties hereto in executing this Agreement and in giving the Releases set forth herein, that the same shall be effective as a bar to each and every claim, demand, and cause of action, matter or thing specified; and in furtherance of this specific intention, the Parties hereby expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected this settlement with the debtor.”

2.4 The Parties hereto represent and warrant that they have been advised to seek advice from independent legal counsel of their own choosing regarding this Agreement and its terms and language, and understand and acknowledge the significance and consequence of these Releases, and the specific waiver of Section 1542, and the Parties hereto, and each of them, expressly consent that this Agreement and the Releases set forth herein shall be given full force and effect according to each and all of their express terms and provisions, including those relating to unknown and unsuspected claims, demands and causes of action, if any, as well as those relating to any other claims, demands and causes of action herein above specified.

### **REPRESENTATIONS AND WARRANTIES**

3.1 The Parties hereto, and each of them, separately represent and warrant to each other that they have not heretofore assigned or transferred, or purported to assign or transfer, to any other person or entity any of the Assets or claim or other matter herein released.

3.2 It is understood by the Parties, and each of them, and specifically stated by the Parties hereto, and each of them, that with the exceptions and warranties expressly set forth in this Agreement this Agreement is made without reliance upon any statement or representation of any other party or any agent, attorney, or representative of any Party and that no Party is acting as agent, attorney or representative of any other Party and that the release herein includes claims for misrepresentation, fraud in the inducement, and concealment as it relates to facts discussed prior to execution of this Agreement.

3.3 Each Party represents and warrants to each and every other Party that each Party has made such investigation of the facts pertaining to the Agreement, and of all matters pertaining thereto, as they deemed necessary and that their willingness to execute this Agreement is based upon their independent investigation, rather than any statement or representation made by any Party during the course of negotiations.

3.4 In entering into this Agreement, each Party assumes the risk of any misrepresentation, concealment, or mistake except for the representations and statements expressly made in this Agreement. If any Party should subsequently discover that any fact relied upon by it in entering into this Agreement is untrue, or that the law presently in effect has changed in a manner which would otherwise affect such Parties' rights hereunder, such Parties shall not be entitled to any relief in such connection or otherwise, including, without limitation on the intended generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the Parties, regardless of any claims of fraud, misrepresentation, promise made without the intention of performing, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

3.5 The Parties hereto hereby warrant and represent that he or she has been duly authorized to execute this Agreement and to undertake the obligations contained herein.

3.6 The Parties represent that they fully understand their right to discuss all aspects of this Agreement with their own attorneys, that they have carefully reviewed and fully understand all of the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

3.7 The Parties to this Agreement shall bear their own costs, expenses, and attorneys' fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released herein except as set forth in Section 4.10 herein.

#### **MISCELLANEOUS**

4.1 **Entire Agreement.** This Agreement, together with the attached exhibits, constitute the entire understanding and agreement between the Parties hereto concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, terms, conditions and representations, written or oral, made by any of the Parties hereto or their agents, concerning the matters covered by this Agreement.

4.2 **No Admissions.** It is understood and agreed by the Parties that this Agreement represents a compromise and settlement for various matters and that the promises and consideration of this Agreement shall not be construed to be an admission of any liability or obligation by any party to the other party or to any other person.

4.3 **Partial Invalidity.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

4.4 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon the Parties, and each of them, and their respective successors, assigns, heirs, partners, agents, interrogators, officers, directors, corporations, partnerships, partners, shareholders, representatives, successors, and each of them subject to Bankruptcy Court approval.

4.5 **Modification and/or Amendment:** This Agreement may be amended and modified **only** by a written agreement signed by all of the Parties hereto specifically acknowledging and approving of the modification.

4.6 **Gender.** Whenever in this document the context may so require, the masculine gender shall be deemed to include the feminine and neuter genders, and vice-versa.

4.7 **Compliance with Terms.** The failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

4.8 **Governing Law and Jurisdiction.** This Agreement is made pursuant to, and shall be governed by and construed in accordance with, the laws of the State of California and the United States Bankruptcy Code. Should any dispute arise regarding this Agreement, the United States Bankruptcy Court for the Central District of California shall have exclusive jurisdiction to resolve any such disputes. Further, if a dispute arises, such dispute may initially be resolved through any mediation program pending in the Bankruptcy Court for the Central District of California.

4.9 **Paragraph Headings.** The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Each term of this Agreement is contractual and not merely a recital.

4.10 **Attorneys' Fees.** In the event any claim, dispute and/or litigation arises out of this Agreement, the prevailing party shall be entitled to recovery of its attorneys' fees and costs incurred in prosecuting or defending said claim, dispute and/or litigation.

4.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. The executed counterparts may be transmitted via facsimile or e-mail, with the hard copy to follow by mail.

4.12 **Execution of Documents.** Each party agrees to execute all documents necessary to carry out the purpose of this Agreement and to cooperate with the other in the expeditious filing of any and all document and the fulfillment of the terms of this Agreement.

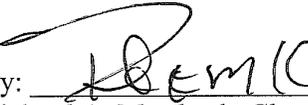
4.13 **Chapter 7 Trustee Capacity to Sign.** The Trustee is signing this Agreement in his capacity solely as Chapter 7 Trustee of the Estate. Nothing contained herein shall in any way

impute liability to the Trustee personally or anyone acting on his behalf, including but not limited to his counsel Shulman Hodges & Bastian LLP.

4.14 **Bankruptcy Court Approval.** The Trustee shall cause appropriate notice thereof to be given to parties entitled to such notice under the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure and pursuant to Court Order. If the Court does not enter an order approving this Agreement, then this Agreement and the releases described herein shall be deemed null and void and of no further effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: <sup>January 29</sup> ~~October~~ \_\_, 2014

By:   
Richard A. Marshack, Chapter 7 Trustee

Dated: October \_\_, 2014

By: \_\_\_\_\_  
Timothy Gibson

Dated: October \_\_, 2014

By: \_\_\_\_\_  
Monique Gibson

Dated: October \_\_, 2014

By: \_\_\_\_\_  
Lois Patricia Rusche

Dated: October \_\_, 2014

By: \_\_\_\_\_  
Polaris Development, LLC  
By:  
Its:

Dated: October \_\_, 2014

By: \_\_\_\_\_  
Law Offices of Kenneth D. Worth  
By: Kenneth Worth

impute liability to the Trustee personally or anyone acting on his behalf, including but not limited to his counsel Shulman Hodges & Bastian LLP.

4.14 **Bankruptcy Court Approval.** The Trustee shall cause appropriate notice thereof to be given to parties entitled to such notice under the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure and pursuant to Court Order. If the Court does not enter an order approving this Agreement, then this Agreement and the releases described herein shall be deemed null and void and of no further effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Richard A. Marshack, Chapter 7 Trustee

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Timothy Gibson

Dated: October 24, 2014 By: Monique J. Gibson  
Monique Gibson

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Lois Patricia Rusche

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Polaris Development, LLC  
By:  
Its:

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Law Offices of Kenneth D. Worth  
By: Kenneth Worth

impute liability to the Trustee personally or anyone acting on his behalf, including but not limited to his counsel Shulman Hodges & Bastian LLP.

4.14 **Bankruptcy Court Approval.** The Trustee shall cause appropriate notice thereof to be given to parties entitled to such notice under the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure and pursuant to Court Order. If the Court does not enter an order approving this Agreement, then this Agreement and the releases described herein shall be deemed null and void and of no further effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Richard A. Marshack Chapter 7 Trustee

Dated: October 18, 2014 By: \_\_\_\_\_  
Timothy Gibson

Dated: October \_\_, 2014 By: Monique Gibson  
Monique Gibson

Dated: October \_\_, 2014 By: Lois Patricia Rusche  
Lois Patricia Rusche

Dated: October 18, 2014 By: \_\_\_\_\_  
Polaris Development, LLC  
By:  
Its:

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Law Offices of Kenneth D. Worth  
By: Kenneth Worth

impute liability to the Trustee personally or anyone acting on his behalf, including but not limited to his counsel Shulman Hodges & Bastian LLP.

4.14 **Bankruptcy Court Approval.** The Trustee shall cause appropriate notice thereof to be given to parties entitled to such notice under the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure and pursuant to Court Order. If the Court does not enter an order approving this Agreement, then this Agreement and the releases described herein shall be deemed null and void and of no further effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Richard A. Marshack, Chapter 7 Trustee

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Timothy Gibson

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Monique Gibson

Dated: October 31, 2014 By: Lois Patricia Rusche  
Lois Patricia Rusche

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Polaris Development, LLC  
By:  
Its:

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Law Offices of Kenneth D. Worth  
By: Kenneth Worth

impute liability to the Trustee personally or anyone acting on his behalf, including but not limited to his counsel Shulman Hodges & Bastian LLP.

4.14 **Bankruptcy Court Approval.** The Trustee shall cause appropriate notice thereof to be given to parties entitled to such notice under the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure and pursuant to Court Order. If the Court does not enter an order approving this Agreement, then this Agreement and the releases described herein shall be deemed null and void and of no further effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Richard A. Marshack, Chapter 7 Trustee

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Timothy Gibson

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Monique Gibson

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Lois Patricia Rusche

Dated: October \_\_, 2014 By: \_\_\_\_\_  
Polaris Development, LLC  
By:  
Its:

Dated: <sup>Nov. 19</sup> ~~October~~ \_\_, 2014 By: \_\_\_\_\_  
Law Offices of Kenneth D. Worth  
By: Kenneth Worth

1 Leonard M. Shulman - Bar No. 126349  
Melissa Davis Lowe – Bar No. 245521  
2 **SHULMAN HODGES & BASTIAN LLP**  
100 Spectrum Center Drive, Suite 600  
3 Irvine, CA 92618  
Telephone: (949) 340-3400  
4 Facsimile: (949) 340-3000  
Email: lshulman@shbllp.com; mlowe@shbllp.com

5 Attorneys for Richard A. Marshack, Chapter 7 Trustee  
6  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**  
10

11 In re

12 **JAMES W. ROYER,**

13 Debtor.  
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Case No. 8:10-bk-10857-ES

Chapter 7

**SUPPLEMENT TO CHAPTER 7 TRUSTEE'S  
MOTION FOR ORDER APPROVING THE SALE  
OF ESTATE PROPERTY TO POLARIS  
DEVELOPMENT, LLC AND GRANTING  
RELATED RELIEF TO PROVIDE FOR  
OVERBID PROCEDURES**

**Hearing:**

Date: March 12, 2015

Time: 10:30 a.m.

Place: Courtroom 5A

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE;**  
2 **OFFICE OF THE UNITED STATES TRUSTEE; DEBTOR; DEBTOR’S ATTORNEY**  
3 **AND ALL INTERESTED PARTIES:**

4 **I. INTRODUCTION**

5 Richard A. Marshack (“Trustee”), the Chapter 7 trustee for the bankruptcy estate  
6 (“Estate”) of James W. Royer (“Debtor”), hereby submits this Supplement to the Motion for  
7 Order Approving the Sale of Estate Property to Polaris Development, LLC and Granting Related  
8 Relief (“Motion”) to provide for overbid procedures.

9 On February 11, 2015, Joshua Vanderham (“Vanderham”) filed an Opposition to the  
10 Motion on the grounds that he was not given an opportunity to bid on the Judgment<sup>1</sup> and thus  
11 settle with the Trustee as a judgment debtor of the Judgment. Vanderham asserts he is interested  
12 in settling the Judgment with the Trustee by paying more to the Estate than the current proposed  
13 purchaser of the Judgment. In order to ensure the Estate obtains the most and best consideration  
14 for the Judgment, the Trustee has determined that all interested parties should be given a chance  
15 to overbid on the Judgment. If Vanderham or another judgment debtor is the successful  
16 overbidder, the Judgment will be considered satisfied in full and the Trustee will file a notice of  
17 satisfaction of the Judgment once the consideration has been paid to the Estate. If Polaris is the  
18 successful overbidder, the Judgment will be assigned to Polaris as set forth in the Agreement.

19 **II. OVERBIDDING PROCEDURES**

20 **A. Proposed Overbidding Procedures.**

21 The Trustee has determined that it would benefit the Estate to permit all interested  
22 parties, including but not limited to Polaris and Vanderham, to bid for the Judgment.  
23 Accordingly, in order to obtain the highest and best consideration for the benefit of the creditors  
24 of this Estate, the Trustee seeks Court approval of the following bidding procedures (“Bidding  
25 Procedures”):

26 1. Potential overbidder(s) must bid an initial amount of at least \$1,000.00 over the  
27 purchase price for the Judgment to be paid by Polaris, or \$21,000.00. Minimum bid increments  
thereafter shall be \$1,000.00. The Trustee shall have sole discretion in determining which

28 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning set forth in the  
Motion.

1 overbid is the best for the Estate and will seek approval from the Court of the same.

2 2. Overbids must be in writing and be received by the Trustee and the Trustee's  
3 counsel, Shulman Hodges & Bastian LLP to the attention of Melissa Davis Lowe, on or before  
4 **5:00 p.m. (California time) on March 2, 2015.**

4 3. The overbidder must provide evidence of having sufficient specifically committed  
5 funds to complete the transaction and such other documentation relevant to the bidder's ability to  
6 qualify as the purchaser of the Judgment.

6 4. The overbidder must seek to acquire the Judgment on terms and conditions not  
7 less favorable to the Estate than the terms and conditions to which Polaris has agreed to purchase  
8 the Judgment as set forth in the Agreement attached as **Exhibit "A"** to the Marshack Declaration  
9 filed in support of the Motion. Since Polaris has already paid the purchase price for the  
10 Judgment, the overbidder must have funds available to pay to the Estate within five (5) days of  
11 entry of an order approving this Motion.

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

13 6. At the hearing on the Motion, the Trustee will seek entry of an order, *inter alia*,  
14 authorizing and approving the sale of the Judgment (or settlement of the Judgment) to the  
15 Successful Bidder. The hearing on the Motion may be adjourned or rescheduled without notice  
16 other than by an announcement of the adjourned date at the hearing on the Motion.

15 7. If the Successful Overbidder is Vanderham or another judgment debtor under the  
16 Judgment, the Trustee will file a notice of satisfaction of judgment within five days of full  
17 payment to the Trustee. If the successful overbidder is someone other than a judgment debtor  
18 under the Judgment, the Judgment will be assigned to the purchaser on the terms set forth in the  
19 Agreement.

18 8. In the event the Successful Bidder fails to close on the sale of the Judgment  
19 within the time parameters approved by the Court, the Trustee will be released from his  
20 obligation to sell the Judgment to the Successful Bidder and the Trustee may then sell the  
21 Judgment to the first back-up bidder approved by the Court at the hearing on the Motion ("First  
22 Back-Up Bidder").

22 **B. The Court has the Authority to Approve the Bidding Procedures**

23 Implementation of the Bidding Procedures is an action outside of the ordinary course of  
24 the business. Bankruptcy Code Section 363(b)(1) provides that a trustee "after notice and  
25 hearing, may use, sell or lease, other than in the ordinary course of business, property of the  
26 estate." 11 U.S.C. § 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a), "[t]he  
27 court may issue any order, process, or judgment that is necessary or appropriate to carry out the

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1 provisions of this title.” 11 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code Sections  
2 363(b)(1) and 105(a), this Court may authorize the implementation of overbidding procedures.

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

13 **i. The Overbid Procedures are Untainted by Self-Dealing**

14 The Bidding Procedures have been proposed in good faith by the Trustee without  
15 involving Polaris or Vanderham. Therefore, there is no prospective taint in dealings between  
16 Trustee and any potential bidders.

17 **ii. The Overbid Procedures Encourage Bidding and are Fair in Amount**

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

22 **iii. The Overbid Procedures are Fair, Reasonable and Serve the Best**

23 **Interests of the Estate**

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

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1 The Bidding Procedures will ensure that all bids will be comparable. The only major  
2 difference will be that if the Successful Overbidder is a judgment debtor under the Judgment, the  
3 transaction will be a settlement other than a sale of the Judgment if the Successful Overbidder is  
4 anyone other than a judgment debtor. Either way, the overbidding procedures will ensure the  
5 Estate obtains the highest possible compensation for the Judgment. The Trustee will determine  
6 which bid is the highest and best for the Estate. The comparability requirement of the Bidding  
7 Procedures will make it possible to accomplish this task.

8 The Bidding Procedures will help the Trustee to obtain the highest and best possible price  
9 for the Judgment. The Bidding Procedures institute minimum overbid increments which the  
10 Trustee believes are reasonable. Thus, the Trustee will be able to obtain substantial benefit for  
11 this Estate from the sale or settlement of the Judgment from competing bids.

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

17 Finally, the most important benefit of the Bidding Procedures to the Estate is that their  
18 implementation will enable the consummation of the proposed sale. The proposed sale or  
19 settlement of the Judgment will be the best way to obtain the maximum and most expedient  
20 recovery for creditors of this Estate.

21 The Bidding Procedures proposed by the Trustee are fair and provide for a “level playing  
22 field” for all prospective bidders with respect to the Judgment. The proposed Bidding  
23 Procedures establish a reasonable but expeditious timeline for allowing the Trustee to give notice  
24 of the proposed sale and qualified bidders to conduct reasonable due diligence and submit  
25 competing offers for the Judgment, thereby potentially generating additional value for the  
26 Judgment. Furthermore, the notice that the Trustee proposes to provide to creditors and parties  
27 in interest in connection with the Bidding Procedures and Motion is designed to attract the most  
28 interest in the acquisition of the Judgment and is sufficient under the circumstances of this case.

1 Thus, approval of the Bidding Procedures will serve the best interests of the Estate and its  
2 creditors.

3 **III. CONCLUSION**

4 Based on all of the above, the Trustee requests, in addition to the prayer set forth in the  
5 Motion, that the Court approve the Bidding Procedures set forth herein.

6 **SHULMAN HODGES & BASTIAN LLP**

7  
8 Dated: February 19, 2015

By: /s/ Melissa Davis Lowe  
Leonard M. Shulman  
Melissa Davis Lowe  
Attorneys for Richard A. Marshack, the Chapter 7  
Trustee

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
100 Spectrum Center Drive, Suite 600, Irvine 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)* 2/19/2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

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

On *(date)* \_\_\_\_\_, 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)* 2/19/2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PERSONAL DELIVERY: Honorable Erithe Smith, USBC, 411 W. Fourth St, Crtrm 5A,  
Santa Ana, CA 92701

Service information continued on attached page

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

2/19/2015  
Date

Laurie Verstegen  
Printed Name

/s/Laurie Verstegen  
Signature

PROOF OF SERVICE (cont'd)

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

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