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Attorneys for John M. Wolfe, Chapter 7 Trustee	
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b>	
In re:  <b>CHARLES D. MCHUGH,</b>  Debtor(s).	CASE NO.: <b>8:12-bk-14904-ES</b>  Chapter 7

**NOTICE OF SALE OF ESTATE PROPERTY**

Sale Date: <b>August 30, 2013</b>	Time: <b>12:00 p.m.</b>
Location: <b>3910 Valley Boulevard, Unit I, Walnut, California 91789</b>	

Type of Sale:  Public  Private Last date to file objections: **April 15, 2013**  
Description of Property to be Sold: **Vehicle - 1971 Plymouth Barracuda 440-6**

Terms and Conditions of Sale: **See the attached Motion for an Order: (1) Approving the Auction Sale of the Estate's Right, Title, and Interest in Personal Property of the Estate Free and Clear of All Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. §363(b)(1) and (f); (2) Approving the Employment of Scott R. Van Horn and Van Horn Auctions & Appraisal Group, LLC as Auctioneer; (3) Approving the Payment of Auctioneer's Commission; and (4) Granting Related Relief ("Motion")**

Proposed Sale Price: **Unknown**

Overbid Procedure (If Any): \_\_\_\_\_

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

**Auction Sale on August 30, 2013 at 12:00 p.m. at 3910 Valley Boulevard, Unit I, Walnut, California 91789**

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

**Rika M. Kido, Esq.**  
**Shulman Hodges & Bastian LLP**  
**8105 Irvine Center Drive, Suite 600, Irvine, CA 92618**  
**Telephone: (949) 340-3400; Facsimile: (949) 340-3000**

Dated: **March 29, 2013**

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Rika M. Kido – State Bar No. 273780  
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6 Attorneys for John M. Wolfe, Chapter 7 Trustee

7

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**UNITED STATES BANKRUPTCY COURT**

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**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

10

11

In re

Case No. 8:12-bk-14904-ES

12

**CHARLES D. MCHUGH,**

Chapter 7

13

Debtor.

**CHAPTER 7 TRUSTEE’S MOTION FOR AN  
ORDER AUTHORIZING THE TRUSTEE TO:**

14

**(1) CONDUCT AN AUCTION SALE OF THE  
ESTATE’S RIGHT, TITLE, AND INTEREST  
IN PERSONAL PROPERTY OF THE ESTATE  
FREE AND CLEAR OF ALL LIENS, CLAIMS  
AND ENCUMBRANCES PURSUANT TO 11  
U.S.C. §§363(b)(1) AND (f);**

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**(2) EMPLOY AUCTIONEER AND PAY  
COMPENSATION TO THE AUCTIONEER;**

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**(3) GRANTING RELATED RELIEF**

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**MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATIONS OF  
JOHN M. WOLFE AND SCOTT R. VAN HORN  
IN SUPPORT THEREOF**

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23

[No Hearing Set Pursuant to  
Local Bankruptcy Rule 2014-1(b)]

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

4 John M. Wolfe, the Chapter 7 Trustee for the bankruptcy estate (“Estate”) of Charles D.  
5 McHugh (“Debtor”), brings this Motion For an Order: (1) Approving the Auction Sale of the  
6 Estate’s Right, Title, and Interest in Personal Property of the Estate Free and Clear of All Liens,  
7 Claims, and Encumbrances Pursuant to 11 U.S.C. §363(b)(1) and (f); (2) Approving the  
8 Employment of Scott R. Van Horn and Van Horn Auctions & Appraisal Group, LLC as  
9 Auctioneer; (3) Approving the Payment of Auctioneer’s Commission; and (4) Granting Related  
10 Relief (“Motion”).

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

12 **I. SUMMARY OF ARGUMENT**

13 The Trustee is in possession of a 1971 Plymouth Barracuda 440-6 (“Vehicle”). Through  
14 this Motion, the Trustee is seeking an Order authorizing the auction sale of the Estate’s right,  
15 title, and interest in the Vehicle. The Trustee, with the assistance of Scott Van Horn of Van  
16 Horn Auctions & Appraisal Group, LLC (“Auctioneer”), has completed an analysis of value and  
17 has determined that the Vehicle has a liquidation value of approximately \$12,000.00 to  
18 \$15,000.00, at an auction sale. The sale is authorized by Bankruptcy Code section 363(f) and  
19 will provide for a cost-efficient and expeditious manner in which to administer the Vehicle. The  
20 Estate is expected to net between \$9,000.00 to \$12,000.00 if the Vehicle is sold at an auction.  
21 Accordingly and based on the Trustee’s business judgment, the Trustee respectfully requests that  
22 the Court approve the Motion.

23 **II. RELEVANT FACTS**

24 **A. Case Commencement**

25 The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on  
26 April 18, 2012 (“Petition Date”).

27 John M. Wolfe is the duly appointed, qualified and acting Chapter 7 trustee for the  
28 Debtor’s Estate.

1 **B. The Vehicle**

2 The Debtor's Bankruptcy Schedule B, as amended on September 6, 2012, indicate that  
3 the Debtor is the registered owner of the Vehicle. The Debtor values the Vehicle at \$9,500.00  
4 and does not claim an exemption in the Vehicle. On his Schedule D, he indicates there is a lien  
5 against the Vehicle in the amount of \$9,500.00. A true and correct copy of the Debtor's  
6 Schedules B and D are attached to the Wolfe Declaration as **Exhibit 1**.

7 The Auctioneer has inspected the Vehicle and believes it to be worth approximately  
8 \$12,000.00 to \$15,000.00. The Auctioneer is currently in possession of the Vehicle.

9 **C. Lien/Encumbrance Against the Vehicle and Its Proposed Treatment Through the**  
10 **Sale**

11 Pursuant to the Debtor's Schedule D, creditor Sparrow Mahoney provided the Debtor  
12 with a loan on April 2, 2012 against title to the Vehicle in the amount of \$9,500.00 ("Mahoney  
13 Lien"). The validity and amount of this encumbrance/lien is disputed and the subject of a bona  
14 fide dispute. The Trustee is informed and believes that the Debtor and Ms. Mahoney entered  
15 into a Secured Promissory Note on March 30, 2012 in the amount of \$9,500.00 ("Note"). The  
16 Note was secured by the Vehicle and the Certificate of Title for the Vehicle lists Ms. Mahoney as  
17 a lienholder. The Certificate of Title and Ms. Mahoney's status as a secured creditor is disputed  
18 by the Trustee because the Certificate of Title was issued on April 14, 2012, four days before the  
19 Petition Date. Therefore, the Debtor allegedly transferred a security interest in the Vehicle  
20 within ninety (90) days prior to the Petition Date, which may constitute a preferential or other  
21 improper transfer that the Trustee may avoid and recover pursuant to Bankruptcy Code Sections  
22 547 and 550 and/or other applicable bankruptcy law and/or California state law.

23 As the Mahoney Lien is subject to a bona fide dispute, pursuant to Bankruptcy Code  
24 Sections 363(b)(1) and (f)(4), the Trustee seeks to sell the Vehicle free and clear of this  
25 lien/encumbrance with this disputed lien/encumbrance to attach to the proceeds of the sale in the  
26 same validity and priority as prior to the sale pending agreement with the creditor or further  
27 Court order.

28 ///

1 **D. The Proposed Auction Date, Proposed Auctioneer and Proposed Auction Proposal**

2 The Trustee proposes to sell on an all cash basis and an as-is basis, all of the Estate’s  
3 right, title and interest in the Vehicle by auction to the highest bidder and without any minimum  
4 price on **April 30, 2013 commencing at 12:00 p.m.** The auction sale will be conducted at **3910  
5 Valley Boulevard, Unit I, Walnut, California 91789.**

6 The proposed public auction shall be without any warranties, representations or  
7 contingencies. The sale will be free and clear of liens, claims and interests of third parties, with  
8 such liens, claims and interests to attach to the sale proceeds.

9 The Trustee proposes to employ Scott R. Van Horn and Van Horn Auctions & Appraisal  
10 Group, LLC as the Trustee’s auctioneer (“Auctioneer”) to coordinate the auction sale and  
11 authorizing payment of the Auctioneer’s Compensation pursuant to the terms of the Auctioneer’s  
12 proposal (“Auction Proposal”), a true and correct copy of which is attached to the Wolfe  
13 Declaration as **Exhibit 2**. The principle terms of the Auction Proposal are as follows (the term  
14 “Seller” means the Trustee on behalf of the Estate):

15	<b>Format</b>	Public Auction
16	<b>Date</b>	April 30, 2013 at 12:00 p.m.
17	<b>Site</b>	3910 Valley Blvd., Unit I, Walnut, California 91789
18	<b>Asset</b>	1971 Plymouth Barracuda 440-6, License Number 44CUDA
19	<b>Marketing</b>	Newspaper, On Line Publications, and Email Blast
20	<b>Seller’s Cost</b>	Auctioneer’s Expense Reimbursement only. <b>No Seller’s Commission paid.</b>
21	<b>Auctioneer’s Compensation</b>	13% buyer’s premium charged to each purchaser.  Expense allowance not to exceed \$3,200.00 for: (1) two (2) Los Angeles Times display advertisements (2 columns by 1 inch at \$350.00 per column inch); (2) one thousand (1000) auction brochures, graphics, mail list and handling, auction bond, (3) days labor (asset preparation and set-up, lotting & tagging, computer entry, auction sale day, check-out and removal personnel, post auction recapitulation of sale)(“Expense Allowance”).  Reimbursement for storage of the Vehicle in the amount of \$12.50 per day up to the date of the Auction Sale (“Storage Charge”). Storage of the Vehicle commenced on December 19, 2012.

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<b>Sale Terms</b>	<ul style="list-style-type: none"> <li>• The sale will be without limit and without reserve, subject only to minimum opening bid amounts established by the Auctioneer, based on Auctioneer’s expert judgment.</li> <li>• Auctioneer will offer the property to buyers in “As-Is, Where-Is” Condition, without representations or warranties.</li> <li>• Auctioneer will require bidders to post an appropriate deposit as a prerequisite to bid</li> <li>• Auctioneer will require buyers to sign a terms sheet, which will include terms intended to protect Auctioneer and Seller from buyer payment defaults, property abandonment, damage to persons or property onsite, claims regarding the property condition, etc.</li> <li>• Auctioneer will accept from buyers the following forms of payment: credit card (fees shall be Auctioneer’s responsibility), cashiers’ checks, guaranteed checks and wire transfer as payment for the property sold. No cash will be accepted for this sale.</li> <li>• Regardless of any scheduled time and place for offer to purchase the Vehicle, the Trustee may, at his option, reject any and all bids if he deems that such bids are inadequate as to form and amount. The sale date may be continued from time to time until the Vehicle is sold, without further Order of this Court, or until such time it is determined that abandonment is appropriate.</li> <li>• Auctioneer will be paid a 13% buyers’ premium from auction purchasers.</li> <li>• Auctioneer shall require the buyer to pay any DMV fees and remit applicable sales tax directly to the DMV.</li> <li>• Auctioneer shall provide Trustee an Auctioneers’ Report within 21 days of the auction, including a list of items sold, price of each item sold, buyer of each item, and gross sale proceeds. The Auctioneer shall also provide a settlement summary report, statement itemizing sale expense, copies of all marketing materials and expense receipts.</li> </ul>
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Regardless of any scheduled time and place for offer to purchase the Vehicle, the Trustee may, at his option, reject any and all bids if he deems that such bids are inadequate as to form and amount. The sale date may be continued from time to time until the Vehicle is sold, without further Order of this Court, or until such time it is determined that abandonment is appropriate.

Attached as **Exhibit 3** to the Declaration of Scott R. Van Horn (“Van Horn Declaration”) is a true and correct copy of the resume for the Auctioneer. Attached as **Exhibit 4** are copies of the Auctioneer’s Bankruptcy Bond in the amount of \$15,000.00 and proof of liability insurance in the amount of \$1,000,000.00. I have been advised by my counsel that the Auctioneer’s Bankruptcy Bond has been filed with the United States Bankruptcy Court – Los Angeles Division and a copy provided to the Office of the United States Trustee. The Auctioneer has also advised the Trustee that the total value of all pending bankruptcy auctions in which the

1 Auctioneer is involved in this district does not exceed the Auctioneer's Bankruptcy Bond and  
2 liability insurance coverage.

3 The Trustee believes that the auction is fair and reasonable and that the Trustee should be  
4 authorized to employ the Auctioneer on the terms and conditions set forth herein. The Trustee is  
5 satisfied from the Van Horn Declaration that the Auctioneer is a disinterested person within the  
6 meaning of Bankruptcy Code Section 101(14).

7 **E. Request for Authorization to Use the Auction Proceeds to Pay the Auctioneer's**  
8 **Expenses and to Reimburse the Trustee for his Actual Costs**

9 Through this Auction Motion, the Trustee requests the Court authorize the use of the  
10 proceeds of the auction sale to make Court approved disbursements to the proposed Auctioneer  
11 pursuant as set forth herein.

12 Pursuant to the Office of the United States Trustee's Supervisory Instructions  
13 ("Instructions"), Auctioneer's compensation and expenses shall be payable upon completion of  
14 the following:

15 a. Within twenty-one (21) days after the auction sale, Auctioneer shall: 1) turnover  
16 any and all proceeds from the auction to the Trustee; and 2) submit to the Trustee a Report of  
17 Auctioneer ("Auction Report") which is consistent with the requirements of the Instructions; and

18 b. Provided an Order has been entered approving payment of the Auctioneer's  
19 compensation and expenses, the Trustee shall compensate the Auctioneer for the Court approved  
20 fees and expenses within ten (10) calendar days of the Trustee's receipt of the Auction Report.

21 Within thirty (30) days of receipt of the Auction Report, the Trustee shall file the Auction  
22 Report with the Court together with a brief declaration ("Trustee's Declaration") which is  
23 consistent with the requirements of the Instructions.

24 Based upon an analysis of the market value of the Vehicle and costs associated with sale  
25 of same, the Trustee is of the opinion and belief that the public auction as referenced above is in  
26 the best interest of this bankruptcy estate, as it will generate the most funds to the Estate for the  
27 benefit of the creditor body.

28 ///

1 The Trustee believes that the proposal for employment of the Auctioneer is fair and  
2 reasonable and the Trustee should be authorized to pay the Auctioneer pursuant to the terms and  
3 conditions set forth above.

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

#### 5 **A. The Vehicle is Property of the Debtor's Bankruptcy Estate**

6 Bankruptcy Code Section 541 provides in part as follows:

7 (a) The commencement of a case under section 301, 302 or 303 of this title  
8 creates an estate. Such estate is comprised of all the following property, wherever  
located and by whomever held:

9 (1) Except as provided in subsection s (b) and (c)(2) of this section,  
10 all legal or equitable interests of the debtor in property as of the  
commencement of the case.

11 *See* 11 U.S.C. § 541(a)(1) (2011). Bankruptcy Code section 541 is broadly construed to  
12 include all property interests, whether reachable by state-law creditors or not, and whether vested  
13 or contingent. *United States v Rauer*, 963 F.2d 1332 (10th Cir. 1992); *In re Yonikus*, 996 F.2d  
14 866 (7th Cir. 1993) (virtually all property of debtor becomes property of estate; in fact, every  
15 conceivable interest of debtor, including future, non-possessory, contingent, speculative, and  
16 derivative, is within the scope of Section 541).

17 In this case, the Debtor is the registered owner of the Vehicle and the Debtor lists the  
18 Vehicle in his Bankruptcy Schedules. As such, the Vehicle belongs to the bankruptcy Estate as  
19 set forth in Bankruptcy Code section 541(a)(1).

#### 20 **B. The Court May Authorize the Sale When There is a Good Faith 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.

1 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's  
2 proposed sale of Vehicle meets the foregoing criteria.

3 1. Sound Business Purpose

4 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the  
5 business purpose for a proposed sale justifies disposition of property of the estate under Section  
6 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting  
7 the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir.  
8 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the  
9 following standard to be applied under Bankruptcy Code Section 363(b):

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

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

23 In this case, it is in the best interest of all concerned to sell the Estate's right, title and  
24 interest in the Vehicle to the highest and best bidder under the terms set forth in the Trustee's  
25 Motion. The sale will provide for a cost-efficient and expeditious manner in which to administer  
26 the Vehicle and is expected to net the Estate between \$9,000.00 and \$12,000.00 after payment of  
27 fees and costs to the Auctioneer.

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

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

The Trustee believes that it would be in the best interest of the Estate and its creditors to  
sell the Vehicle. The benefits to the Estate, as set forth above, are significant due to the funds to  
be generated from the sale for payment of unsecured claims. If the Motion is not approved, the  
Estate will have difficulty selling the Vehicle to a third party. The sale will provide for a cost-

1 efficient and expeditious manner in which to administer the Vehicle. Thus, the Trustee has made  
2 a business decision that it is in the best interest of the creditors of the Estate that this Sale Motion  
3 be approved.

4 3. Accurate and Reasonable Notice

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

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

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

17 4. The Sale is Made in Good Faith

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

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

22 ‘Good faith’ encompasses fair value, and further speaks to the  
23 integrity of the transaction. Typical ‘bad faith’ or misconduct,  
24 would include collusion between the seller and buyer, or any  
25 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.

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

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1 In the present case, the sale of the Vehicle will be conducted by the Auctioneer and  
2 therefore constitute an arms-length transaction. The sale will provide for a cost-efficient and  
3 expeditious manner in which to administer the Vehicle that will benefit the Estate. As set forth  
4 in the Notice of the Motion, the creditors will have been provided with sufficient notice of the  
5 sale. Accordingly, the sale is in good faith and should be approved. The Trustee shall request  
6 such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Motion.

7 **C. The Sale Free and Clear of Liens and Encumbrances Should be Permitted**

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

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

20 11 U.S.C. § 363(f).

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

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

24 The sale of the Vehicle is proper pursuant to Section 363(f)(3). The sales price is for a  
25 sum that is greater than the aggregate value of the non-disputed liens. Courts have approved  
26 sales under Bankruptcy Code Section 363(f) even where the sale price did not exceed the value  
27 of the liens asserted on the property so long as the sale is for fair market value. *In re Terrace*  
28 *Gardens Park Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989); *In re Beker Indus. Corp.*, 63  
B.R. 474, 477 (Bankr. S.D.N.Y. 1986). Thus, approval for the sale free and clear of liens and  
encumbrances in the manner provided herein is appropriate.

1           2.     Section 363(f)(4) – Bona Fide Dispute

2           As set forth in the above, the Trustee disputes that Ms. Mahoney has a security interest in  
3 the Vehicle and also disputes the validity of any lien encumbering the Vehicle in favor of Ms.  
4 Mahoney that is showing on the Certificate of Title for the Vehicle. In addition, the Note  
5 providing the security interest in the Vehicle was entered into and the Certificate of Title was  
6 issued within ninety days prior to the Petition Date and may constitute a preferential or other  
7 improper transfer that the Trustee may avoid and recover pursuant to Bankruptcy Code Sections  
8 547 and 550 and/or other applicable bankruptcy law and California state law. As the interests  
9 and encumbrances of Ms. Mahoney are subject to a bona fide dispute, the Trustee seeks to sell  
10 the Vehicle free and clear of the disputed interests of Ms. Mahoney with such disputed interests  
11 and encumbrances to attach to the proceeds of the sale in the same validity and priority as prior  
12 to the sale pending agreement with or further Court order.

13           The policy behind allowing assets to be sold free and clear of disputed interests provides  
14 that the disputes do not bog down the swift and orderly liquidation of bankruptcy estate assets for  
15 the highest possible value. It is absolutely essential for the Trustee to be able to quickly liquidate  
16 the Vehicle for its maximum possible value. By demonstrating the existence of the bona fide  
17 disputes, Section 363(f) allows the Vehicle to be sold free and clear of any lien that is subject to  
18 a dispute so that at a minimum, proceeds can be generated for distribution to parties. If every  
19 sale were subject to resolution of disputes that were in existence, expense and time associated  
20 with litigation would significantly impact values that could be obtained by trustees and/or other  
21 estate fiduciaries for the benefit of creditors. Resolution of the issues with regard to the claims  
22 of the holders of disputed liens and encumbrances may likely take substantial time, effort and  
23 expense by the parties. That process should not hinder, delay or in any way inhibit the Trustee's  
24 efforts to maximize the value of the sale of Vehicle.

25           In summary, the Trustee seeks Court approval of the sale free and clear of any and all  
26 disputed liens and encumbrances, with all disputed liens and encumbrances to be unconditionally  
27 released, discharged and terminated, and with any liens and encumbrances not satisfied through  
28 the sale to attach only to the proceeds of the transaction with the same priority, validity, force

1 and effect as they existed with respect to the Vehicle before the closing of the sale pending  
2 further Court order or agreement with the parties. The Trustee does not believe it is prudent or  
3 necessary to resolve the disputes with holders of any disputed liens and encumbrances by Court  
4 order or judgment prior to the sale. The unresolved disputed liens and encumbrances, if any,  
5 would be subject to a bona fide dispute and the Bankruptcy Code provides for a means to sell  
6 free and clear of such interests. If the Estate is forced to wait for resolution of the disputes, the  
7 costs of such delay will dilute the amount of funds available for the Estate. Thus, the Trustee  
8 needs immediate Court approval of the sale of the Vehicle.

9 Further, the Trustee desires to sell the Vehicle quickly in order stop administrative costs  
10 associated with the Vehicle and delays that could result from having to first resolve any disputes  
11 related to secured claims that may negatively impact the benefits of the sale. Thus, approval for  
12 the sale of the Vehicle free and clear of disputed liens and encumbrances pursuant to Bankruptcy  
13 Code Sections 363(f)(3) and (4) in the manner provided herein is appropriate.

14 **D. The Court has Authority to Waive the Fourteen-Day Stay of Sale**

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

18 The Trustee desires to conduct and close on the proposed auction sale as soon as  
19 practicable after entry of an order approving the Auction Motion. Accordingly, the Trustee  
20 requests that the Court in the discretion provided it under Federal Rules of Bankruptcy Procedure  
21 6004(h), order that the fourteen-day stay of the order granting this Auction Motion shall not  
22 apply.

23 **IV. CONCLUSION**

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

- 26 1. Granting the Motion.
- 27 2. Authorizing the sale of the Vehicle to the highest bidder as the case may be,  
28 pursuant to the terms and conditions set forth herein.



# **DECLARATION**

**DECLARATION OF JOHN M. WOLFE**

I, John M. Wolfe, declare:

1. I am the duly appointed, qualified and acting Chapter 7 Trustee for the bankruptcy estate (“Estate”) of Charles D. McHugh, (“Debtor”) Case No. 8:12-bk-14904-ES. I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify thereto, except where matters are stated on information and belief, in which case I am informed and believe that the facts so stated are true and correct.

2. I make this Declaration in support of my Motion for Order: (1) Approving the Auction Sale of the Estate’s Right, Title, and Interest in Personal Property of the Estate Free and Clear of All Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. §363(b)(1) and (f); (2) Approving the Employment of Scott R. Van Horn and Van Horn Auctions & Appraisal Group, LLC as Auctioneer; (3) Approving the Payment of Auctioneer’s Commission; and (4) Granting Related Relief (“Motion”). All capitalized terms not otherwise defined herein shall have the meaning 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.

4. The Court’s docket indicates that the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on April 18, 2012 (“Petition Date”).

5. I am proposing to sell on an all cash basis and an as-is basis, all of the Estate’s right, title and interest in a 1971 Plymouth Barracuda 440-6 (“Vehicle”), by way of a public auction to be conducted by my proposed auctioneer, Scott Van Horn of Van Horn Auctions & Appraisal Group, LLC (“Auctioneer”). The request is based on my business judgment.

6. The Debtor’s Bankruptcy Schedule B, as amended on September 6, 2012, indicate that he is the registered owner of the Vehicle. He values the Vehicle at \$9,500.00 and does not claim an exemption in the Vehicle. On his Schedule D, he indicates that there is a lien against the Vehicle in the amount of \$9,500.00. A true and correct copy of the Debtor’s Schedules B and D are attached hereto as **Exhibit 1**.

1           7.       I, with the assistance of the Auctioneer, have completed an analysis of value and  
2 have determined that the Vehicle have a liquidation value of approximately \$12,000.00 to  
3 \$15,000.00.

4           8.       The proposed public auction shall be without any warranties, representations or  
5 contingencies, free and clear of liens, claims and interests of third parties, with such liens, claims  
6 and interests to attach to the sale proceeds.

7           9.       Pursuant to the Debtor's Schedule D, creditor Sparrow Mahoney provided the  
8 Debtor with a loan on April 2, 2012 against title to the Vehicle in the amount of \$9,500.00  
9 ("Mahoney Lien"). The validity and amount of this encumbrance/lien is disputed and the subject  
10 of a bona fide dispute. I am informed and believe that the Debtor and Ms. Mahoney entered into  
11 a Secured Promissory Note on March 30, 2012 in the amount of \$9,500.00 ("Note"). The Note  
12 was secured by the Vehicle and Certificate of Title for the Vehicle lists Ms. Mahoney as a  
13 lienholder. The Certificate of Title and Ms. Mahoney's status as a secured creditor is disputed  
14 by the Trustee in that the Certificate of Title was issued on April 14, 2012, four (4) days before  
15 the Petition Date. Therefore, the Debtor allegedly transferred a security interest in the Vehicle  
16 within ninety (90) days prior to the Petition Date, which may constitute a preferential or other  
17 improper transfer that the Trustee may avoid and recover pursuant to Bankruptcy Code Sections  
18 547 and 550 and/or other applicable bankruptcy law and/or California state law.

19           10.       As the Mahoney Lien is subject to a bona fide dispute, pursuant to Bankruptcy  
20 Code Sections 363(b)(1) and (f)(4), I seek to sell the Vehicle free and clear of this  
21 lien/encumbrance with such disputed lien/encumbrance to attach to the proceeds of the sale in  
22 the same validity and priority as prior to the sale pending agreement with the creditor or further  
23 Court order.

24           11.       I am requesting authorization to employ the Auctioneer to coordinate the auction  
25 sale and authorizing payment of the Auctioneer's Compensation, including Auctioneer's  
26 Expense Allowance and reimbursement for the Storage Charge, pursuant to the terms of the  
27 Auctioneer's proposal ("Auction Proposal"), a true and correct copy of which is attached hereto  
28 as **Exhibit 2**.



# **DECLARATION**

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**DECLARATION OF SCOTT R. VAN HORN**

I, Scott R. Van Horn, declare:

1. I am the President of Van Horn Auctions & Appraisal Group, LLC (“Firm”), the proposed auctioneer for the bankruptcy estate (“Estate”) of Charles D. McHugh, (“Debtor”) Case No. 8:12-bk-14904-ES. I have personal knowledge of the matters set forth in this Declaration and if called upon to testify, I could and would testify competently thereto.

2. I make this Declaration in support of the Trustee’s Motion for Order: (1) Approving the Auction Sale of the Estate’s Right, Title, and Interest in Personal Property of the Estate Free and Clear of All Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. §363(b)(1) and (f); (2) Approving the Employment of Scott R. Van Horn and Van Horn Auctions & Appraisal Group, LLC as Auctioneer; (3) Approving the Payment of Auctioneer’s Commission; and (4) Granting Related Relief (“Motion”). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Motion.

3. The Firm has extensive experience in the matters to which it is to be engaged and is well qualified to complete the sale of the kind proposed by the Trustee in the Motion. Attached hereto as **Exhibit 3** is a true and correct copy of the Firm’s resume.

4. I assisted the Trustee in completing an appraisal of the Vehicle and have determined that the best means to liquidate same is a public auction. In my opinion, the liquidation value of the Vehicle is \$12,000.00 to \$15,000.00.

18. Included with **Exhibit 4** is a copy of the Firm’s Bankruptcy Bond in the amount of \$15,000.00 and proof of liability insurance in the amount of \$1,000,000.00.

19. I have been advised that the Firm’s Bankruptcy Bond has been filed with the United States Bankruptcy Court – Los Angeles Division and a copy provided to the Office of the United States Trustee.

5. I have advised the Trustee that the total value of all pending bankruptcy auctions in which the Firm is involved in this district does not exceed my aggregate bond.

6. I have read foregoing Motion and the Firm agrees to and approves all of the terms and conditions thereof.

1 7. To the best of the Firm's knowledge, neither the Firm, nor any of the  
2 professionals comprising or employed by it, have any connection with the Debtors, their  
3 creditors or any other party in interest, their respective attorneys or other professionals, the  
4 United States Trustee, or any person employed by the Office of the United States Trustee.

5 8. To the best of the Firm's knowledge, none of the professionals comprising or  
6 employed by the Firm are related to any judge of the United States Bankruptcy Court for the  
7 Central District of California.

8 9. To the best of my knowledge the Firm is both disinterested as that term is defined  
9 in Bankruptcy Code Section 101(14) and represents no interest which would be adverse to the  
10 Debtor, the Estate or its creditors or any party in interest in this proceeding.

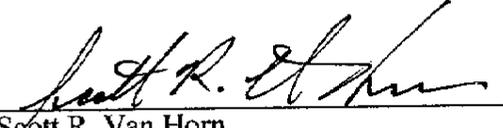
11 10. The Firm has no pre-petition claim against the Estate.

12 11. The Firm has received no retainer for the services to be performed herein.

13 12. The Firm and I are familiar with the requirements of the Office of the United  
14 States Trustee related to employment of auctioneers which includes requirements relative to the  
15 filing of a report by the auctioneer within twenty-one (21) days after the auction sale, and the  
16 procedures for compensation of auctioneers, and we agree to comply therewith.

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

19 Executed on March <sup>th</sup>27, 2013, at Aliso Viejo, California.

20  
21   
22 Scott R. Van Horn

**Exhibit 1**

**Schedules B and D**

IN RE **McHugh, Charles D**

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		<b>Cash</b>	<b>J</b>	<b>20.00</b>
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		<b>Checking Accounts</b> <b>Wells Fargo Bank Account Ending 4287 (blocked by court order of Orange County Superior Court, joint account with Connie McHugh --proceeds from sale of automobile)</b>	<b>J</b>	<b>675.00</b> <b>54,000.00</b>
3. Security deposits with public utilities, telephone companies, landlords, and others.	<b>X</b>			
4. Household goods and furnishings, include audio, video, and computer equipment.		<b>Bed</b> <b>Bedroom set</b> <b>Couch</b> <b>Dishes, pots and pans.</b> <b>File cabinet</b>		<b>100.00</b> <b>250.00</b> <b>250.00</b> <b>100.00</b> <b>50.00</b>
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	<b>X</b>			
6. Wearing apparel.	<b>X</b>	<b>Clothing, shirts, pants, shoes</b>		<b>100.00</b>
7. Furs and jewelry.	<b>X</b>			
8. Firearms and sports, photographic, and other hobby equipment.	<b>X</b>			
9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	<b>X</b>			
10. Annuities. Itemize and name each issue.	<b>X</b>			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	<b>X</b>			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		<b>Charles Schwab 401k Retirement Account from former employer Amcor Packaging Distribution</b>	<b>J</b>	<b>552,000.00</b>

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IN RE **McHugh, Charles D**

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE B - PERSONAL PROPERTY  
(Continuation Sheet)**

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X	<b>Promissory note payment due from James Moran from 2009. Payment not due on promissory note until 2014.</b>	<b>J</b>	<b>17,500.00</b>
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X	<b>1971 Plymouth Barracuda</b> <b>2006 Ford Explorer</b>		<b>9,500.00</b> <b>7,300.00</b>
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			

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IN RE McHugh, Charles D

Debtor(s)

Case No. \_\_\_\_\_

(If known)

**SCHEDULE B - PERSONAL PROPERTY  
(Continuation Sheet)**

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
31. Animals. 32. Crops - growing or harvested. Give particulars. 33. Farming equipment and implements. 34. Farm supplies, chemicals, and feed. 35. Other personal property of any kind not already listed. Itemize.	X X X X X			
<b>TOTAL</b>				<b>641,845.00</b>

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0 continuation sheets attached

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

**Exhibit 1**

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. <b>Sparrow Mahoney</b> <b>232 Tyler Avenue</b> <b>St. Michaels, MD 21663</b>		<b>4/2/2012 Loan against title to 1971 Plymouth Barracuda</b>				<b>9,500.00</b>	
		VALUE \$ <b>9,500.00</b>					
ACCOUNT NO. <b>8808</b> <b>Wells Fargo Mortgage</b> <b>Post Office Box 30427</b> <b>Los Angeles, CA 90030-0427</b>	<b>X J</b>	<b>September 2009. Mortgage secured by deed of trust</b>				<b>292,402.62</b>	
		VALUE \$ <b>691,000.00</b>					
ACCOUNT NO.							
		VALUE \$					
ACCOUNT NO.							
		VALUE \$					

0 continuation sheets attached

Subtotal (Total of this page)	\$ <b>301,902.62</b>	\$
Total (Use only on last page)	\$ <b>301,902.62</b>	\$

(Report also on Summary of Schedules.)  
 (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

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**Exhibit 2**

**Auction Proposal**



26895 Aliso Creek Road • Suite B, # 569 • Aliso Viejo, California 92656-5301

Email: [vanhornauctions@cox.net](mailto:vanhornauctions@cox.net) • Website: [www.vanhornauctions.com](http://www.vanhornauctions.com)

Tel: (949) 206-2525 • Fax: (949) 831-1975

January 7, 2013

John M. Wolfe, Trustee  
5450 Trabuco Road  
Irvine, CA 92620-5704

Dear Mr. Wolfe;

As you are aware, on Tuesday, December 18th, 2012, I had the opportunity to inspect the 1971 Plymouth Barracuda 440-6, license number 446CUDA (**related to the case of In re Charles D. McHugh, 8:12-bk-14904-ES**), that was delivered to your office at the above location, for the purpose of establishing a liquidation, opinion of value, and conducting a public auction sale if such action is forthcoming.

It is from this inspection that I am of the following opinion.

It is my opinion the 1971 Plymouth Barracuda 440-6, license number 446CUDA will bring approximately \$12,000.00 to \$15,000.00 at a piece meal auction sale conducted off site.

As always our sole commission will be derived from a 13% buyers premium charged to each purchaser, however, we will require and expense allowance not to exceed \$3,200.00 for (2) Los Angeles Times display advertisements (2 columns by 1 inch at \$350.00 per column inch) and (1000) auction brochures, graphics, mail list and handling, auction bond, (3) days labor (asset preparation and set-up, lotting & tagging, computer entry, auction sale day, check-out and removal personnel, post auction recapitulation of sale).

We will sell the vehicle at 3910 Valley Blvd, Unit I, Walnut, California as soon as we have court approval.

The expense allowance above does not take into consideration the storage charge of \$12.50 per day. At this time, we do not know the number of days the vehicle will be stored until the Bankruptcy Court gives us the auction green light. We began the storage on Wednesday, December 19th, 2012.

We will make every effort to minimize these expenses.

Please be aware that all costs will be incurred by VAN HORN AUCTION GROUP, LLC., prior to the auction and will be re-paid from the proceeds of the sale. All invoices and receipts of actual expenses will be provided with a total recapitulation of the sale.

Please keep me apprised as to your decision. Thank you for the opportunity to be of service.

Sincerely,

Scott R. Van Horn

**Exhibit 2**

## **Exhibit 3**

## **Resume**



26895 Aliso Creek Road • Suite B, # 569 • Aliso Viejo, California 92656-5301

Email: [vanhornauctions@cox.net](mailto:vanhornauctions@cox.net) • Website: [www.vanhornauctions.com](http://www.vanhornauctions.com)

Tel: (949) 206-2525 • Fax: (949) 831-1975

## **INTRODUCTION OF AUCTIONEER**

**SCOTT R. VAN HORN, PRINCIPAL**

### **VAN HORN AUCTIONS & APPRAISAL GROUP, LLC.**

**VAN HORN AUCTIONS & APPRAISAL GROUP, LLC**, was formed as a result in a change in the industry. We recognized a need for a dependable auction and appraisal team to provide a young, dynamic approach for the liquidation and appraisal process.

For the past twenty five years Scott R. Van Horn and his staff have been leaders in the auction & appraisal industry. He believes in ethical practice and intends to continue, as they launch themselves into the 21st Century.

**VAN HORN AUCTIONS & APPRAISAL GROUP, LLC**, currently works for the United States Bankruptcy Court, various Financial and Lending Institutions, Administrators, Receivers, Assignees For Benefit Of Creditors, Consultants, Real Estate Brokers, Accountants and Business Owners.

We are presently bonded and licensed with the State Of California and bonded with the United States Bankruptcy Court for projects ranging from \$50,000.00 to \$450,000.00. We are members of the National Auctioneers Association, California State Auctioneers Association, and Southern California Auctioneers Association.

**VAN HORN AUCTIONS & APPRAISAL GROUP, LLC**, is an industrial auction company specializing in all aspects of appraisals and auction sales including, but not limited to: physical inspection and evaluation of assets, bidding and conducting public auction sales, preparation of assets to be sold, auction inspection supervision, collection of auction proceeds, relocation of assets, facility lock-down, printing and mailing of brochures, newspaper advertisements, legal notices, "Out-Right" purchases, conducting and preparing Liquidation and Fair Market Value appraisals.

#### **Members Of The Following Organizations:**

National Auctioneers Association

California State Auctioneers Association

Southern California Auctioneers Association



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Tel: (949) 206-2525 • Fax: (949) 831-1975

## Scott Van Horn, Principal

### EDUCATION

**BACHELOR OF SCIENCE** (1983-1988)

**California Polytechnic University, Pomona**

- Degree In Management And Human Resources

---

### EXPERIENCE

**Auction Company, Los Angeles, California** (1988-1998)

- Prepared, rearranged, relocated and tagged assets to be auctioned.
- Prepared auction advertisements to be circulated nationally.
- Prepared auction proposals, contracts, and post auction recapitulations of auction.
- Conducted Fair Market and Liquidation value appraisals.
- Auctioneer of Ostrin & Ostrin Auctioneers.

**Van Horn Auctions & Appraisal Group, LLC** (1997- Present)

- Owner, principal and member since 1997.
- Appraiser, Fair Market and Liquidation value appraisals.
- Auctioneer
- Prepared auction advertisements to be circulated nationally.
- Prepared auction proposals, contracts, and post auction recapitulations of auction.

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### SPECIALTIES

#### Scope Of Work

- Public Auction Sales
- Liquidation & Fair Market Value Appraisals
- Relocation Of Assets
- Physical Inspections
- Evaluation Of Assets
- Legal Notices
- Facility Lock Down
- Out Right Purchases

---

### AFFILIATIONS

**Southern California Auctioneers Association** (1989- Present)



26895 Aliso Creek Road • Suite B, # 569 • Aliso Viejo, California 92656-5301

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Tel: (949) 206-2525 • Fax: (949) 831-1975

**Following Is A Partial List Of References:**

<p>Charlie Heckenlaible Special Assets Division Comerica Bank 301 E Ocean Blvd, #1800 Long Beach, CA 90802 (562) 590-2552</p>	<p>Kenneth A. Krasne, Court Appointed Receiver United States Federal and California Superior Courts KRASNE &amp; COMPANY, INC. 21535 Hawthorne Boulevard, Suite 510 Torrance, CA 90503 Phone (310) 944-9724 (Ext. 223), Fax (310) 944-9734</p>
<p>Nigel Hamer EQUITABLE TRANSITIONS, Inc. THE HAMER GROUP 444 West Ocean Blvd., Suite 1400 Long Beach, CA 90802 (310) 409.6649</p>	<p>John M. Wolfe Attorney at Law 2603 Main Street, Suite 600 Irvine, CA 92614 (949) 476-2697</p>
<p>David Haberbush Haberbush &amp; Campbell 444 West Ocean #600 Long Beach, CA 90802 (562) 435-3456</p>	<p>Barry Mitnick Special Assets Division Comerica Bank 301 E Ocean Blvd, #1800 Long Beach, CA 90802 (562) 951-2419</p>
<p>Steven E. Blair National Bank of California 12121 Wilshire Blvd., 14<sup>th</sup> Floor Brentwood, CA 90025 310.882.4800 Ext 2298 Office</p>	<p>Belinda Moffatt Senior Vice President Beach Business Bank 180 E Ocean Blvd., # 100 Long Beach, CA 90802 (562) 481-3425</p>
<p>N. L. Hanover, Trustee 665 North Arrowhead Ave P.O. Box 71 San Bernardino, CA 92402-0071 (909) 383-9162</p>	<p>Luis Ortiz MAS Moving &amp; Storage 18450 East Gale Avenue City Of Industry, CA (626) 810-9200</p>
<p>Dale Heyden South County Bank, N.A. 2 Venture Suite 120 Irvine, CA 92618 Direct (949)766-3049; Fax (949)766-3041</p>	<p>Christopher Barclay, Trustee Mack / Barclay Inc. 600 Anton Blvd., Suite 1350 Costa Mesa, CA 92626 (714) 662-0800</p>
<p>Janice Bado Loan Profolio Manager Business Community Bank 505 South Villa Real, Suite 101A Anaheim Hills, California 92807 (714) 283-9000</p>	<p>David W. Zittlow First Vice President-Western Market Comerica Bank 333 W. Santa Clara Street, M/C 4841, 12th Floor San Jose, CA 95113 Direct 408-556-5835</p>
<p>Dorothy M. Koster Vice President, Credit Management Group - SBA Wells Fargo Bank 100 West Washington Street, 21st Floor Phoenix, AZ 85003 Tel (602) 378 - 5315   Fax (866) 672-6524</p>	<p>George Weiwurm Weiwurm Associates Inc. Warner Plaza, Suite 300 21550 Oxnard Street Woodland Hills, CA 91367 (818) 716-5058</p>

**Exhibit 4**

**Bond and Insurance**

Bond Number: 0618662

AUCTIONEER BOND

KNOW ALL MEN BY THESE PRESENTS that we, VAN HORN AUCTIONS & APPRAISAL GROUP, LLC (hereinafter called Principal), as Principal, and the INTERNATIONAL FIDELITY INSURANCE COMPANY, its home office in Atlanta, Ga 30350 (hereinafter called Surety), as Surety, are held and firmly bound unto the UNITED STATES OF AMERICA (hereinafter called Obligee), in the full and just sum of FIFTEEN THOUSAND AND NO/100 (\$15,000.00) Dollars, for the payment of which, well and truly to be made, the Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

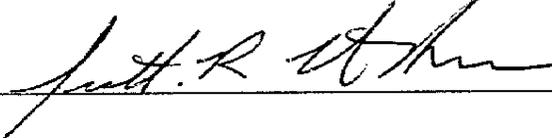
NOW THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully account for all money, assets and effects of bankruptcy case, CHARLES D. MCHUGH; CASE #8:12-BK-14904-ES, in which the Principal is serving as auctioneer, then this obligation to be void; otherwise to remain in full force in effect.

The liability of the Surety hereunder shall not exceed the aggregate sum of FIFTEEN THOUSAND AND NO/100 (\$15,000.00) Dollars, for all claims asserted against this bond.

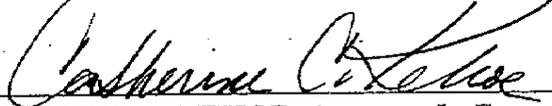
This bond shall remain in full force and effect from APRIL 30, 2013 to JULY 30, 2013.

SIGNED AND SEALED THIS 18TH day of MARCH, 2013.

VAN HORN AUCTIONS & APPRAISAL GROUP, LLC

By: 

INTERNATIONAL FIDELITY INSURANCE COMPANY

By: 

CATHERINE C. KEHOE, Attorney-In-Fact

Tel (973) 624-7200

# POWER OF ATTORNEY

## INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

EMILY G. LAPEYRE, LINDA C. SHEFFIELD, CONWAY C. MARSHALL, STEPHEN BEAHM,  
R. TUCKER FITZ-HUGH, CLARK P. FITZ-HUGH, DARLENE A. BORNT, CATHERINE C. KEHOE,  
KRISTINE DONOVAN, ELIZABETH K. WRIGHT

New Orleans, LA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

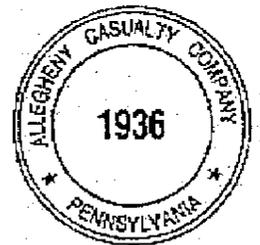
"RESOLVED, that (1) the President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 12th day of March, 2012.



STATE OF NEW JERSEY  
County of Essex

ROBERT W. MINSTER  
Executive Vice President/Chief Operating Officer  
(International Fidelity Insurance Company)  
and President (Allegheny Casualty Company)



On this 12th day of March 2012, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Mar. 27, 2014

### CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 18th day of MARCH, 2013

MARIA BRANCO, Assistant Secretary

STOCK COMPANY

**COMMERCIAL LINES POLICY**



**POLICY NUMBER: NPP8112877**

**Prior Policy Number: NPP1253834**

WESTERN WORLD INSURANCE COMPANY     TUDOR INSURANCE COMPANY     STRATFORD INSURANCE COMPANY

SLA# 04141408

**Agent/Broker #00514**

**COMMON POLICY DECLARATIONS**

**Named Insured and Mailing Address:**

Van Horn Auction Group

26895 Aliso Creek Rd, Ste B-569

Aliso Viejo, CA 92656

**Producer:**

Worldwide Facilities, Inc.  
725 South Figueroa Street  
19 Floor  
Los Angeles, CA 90017

**Policy Period: (Mo./Day/Yr.)**

From: 12/04/2012

To: 12/04/2013

12:01 AM, standard time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGES FOR WHICH A PREMIUM IS INDICATED.  
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.**

Commercial Property Coverage Part	<b>\$ NOT COVERED</b>
Commercial General Liability Coverage Part	<b>\$ 2,295.00</b>
Commercial Auto Coverage Part	<b>\$ NOT COVERED</b>
_____	<b>\$ _____</b>
_____	<b>\$ _____</b>
_____	<b>\$ _____</b>
Other Coverages: Terrorism Risk Insurance Act	<b>\$ NOT COVERED</b>
_____	<b>\$ _____</b>
_____	<b>\$ _____</b>
_____	<b>\$ _____</b>
<b>TOTAL ADVANCE PREMIUM</b>	<b>\$ 2,295.00</b>
Policy Fee - Fully Earned	<b>\$ 225.00</b>
Stamp Fee	<b>\$ 5.74</b>
State Tax	<b>\$ 68.85</b>
_____	<b>\$ _____</b>
_____	<b>\$ _____</b>
_____	<b>\$ _____</b>
<b>GRAND TOTAL</b>	<b>\$ 2,594.59</b>

Forms and endorsements applying to this policy and attached at time of issue:

See Applicable Schedule Of Forms And Endorsements

**Exhibit 4**  
Page 1 of 2

**INSURED**

WW230 (08/11)

**POLICY NUMBER: NPP8112877**

<b>The Named Insured is:</b>	
<input checked="" type="checkbox"/> Individual	<input type="checkbox"/> Partnership
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Organization/Corporation
<input type="checkbox"/> Trust	<input type="checkbox"/> Other _____
Location of Business: Same	Business Description: Auctioneer away from premises

THESE DECLARATIONS TOGETHER WITH THE COVERAGE PART DECLARATIONS, THE COMMON POLICY CONDITIONS, COVERAGE FORM(S), AND FORMS AND ENDORSEMENTS, IF ANY, COMPLETE THE ABOVE NUMBERED POLICY.

## WESTERN WORLD INSURANCE GROUP

Western World Insurance Company  
Tudor Insurance Company  
Stratford Insurance Company

Administrative Office  
400 Parson's Pond Drive  
Franklin Lakes, New Jersey 07417-2600

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy. If required by state law, this policy shall not be valid unless countersigned by our authorized representative.



Secretary



President

Countersigned: Los Angeles, CA

01/03/2013 SEDRULEY

By 

Authorized Representative

**SCHEDULE OF FORMS AND ENDORSEMENTS**

POLICY NUMBER: NPP8112877	NAMED INSURED Van Horn Auction Group
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Form/Endorsement No./Edition Date	Title (Note- Titles are indications only. See actual form for correct name.)
WW230(08_11)	COMMON POLICY DECLARATIONS
WW232(01_12)	COMMERCIAL LIABILITY COVERAGE PART DECLARATIONS
IL0017(11_98)	COMMON POLICY CONDITIONS
IL0021(09_08)	NUCLEAR ENERGY LIABILITY EXCLUSION ENDT
WW183(05_12)	MINIMUM-EARNED PREMIUM
D-2(07_11)	CALIFORNIA NOTICE
WWCA01(12_11)	CALIFORNIA DISCLOSURE NOTICE PREMIUM REFUND
WW1(06_12)	DEDUCTIBLE ENDORSEMENT
WW13(06_12)	CLASSIFICATION LIMITATION
WW191(01_97)	CONTRACTUAL LIABILITY - AMENDMENTS
WW192(07_12)	PREMIUM BASIS ENDORSEMENT
WW204A(06_12)	STANDARD PROVISIONS ENDORSEMENT
WW401(06_12)	TOTAL ASBESTOS EXCLUSION
WW424(09_10)	EXCL OF NUCLEAR/BIO/CHEM INJURY OR DAMAGE
WW456(01_12)	COMMERCIAL GENERAL LIABILITY AMENDATORY ENDROSEMENT
CG0001(12_07)	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0068(05_09)	RECORDING/DISTR: MATERIAL IN VIOLATION OF LAW EXCL
CG2147(12_07)	EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG2167(12_04)	FUNGI OR BACTERIA EXCLUSION
CG2173(01_08)	EXCLUSION OF CERTIFIED ACTS OF TERRORISM

**ADDITIONAL FORMS AND ENDORSEMENTS**

Exhibit 4

INSURED

**COMMERCIAL LIABILITY COVERAGE PART  
DECLARATIONS**

Effective Date: 12/04/2012  
12:01 AM, Standard Time

Policy Number: NPP8112877

**COMMERCIAL GENERAL LIABILITY - LIMITS OF INSURANCE**

General Aggregate Limit (Other Than Products-Completed Operations) \$ 2,000,000  
 Products - Completed Operations Aggregate Limit \$ Included †  
 Personal and Advertising Injury Limit \$ 1,000,000 Any One Person or Organization  
 Each Occurrence Limit \$ 1,000,000  
 Damage to Premises Rented to You \$ 100,000 Any One Premises  
 Medical Expense Limit \$ 5,000 Any One Person  
 Each Professional Incident Limit (if applicable) \$ Not Covered

† If the Limit is shown as Included, Products-Completed Operations are subject to the General Aggregate Limit.

**PREMIUM**

Classification	Code No.	Premium Basis	Rate		Advance Premium	
			Pr/Co	All Other	Pr/Co	All Other
Auctioneers - sales conducted away from the Insured's premises	91177	Payroll 33,600.00	Included	27.451	Included	2,295.00
Total Advance Premium						\$ 2,295.00

**FORMS AND ENDORSEMENTS**

Forms and Endorsements applying to this coverage part and made part of policy at time of issue:

**See Schedule of Forms and Endorsements**

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

**Exhibit 4**