

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  RON BENDER (SBN 143364) KRIKOR J. MESHEFEJIAN (SBN 255030) LEVENE, NEALE, BENDER, YOO & BRILL L.L.P. 10250 Constellation Boulevard, Suite 1700 Los Angeles, California 90067 Telephone: (310) 229-1234 Facsimile: (310) 229-1244 Email: rb@lnbyb.com; kjm@lnbyb.com  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Chapter 7 Trustee	FOR COURT USE ONLY
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - SAN FERNANDO VALLEY DIVISION**

In re:  MOSHE ADRI     Debtor(s).	CASE NO.: 1:12-bk-20733-AA CHAPTER: 7   <p style="text-align: center;"><b>AMENDED NOTICE OF SALE OF ESTATE PROPERTY</b></p>
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<b>Sale Date:</b> March 18, 2013	<b>Time:</b> 10:00 a.m.
<b>Location:</b> United States Bankruptcy Court, Courtroom 301, 21041 Burbank Blvd., Woodland Hills, CA 91367	

**Type of Sale:**  Public  Private      **Last date to file objections:** March 18, 2013 (orally at hearing)

**Description of property to be sold:** Moshe Adri's ownership interests in 6371-77 VNB, LLC and Prime Property Management, Inc.

Please see attached Motion for additional information.

**Terms and conditions of sale:** Please see attached Motion for information regarding the terms and conditions of the proposed sale.

**Proposed sale price:** \$ 25,000.00

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): None  
\_\_\_\_\_  
\_\_\_\_\_

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

March 18, 2013, at 10:00 a.m.  
United States Bankruptcy Court - San Fernando Valley Division  
Courtroom 303  
21041 Burbank Blvd.  
Woodland Hills, 91367  
\_\_\_\_\_

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

Not applicable.  
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\_\_\_\_\_

Date: 03/14/2013

## 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:

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)* \_\_\_\_\_, 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)* \_\_\_\_\_, 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.

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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

1 RON BENDER (SBN 143364)  
2 KRIKOR J. MESHEFEJIAN (SBN 255030)  
3 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.  
4 10250 Constellation Boulevard, Suite 1700  
5 Los Angeles, California 90067  
6 Telephone: (310) 229-1234  
7 Facsimile: (310) 229-1244  
8 Email: rb@lnbyb.com; kjm@lnbyb.com

9 Proposed Counsel for David Gottlieb, Chapter 7 Trustee

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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

MOSHE ADRI,  
  
Debtor.

Case No.: 1:12-bk-20733-AA

Chapter 7

**EMERGENCY MOTION OF CHAPTER  
7 TRUSTEE FOR A COURT ORDER  
AUTHORIZING SALE OF  
OWNERSHIP INTERESTS IN 6371-77  
VNB, LLC AND PRIME PROPERTY  
MANAGEMENT, INC. FREE AND  
CLEAR OF LIENS, CLAIMS, AND  
INTERESTS; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF DAVID  
GOTTLIEB IN SUPPORT THEREOF**

**[Application for Order Shortening Time  
Filed Concurrently Herewith]**

**HEARING REQUESTED ON OR  
BEFORE MARCH 18, 2013**

1 David K. Gottlieb, acting in his capacity as the duly appointed Chapter 7 trustee (the  
2 "Trustee") in the bankruptcy case of Moshe Adri (the "Debtor"), hereby moves (the "Motion"),  
3 on an emergency basis, for entry of an order authorizing the sale of the Debtor's estates  
4 ownership interests (the "Interests") in 6371-77 VNB, LLC (the "LLC") and Prime Property  
5 Management, Inc. ("PPM"), to Deborah Adri ("Deborah") (the Debtor's ex-wife) free and clear of  
6 liens, claims and interests, pursuant to 11 U.S.C. §§ 105 and 363.

7 **SUMMARY OF THE MOTION AND THE BASIS FOR THE EMERGENCY**

8 On December 12, 2012 (the "Petition Date"), the Debtor filed a voluntary petition under  
9 Chapter 7 of Title 11 of the United States Code (as amended, the "Bankruptcy Code"). The  
10 Trustee has been appointed as the Chapter 7 trustee, to administer the estate's assets.

11 The Trustee has learned that the estate owns a 50% ownership interest in the LLC and a  
12 50% ownership interest in PPM (the Interests). The remaining ownership interests in the LLC  
13 and PPM are held by Deborah. The LLC owns a shopping plaza located at 6371-6377 Van Nuys  
14 Blvd. (the "LLC Property"), which the Trustee is informed and believes constitutes the primary, if  
15 not the only, asset of the LLC. PPM is a property management company that does not own any  
16 assets but apparently manages the LLC Property.

17 There is a foreclosure auction for the LLC Property set for March 19, 2013. Deborah  
18 seeks to commence bankruptcy proceedings for the LLC to stay the foreclosure proceedings for  
19 the LLC Property. In order to commence bankruptcy proceedings for the LLC, both Deborah and  
20 the Trustee, as owners of the interests in the LLC, must consent to the filing of a bankruptcy for  
21 the LLC. The Trustee is not inclined to participate in or conduct a bankruptcy case for the LLC,  
22 and the Trustee does not believe that there is any equity in the LLC Property.<sup>1</sup>

23 Deborah and the Trustee have agreed, subject to Court approval, to the sale of the Interests  
24 to Deborah, in exchange for \$25,000 cash to be paid to the Debtor's estate. Court approval of this  
25 proposed sale is required immediately, so that the Trustee can transfer the Interests to Deborah

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26 <sup>1</sup> Though Deborah claims that there is "upside potential" in the LLC Property, the Trustee does  
27 not believe that this estate will benefit from its involvement in a bankruptcy proceeding  
28 related to the LLC Property, and believes that the sale of the Interests now to Deborah is the  
only feasible way to monetize the Interests.

1 (after payment of \$25,000 to the Trustee), and Deborah can commence bankruptcy proceedings  
2 for the LLC prior to the Foreclosure of the LLC Property scheduled for March 19, 2013. If the  
3 proposed sale of the Interests is not approved prior to the Foreclosure, the LLC Property will be  
4 foreclosed upon, since the Trustee is not inclined to participate, nor does the Trustee believe that  
5 participating, in a bankruptcy proceeding for the LLC is beneficial to the Debtor's estate.  
6 Additionally, since the LLC Property does not appear to have any equity, the Trustee believes that  
7 \$25,000 is a fair and reasonable offer, given that any alternative disposition of the Interests would  
8 net the Debtor's estate \$0.00. Indeed, if the Foreclosure takes place, the Interests would be  
9 worthless. If the proposed sale is approved, however, the estate will gain \$25,000. To the extent  
10 the Trustee and Deborah ultimately agree on the sales to Deborah of the estate's interests in assets  
11 other than the Interests (which would be subject to further Court approval pursuant to separately  
12 filed sale motions), the \$25,000 payment for the Interests would be applied to the ultimate  
13 purchase price for those additional assets.

14 The Trustee believes that an emergency sale of the Interests is in the overwhelming best  
15 interests of the estate, given that, if a Foreclosure of the LLC Property occurs on March 19, 2013,  
16 the Interests will be worthless. Presently, the Trustee has been offered \$25,000 for Interests in an  
17 LLC whose sole asset (the LLC Property) is over-encumbered. The Trustee believes that a sale of  
18 the Interests to Deborah is the only circumstance under which the estate will receive value for the  
19 Interests.

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**RELIEF REQUESTED IN THE MOTION**

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:

1. Granting the Motion;
2. Authorizing the Trustee to sell the Interests to Deborah free and clear of liens, claims, and interests; and
4. Granting such further relief as the Court deems just and proper.

Dated: March 14, 2013

LEVENE, NEALE, BENDER, YOO &  
BRILL L.L.P.

By:           /s/ Krikor Meshefejian          

RON BENDER  
KRIKOR J. MESHEFEJIAN  
Proposed Counsel for David K. Gottlieb,  
Chapter 7 Trustee

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 David K. Gottlieb, acting in his capacity as the duly appointed Chapter 7 trustee (the  
3 “Trustee”) in the bankruptcy case of Moshe Adri (the “Debtor”), has filed a motion (the  
4 “Motion”), on an emergency basis, for entry of an order authorizing the sale of the Debtor’s  
5 estates ownership interests (the “Interests”) in 6371-77 VNB, LLC (the “LLC”) and Prime  
6 Properties Management (“PPM”), to Deborah Adri (“Deborah”) free and clear of liens, claims and  
7 interests, pursuant to 11 U.S.C. §§ 105 and 363.

8 **I. STATEMENT OF FACTS**

9 **A. Background.**

10 1. On December 12, 2012 (the “Petition Date”), the Debtor filed a voluntary petition  
11 under Chapter 7 of Title 11 of the United States Code (as amended, the “Bankruptcy Code”). The  
12 Trustee has been appointed as the Chapter 7 trustee, to administer the estate’s assets.

13 2. The Debtor’s Schedules of Assets and Liabilities do not list the Interests as assets  
14 of the Debtor’s estate, but the Trustee has learned that the estate owns a 50% ownership interest  
15 in the LLC and PPM. The remaining ownership interests in the LLC and PPM are apparently  
16 owned by Deborah. The Trustee has also learned that the LLC owns a shopping plaza located at  
17 6371-6377 Van Nuys Blvd. (the “LLC Property”), which the Trustee is informed and believes  
18 constitutes the primary, if not the only, asset of the LLC. PPM is a property management  
19 company that does not own any assets but apparently manages the LLC Property.

20 3. There is a foreclosure auction for the LLC Property set for March 19, 2013.  
21 Deborah seeks to commence bankruptcy proceedings for the LLC to stay the foreclosure  
22 proceedings for the LLC Property. In order to commence bankruptcy proceedings for the LLC,  
23 both Deborah and the Trustee, each as 50% owners of the interests in the LLC, must consent to  
24 the filing of a bankruptcy for the LLC. The Trustee is not inclined to participate in or conduct a  
25 bankruptcy case for the LLC, and the Trustee does not believe that there is any equity in the LLC  
26 Property.<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> Though Deborah claims that there is “upside potential” in the LLC Property, the Trustee does  
not believe that this estate will benefit from its involvement in a bankruptcy proceeding

1 **B. The Proposed Terms of the Sale.**

2 4. Deborah and the Trustee have agreed, subject to Court approval, to the sale of the  
3 Interests to Deborah, in exchange for \$25,000 cash to be paid to the Debtor's estate. Court  
4 approval of this proposed sale is required immediately, so that the Trustee can transfer the  
5 Interests to Deborah (after payment of \$25,000 to the Trustee), and Deborah can commence  
6 bankruptcy proceedings for the LLC prior to the Foreclosure of the LLC Property scheduled for  
7 March 19, 2013.

8 5. If the proposed sale of the Interests is not approved prior to the Foreclosure, the  
9 LLC Property will be foreclosed upon, since the Trustee is not inclined to participate, nor does the  
10 Trustee believe that participating in, a bankruptcy proceeding for the LLC is beneficial to the  
11 Debtor's estate.

12 6. Additionally, since the LLC Property does not appear to have any equity, the  
13 Trustee believes that \$25,000 is a fair and reasonable offer, given that any alternative disposition  
14 of the Interests would net the Debtor's estate \$0.00. Indeed, if the Foreclosure takes place, the  
15 Interests would be worthless. If the proposed sale is approved, however, the estate will gain  
16 \$25,000.

17 7. To the extent the Trustee and Deborah ultimately agree on the sales to Deborah of  
18 the estate's interests in assets other than the Interests (which would be subject to further Court  
19 approval pursuant to separately filed sale motions), the \$25,000 payment for the Interests would  
20 be applied to the ultimate purchase price for those additional assets.<sup>3</sup>

21 **C. Court Approval Of The Proposed Sale of the Interests is Necessary and Appropriate.**

22 8. The Trustee believes that an emergency sale of the Interests is in the overwhelming  
23 best interests of the estate, given that, if a Foreclosure of the LLC Property occurs on March 19,

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24 related to the LLC Property, and believes that the sale of the Interests now to Deborah is the  
25 only feasible way to monetize the Interests.

26 <sup>3</sup> Though the Debtor's Schedules of Assets and Liabilities disclose ownership in only a single  
27 asset (real property listed on Schedule A), the Trustee is informed and believes that the  
28 Debtor owns interests in various other properties, either directly or indirectly, and the  
Trustee will investigate the Debtor to determine what other assets belong to the estate.

1 2013, the Interests will be worthless. Presently, the Trustee has been offered \$25,000 for Interests  
2 in an LLC whose sole asset (the LLC Property) is over-encumbered (though the Trustee believes  
3 believe that the Interests, which are owned by the Debtor's estate, are not encumbered). The  
4 Trustee believes that a sale of the Interests to Deborah is the only circumstance under which the  
5 estate will receive value for the Interests. Therefore, the Trustee, in an exercise of his business  
6 judgment, believes that the sale of the Interests should be approved by the Court.

## 7 8 **II. DISCUSSION**

### 9 **A. The Court Should Approve The Sale Of The Interests To Deborah.**

10 Section 363(b) of the Bankruptcy Code provides that a trustee "after notice and a hearing,  
11 may use, sell or lease, other than in the ordinary course of business, property of the estate." To  
12 approve a use, sale or lease of property other than in the ordinary course of business, the court  
13 must find "some articulated business justification." See, e.g., *In re Martin (Myers v. Martin)*, 91  
14 F.3d 389, 395 (3d Cir. 1996) citing *In re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513,  
15 515 (7th Cir. 1991); *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d  
16 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir.  
17 1986) (implicitly adopting the "sound business judgment" test of *Lionel Corp.* and requiring good  
18 faith); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the  
19 Third Circuit adopted the "sound business judgment" test in the *Abbotts Dairies* decision).

20 In the Ninth Circuit, "cause" exists for authorizing a sale of estate assets if it is in the best  
21 interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington,*  
22 *Ltd.*, 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988). The  
23 Ninth Circuit has also held that section 363 allows the sale of substantially all assets of a debtor's  
24 bankruptcy estate after notice and a hearing. *In re Qintex Entertainment, Inc.*, 950 F.2d 1492 (9th  
25 Cir. 1991).

26 In determining whether a sale satisfies the business judgment standard, courts have held  
27 that: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of the  
28 sale be given to interested persons; (3) the sale yield an adequate price (i.e., one that is fair and

1 reasonable); and (4) the parties to the sale have acted in good faith. *Titusville Country Club v.*  
2 *Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); see also, *In*  
3 *re Walter*, 83 B.R. at 19-20.

4 The Trustee submits that the sale of the Interests to Deborah clearly comports with each of  
5 these four criteria and demonstrates that the Trustee's business judgment to proceed with the sale  
6 of the Interests is sound.

7 1. Sound Business Purpose.

8 The proposed sale of the Interests will provide the estate with \$25,000 cash which the  
9 estate would not otherwise receive. Additionally, if the sale of the Interests is not consummated  
10 prior to March 19, 2013, the Interests will be worthless, because neither Deborah, nor any other  
11 party, would pay for the Interests of entities whose assets have been foreclosed upon. Finally, the  
12 only party that would conceivably be willing to pay anything for the Interests is Deborah, who  
13 already owns the other 50% of the interests of the LLC and PPM. No other party would be  
14 willing to pay cash for ownership interests in an LLC whose sole asset is over-encumbered and  
15 facing imminent foreclosure. The proposed sale of the Interests to Deborah is the only transaction  
16 that will provide value to the estate. The Trustee therefore submits that the proposed sale is  
17 justified by sound business purposes, satisfying the first requirement for a sale under Section  
18 363(b) of the Bankruptcy Code.

19 2. Accurate and Reasonable Notice.

20 The Trustee will provide notice of this Motion to all of the Debtor's, the United States  
21 Trustee, and those parties who have requested special notice.

22 3. Fair and Reasonable Price.

23 The Trustee believes that the sale price for the Interests is completely fair and reasonable.  
24 The Trustee negotiated the sale of the Interests at arms' length, under intensive time constraints  
25 given the looming Foreclosure, in an effort to ensure that the estate receives some value for the  
26 Interests before the LLC Property is foreclosed upon. The Trustee believes that the transfer of  
27 Interests in what appears to be an insolvent entity for \$25,000 is an outstanding outcome for the  
28 Debtor's estate.

1 4. Good Faith.

2 The proposed sale is an arms' length transaction between the Trustee and Deborah. The  
3 Trustee agreed to the proposed sale of the Interests only after engaging in discussions with  
4 Deborah and her counsel and engaging in his own independent evaluation of the LLC, the LLC  
5 Property, the Foreclosure, the Interests, and the costs and benefits to the estate of engaging in the  
6 proposed sale versus not engaging in the proposed sale. The Trustee has deduced, based on these  
7 discussions and his own analysis, that the sale of the Interests to Deborah, which was agreed upon  
8 after various alternative sale proposals from Deborah were considered, is the most attractive  
9 option for the estate under the circumstances. Accordingly, the Trustee submits that the sale of  
10 the Interests to Deborah is in good faith.

11 **B. Section 363(f) of the Bankruptcy Code Permits the Sale of the Interests to Be Free and**  
12 **Clear of Any and All Liens, Claims and Interests ("Encumbrances").**

13 Section 363(f) of the Bankruptcy Code provides, in relevant part, as follows:

14 The trustee may sell property under subsection (b) . . . of this section free and clear of  
15 any interest in such property of an entity other than the estate, only if—

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

24 11 U.S.C. § 363(f).

25 Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, a trustee need  
26 only meet the provisions of one of the five subsections of Section 363(f) in order for a sale of  
27 property to be free and clear of Encumbrances. Here, while the Trustee does not believe that the  
28 Interests are encumbered, to the extent that any creditor asserts that it has a lien, claim or interest

1 against the Interests, the Trustee submits that the sale of the Interests should still be free and clear  
2 of Encumbrances.

3       **1.     363(f)(2).**     The Debtor’s only scheduled secured creditor is GMAC Mortgage,  
4 which appears to hold a security interest in the Debtor’s personal residence, but not any other  
5 asset of the Debtor’s estate. The Trustee believes that any and all secured creditors will consent  
6 to a free and clear sale of the Interests. Additionally, in the event any of the Debtor’s secured  
7 creditors do not file an timely objection to the Trustee’s proposed sale, the Trustee submits that  
8 the “consent” of an entity asserting an interest in the property sought to be sold, as referenced in  
9 Section 363(f)(2) of the Bankruptcy Code, can be implied if such entity fails to make a timely  
10 objection to the sale after receiving notice of the sale. *In re Eliot*, 94 B.R. 343, 345 (E.D. Pa.  
11 1988). In its ruling, the *Eliot* court relied on *In re Gabel*, 61 B.R. 661 (Bankr. W.D. La. 1985),  
12 which held that implied consent is sufficient to authorize a sale under § 363(f)(2). See also, *In re*  
13 *Ex-Cel Concrete Company, Inc.*, 178 B.R. 198, 203 (9th Cir. BAP 1995) [“The issue here is  
14 whether there was consent or non-opposition by Citicorp.”]; *In re Paddlewheels, Inc.*, 2007 WL  
15 1035151 (Bankr. E.D.La. April 2, 2007) [“The Sale Motion complies with section 363(f) of the  
16 Bankruptcy Code, in that the Trustee either obtained the consent of Whitney to the sale of the  
17 Vessel to Purchaser or Whitney had no objection to the Sale.”].

18       As a result of the foregoing, the Trustee submits that the Court should approve the sale of  
19 the Interests free and clear of all Encumbrances of those parties who do not file a timely objection  
20 to the sale, by deeming all such parties to have consented to the proposed sale pursuant to Section  
21 363(f)(2) of the Bankruptcy Code.

22       **2.     363(f)(4).**     The Debtor has not scheduled any secured creditor other than  
23 GMAC Mortgage, and the Trustee does not believe that any creditor has a lien against, or interest  
24 in, the Interests. Accordingly, the Trustee will dispute the assertion of any party claiming an  
25 Encumbrance. Given that no such creditors have been scheduled by the Debtor, and no such  
26 creditor has filed a proof of claim thus far alleging an Encumbrance, the Trustee submits that any  
27 such assertion would be in bona fide dispute.

28       **3.     363(f)(5).**     Section 363(f)(5) of the Bankruptcy Code permits a sale of property

1 free and clear of liens and interests if “such entity could be compelled, in a legal or equitable  
2 proceeding, to accept a money satisfaction of such interest.” 11 U.S.C. § 363(f)(5).

3 The Bankruptcy Court in In re Jolan, Inc., 2009 WL 1163928 (Bankr. W.D. Wash. 2009)  
4 has held that there are a number of legal and equitable proceedings available under state law in  
5 which a lienholder could be compelled to accept a money satisfaction including, without limitation,  
6 “a senior secured party’s disposition of collateral under the default remedies provided in part VI of  
7 Article 9” of Washington’s Uniform Commercial Code (specifically, RCW 62A.9A-617), and the  
8 disposition of real property through “judicial and nonjudicial foreclosures, which operate to clear  
9 junior lienholders’ interests, with their liens attaching to proceeds in excess of the costs of sale and  
10 the obligation or judgment foreclosed.” Id. at 3-4.

11 There are legal and equitable proceedings available in California which parallel the  
12 proceedings discussed by the Court in Jolan. In the event of foreclosure of personal property under  
13 the California Commercial Code, disposition of proceeds is governed by Cal. Code § 9615:

14 (a) A secured party shall apply or pay over for application the cash  
15 proceeds of disposition under Section 9610 in the following order to each of the  
16 following:

17 (1) the reasonable expenses of retaking, holding, preparing for  
18 disposition, processing, and disposing, and, to the extent provided for by  
19 agreement and not prohibited by law, reasonable attorney's fees and legal  
20 expenses incurred by the secured party;

21 (2) the satisfaction of obligations secured by the security interest or  
22 agricultural lien under which the disposition is made;

23 (3) the satisfaction of obligations secured by any subordinate security  
24 interest in or other subordinate lien on the collateral . . . [.]

25 Based on the foregoing, in a foreclosure proceeding under California law, liens are paid in  
26 the order of priority. Of course, if there is insufficient value, the foreclosure sale will not result in  
27 full payment of all claims. In short, applicable law provides that lienholders may be compelled to  
28 accept a money judgment, but there is no provision that requires a lienholder to be paid in full in

1 connection with a foreclosure proceeding. Under these circumstances, the sale of the Interests  
2 should be approved under § 363(f)(5) of the Bankruptcy Code.

3  
4 **III. CONCLUSION**

5 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:

- 6 1. Granting the Motion;
- 7 2. Authorizing the Trustee to sell the Interests to Deborah free and clear of liens,  
8 claims, and interests; and
- 9 4. Granting such further relief as the Court deems just and proper.

10 Dated: March 14, 2013

11 LEVENE, NEALE, BENDER, YOO &  
12 BRILL L.L.P.

13 By:           /s/ Krikor Meshefejian            
14 RON BENDER  
15 KRIKOR J. MESHEFEJIAN  
16 Proposed Counsel for David K. Gottlieb,  
17 Chapter 7 Trustee  
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**DECLARATION OF DAVID K. GOTTLIEB**

I, DAVID K. GOTTLIEB, HEREBY DECLARE AS FOLLOWS:

1. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

I have been appointed to serve as Chapter 7 trustee of the bankruptcy case of Moshe Adri (the "Debtor"). I make this Declaration in support of the motion (the "Motion"), on an emergency basis, for entry of an order authorizing the sale of the Debtor's estates ownership interests (the "Interests") in 6371-77 VNB, LLC (the "LLC") and Prime Properties Management ("PPM"), to Deborah Adri ("Deborah") free and clear of liens, claims and interests, pursuant to 11 U.S.C. §§ 105 and 363.

2. On December 12, 2012 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 7 of Title 11 of the United States Code (as amended, the "Bankruptcy Code").

3. The Debtor's Schedules of Assets and Liabilities do not list the Interests as assets of the Debtor's estate, but I have learned from Deborah Adri (the Debtor's ex wife) that the estate owns a 50% ownership interest in the LLC and PPM. The remaining ownership interests in the LLC and PPM are apparently owned by Deborah. I have also learned that the LLC owns a shopping plaza located at 6371-6377 Van Nuys Blvd. (the "LLC Property"), which I am informed and believe constitutes the primary, if not the only, asset of the LLC. I am also informed that PPM is a property management company that does not own any assets but apparently manages the LLC Property.

4. There is a foreclosure auction for the LLC Property set for March 19, 2013. Deborah seeks to commence bankruptcy proceedings for the LLC to stay the foreclosure proceedings for the LLC Property. In order to commence bankruptcy proceedings for the LLC, both Deborah and I, each as 50% owners of the interests in the LLC, must consent to the filing of a bankruptcy for the LLC. I have evaluated the LLC and the LLC Property and I am not inclined

1 to participate in or conduct a bankruptcy case for the LLC, and I do not believe that there is any  
2 equity in the LLC Property.<sup>4</sup>

3 5. Deborah and I have agreed, subject to Court approval, to the sale of the Interests to  
4 Deborah, in exchange for \$25,000 cash to be paid to the Debtor's estate. Court approval of this  
5 proposed sale is required immediately, so that I can transfer the Interests to Deborah (after  
6 payment of \$25,000 to the Trustee), and Deborah can commence bankruptcy proceedings for the  
7 LLC prior to the Foreclosure of the LLC Property scheduled for March 19, 2013.

8 6. If the proposed sale of the Interests is not approved prior to the Foreclosure, the  
9 LLC Property will be foreclosed upon, and Deborah will at that point have no reason to pay the  
10 estate any money for the Interests.

11 7. Additionally, since the LLC Property does not appear to have any equity, I believe  
12 that \$25,000 is a fair and reasonable offer, given that any alternative disposition of the Interests  
13 would net the Debtor's estate \$0.00. Indeed, if the Foreclosure takes place, the Interests would be  
14 worthless. If the proposed sale is approved, however, the estate will gain \$25,000.

15 8. To the extent Deborah and I ultimately agree on the sales to Deborah of the  
16 estate's interests in assets other than the Interests (which would be subject to further Court  
17 approval pursuant to separately filed sale motions), the \$25,000 payment for the Interests would  
18 be applied to the ultimate purchase price for those additional assets.<sup>5</sup>

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23 <sup>4</sup> Though Deborah claims that there is "upside potential" in the LLC Property, I not believe that  
24 this estate will benefit from its involvement in a bankruptcy proceeding related to the LLC  
25 Property, and I believe that the sale of the Interests now to Deborah is the only feasible way  
to monetize the Interests.

26 <sup>5</sup> Though the Debtor's Schedules of Assets and Liabilities disclose ownership in only a single  
27 asset (real property listed on Schedule A), I am informed and believe that the Debtor owns  
28 interests in various other properties, either directly or indirectly, and I will investigate the  
Debtor to determine what other assets belong to the estate.

