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10 Debtor and Debtor in Possession

11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **LOS ANGELES DIVISION**

14 In re

15 11850 Del Pueblo, LLC,
16 A California limited liability company,

17 Debtor and Debtor in
18 Possession.

Case No. 2:12-bk-44726

Chapter 11

**MOTION FOR ORDERS APPROVING (1) SALE
AND ASSIGNMENT PROCEDURES, (2) SALE OF
ALL OR SUBSTANTIALLY ALL OF DEBTOR'S
ASSETS FREE AND CLEAR OF LIENS, CLAIMS
AND INTERESTS PURSUANT TO SECTION 363(F)
AND (3) ASSUMPTION AND ASSIGNMENT OF
UNEXPIRED LEASES AND EXECUTORY
CONTRACTS, PURSUANT TO SECTION 365 ;
DECLARATION OF BIJAN F. RODD IN SUPPORT
THEREOF**

[Order Shortening Time Requested]

Date: [To be determined]

Time: [To be determined]

Place: Courtroom 1675
255 East Temple Street
Los Angeles, CA 90012

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1 **TO THE HONORABLE ROBERT KWAN, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE UNITED STATES TRUSTEE AND OTHER PARTIES IN INTEREST:**

3 11850 Del Pueblo, LLC, the debtor and debtor-in-possession (the “Debtor”) hereby moves (the
4 “Motion”) the Court, for the entry of orders pursuant to, inter alia, sections 105, 363 and 365 of title 11 of
5 the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of
6 the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”):

7 (1) setting a hearing on shortened time as soon as the Court’s calendar may permit (the “Sale
8 Procedures Hearing”), to consider the relief requested in the following paragraphs 2 through 7;

9 (2) approving the procedures, dates and deadlines set forth in Exhibit A hereto (collectively,
10 the “Sale and Assignment Procedures”), including those relating to:

- 11 a. the submission and consideration of bids in respect of the proposed sale;
- 12 b. the conduct of an auction (the “Auction”) by the Debtor on November 19, 2013, or
13 such other date that the Court may direct;
- 14 c. the provision of notice to potential bidders, counterparties to executory contracts and
15 unexpired leases that may be assumed and assigned, and other parties in interest; and
- 16 d. the proposed sale of substantially all of the assets of the Debtor free and clear of liens
17 claims and interests to the party that submits the prevailing bid for the Debtor’s assets
18 (the “Buyer”).

19 (3) approving the form purchase and sale agreement prepared by the Debtor and attached
20 hereto as Exhibit B (the “PSA”).¹

21 (4) approving the form and manner of notice of the proposed sale of assets, the hearing
22 thereon, the Sale and Assignment Procedures, and related matters, substantially in the form attached
23 hereto as Exhibit C (the “Sale and Procedures Notice”);

24 (5) approving the form and manner of notice regarding the executory contracts and unexpired
25 leases that may be assumed and assigned to the Buyer and the procedure for determining the cure
26

27
28 ¹ The Debtor will submit the PSA prior to the hearing on the Sale Procedures Hearing.

1 amounts, if any, associated with these agreements (the “Cure Amount”), substantially in the form attached
2 hereto as Exhibit D (the “Contract Notice”);

3 (6) authorizing a break-up fee and reimbursement of expenses in favor of a stalking horse
4 bidder (“Stalking Horse Bidder”), if any, which in the aggregate does not exceed 1.5% of the proposed
5 purchase price offered by the Stalking Horse Bidder²;

6 (7) setting (a) the Sale Hearing on November 15, 2013, or as soon thereafter as the Court’s
7 calendar may permit, (b) the deadline to file and serve any objection to such relief, and (c) the deadline to
8 file and serve any reply in support of such relief;

9 (8) (a) approving the assumption and assignment of executory contracts and unexpired leases
10 of the Debtor pursuant to the PSA (as defined herein), (b) determining that there are no defaults under
11 such contracts and leases other than payment of certain cure costs, if any, proposed by the Debtor, and (c)
12 determining, at the hearing to approve the sale of the Debtor’s assets (the “Sale Hearing”) that the Buyer
13 has provided adequate assurance of future performance;

14 (9) finding that the Buyer is a good faith purchaser entitled to the protections of Bankruptcy
15 Code 363(m); and

16 (10) providing that all of the foregoing relief shall be effective immediately upon entry of the
17 applicable order granting such relief and that any stay of such order under Bankruptcy Rules 6004(h) and
18 6006(d) is waived and shall not be applicable.

19 **I.**

20 **JURISDICTION**

21 The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is
22 proper pursuant to 28 U.S.C. §§ 1408 and 1409. The matter is a core proceeding pursuant to 28 U.S.C. §
23 157(b)(2)(M). The statutory predicates for the relief sought herein are sections 105, 363, 365, and 1146 of
24 the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

25 **II.**

26 **BACKGROUND FACTS**

27 ² Although the Debtor seeks authority to pay a Break-Up Fee of up to 1.5% of the proposed purchase price offered by
28 the Stalking Horse Bidder, the Debtor does not intend to pay the maximum authorized amount.

1 **A. The Debtor and The Property**

2 The Debtor is a California limited liability company that owns and operates a shopping mall
3 located at 11820-11850 Valley Boulevard, El Monte, California 91732 (the “Property”). The Property is
4 comprised of approximately 7 acres of real property and 92,000 square feet of retail space. The Debtor
5 was formed and acquired the Property, its principal asset, in July 2006.

6 **B. The Secured Indebtedness**

7 On or about July 27, 2006, German American Capital Corporation, a Maryland corporation
8 (“Original Noteholder”) made a \$14,000,000 loan (the “Loan”) to Debtor. The Loan indebtedness is
9 evidenced by that certain Promissory Note dated July 27, 2006 (as amended, the “Note”), executed by
10 Debtor in favor of Original Noteholder.³ The indebtedness under the Note is secured by a lien in favor of
11 U.S. BANK NATIONAL ASSOCIATION, as Trustee, as successor in interest to Bank of America, N.A.,
12 as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee for the registered
13 holders of Deutsche Mortgage & Asset Receiving Corporation, CD 2006-CD3 Commercial Mortgage
14 Pass-Through Certificates (“Noteholder”) on the Property and certain proceeds and products thereof
15 pursuant to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture
16 Filing dated as of July 27, 2006 (as amended, the “Deed of Trust”), executed by Debtor, as grantor, to
17 Stewart Title Guaranty Company, as trustee, for the benefit of Original Noteholder, as beneficiary and that
18 certain Assignment of Leases and Rents also dated as of July 27, 2006 (the “Assignment of Rents”)
19 executed by Debtor, as assignor, to Original Noteholder, as assignee.⁴ Reference to the Note and Deed of
20 Trust and the other documents and agreements entered into in connection therewith are hereinafter
21 referred to as the “Pre-Petition Loan Documents” with reference to the subject transaction hereinafter
22 referred to as the “Loan”. As a result of various assignments and mergers, the Noteholder is the current
23 beneficiary under the Deed of Trust and Assignment of Rents.⁵

24 _____
25 ³ See Declaration Of Allison Eidson in Support of U.S. Bank’s Motion For Relief From The Automatic Stay [Dkt No.
60, p.12-14].

26 ⁴ See *id.* The Deed of Trust encumbers the Property, by a first priority lien as recorded in the Official Records, County
27 of Los Angeles, California (the “Official Records”) on July 31, 2006, as Document No. 06 1685648. The
Assignment of Rents was recorded in the Official Records on July 31, 2006, as Document No. 06 1685649. See *id.*

28 ⁵ See *id.* As of October 30, 2006, Original Noteholder assigned the Pre-Petition Loan Documents to LaSalle Bank
National Association, as Trustee for the Registered Holders of Deutsche Mortgage & Asset Receiving Corporation,

1 **C. The Appointment of the Receiver and the Bankruptcy Case**

2 As a result of a failed attempt to remodel the Property and the deepening global economic crisis,
3 the Debtor's financial condition deteriorated and in December 2011, the Debtor was no longer able to
4 service its debt and ceased making monthly payments on the Loan. On October 15, 2013, the Debtor filed
5 this Case. While the Debtor is a debtor-in-possession, as detailed below, a state court-appointed receiver
6 (the "Receiver") is in custody of the Debtor's shopping center.

7 **D. The Settlement and Proposed Sale of the Property**

8 As detailed in the Settlement Motion,⁶ the Noteholder, the Debtor and the Rodds have entered into
9 a global settlement, subject to this Court's approval, which provides a blue-print for resolving this Case
10 through a consensual sale of the Property and an allocation of the sale proceeds in a manner which allows
11 for the Debtor's estate to share in a portion of the sale proceeds before the Noteholder is potentially paid
12 in full on its asserted secured claim and the exchange of general releases (the "Settlement Agreement").

13 Pursuant to the terms of the Settlement Agreement, if the sale of the Property is not consummated
14 on or before the date that is 120 days from the date the Settlement Agreement is executed (the "Relief
15 Date"), subject to a limited right to extend for up to an additional thirty (30) days, the Noteholder will be
16 entitled to relief from the automatic stay to foreclose on the Property. As such, time is of the utmost
17 importance and the Debtor would like to proceed with the marketing and sale of the Property on an
18 expedited timeline to avoid a foreclosure by the Noteholder.

19
20
21 Commercial Mortgage Pass-Through Certificates, Series CD 2006-CD3 Commercial Mortgage Pass-Through
22 Certificates ("LaSalle"), pursuant to that certain Assignment of Deed of Trust, Assignment of Leases and Rents,
23 Security Agreement and Fixture Filing, and Assignment of Assignment of Leases and Rents ("the LaSalle
24 Assignment") recorded in the Official Records on April 2, 2007, as Document No. 20070759981. In addition,
25 Original Noteholder endorsed the Note in favor of LaSalle pursuant to an allonge. As of April 6, 2012, Bank of
26 America, N.A., as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for the
27 Registered Holders of Deutsche Mortgage & Asset Receiving Corporation, Commercial Mortgage Pass-Through
28 Certificates, Series CD2006-CD3 ("Bank of America") assigned the Pre-Petition Loan Documents to Noteholder
 pursuant to: (i) that certain Assignment of Deed of Trust, Assignment of Leases and Rents, Security Agreement and
 Fixture Filing and Assignment of Assignment of Leases and Rents, recorded in the Official Records on April 17,
 2012, as Document No. 120568303; and (ii) that certain Omnibus Assignment dated April 6, 2012. Bank of America
 endorsed the Note in favor of Noteholder pursuant to an allonge. *See id.*

⁶ The "Settlement Motion" means that certain Motion For Order Approving Stipulation and Settlement Agreement Between the Secured Creditor, the Debtor and the Rodds filed concurrently herewith.

1 If and to the extent that this Motion, the Sales and Assignment Procedures, the Settlement Motion
2 or any order entered in connection therewith conflict with the terms of the Settlement Agreement, then the
3 terms of the Settlement Agreement shall control.

4 **E. The Sale and Assignment Procedures**

5 The Sale and Assignment Procedures describe, among other things, the assets that are subject to
6 sale, the date and time of the Sale Hearing, the manner in which prospective bidders may gain access to
7 due diligence materials, the manner in which bidders may submit qualified bids and become qualified
8 bidders, the process for conducting the Auction and the ultimate selection of the prevailing bidder (the
9 “Buyer”). The Sale and Assignment Procedures allow for the Debtor to designate a Stalking Horse Bidder
10 (without further order from the Court) and, in connection therewith, confer upon such stalking horse
11 certain bid protections including a break-up fee and expense reimbursement which, in the aggregate, does
12 not exceed 1.5% of the gross amount of the stalking horse bid.⁷

13 The Sale and Assignment Procedures will afford all qualified bidders the opportunity to present a
14 bid to acquire the Property (1) in the event there is a Stalking Horse Bidder, upon substantially the same
15 terms and conditions set forth in the purchase and sale agreement to be entered into by and between the
16 Debtor and Stalking Horse Bidder by offering an amount higher than that which the Stalking Horse Bidder
17 has agreed to pay under the agreement or (2) in the event there is no Stalking Horse Bidder, upon such
18 other terms as may be agreeable to the Debtor and the qualified bidder whether pursuant to the form PSA
19 prepared by the Debtor and attached hereto as Exhibit B⁸ or otherwise.

20 The Court and parties in interest are referred to Exhibit A hereto for the entirety of the Sale and
21 Assignment Procedures for which the Debtor seeks approval. The following, however, is a summary of
22 the salient provisions and the proposed timeline:

23 1. Stalking Horse Bidder: The Debtor in its sole discretion may execute a purchase and sale
24 agreement with a stalking horse bidder (“Stalking Horse Bidder”) prior to the Auction and, in connection
25 therewith, may confer upon the Stalking Horse Bidder bid protections, including a break-up fee and

26 _____
27 ⁷ Although the Debtor seeks authority to pay a Break-Up Fee of up to 1.5% of the proposed purchase price offered by
the Stalking Horse Bidder, the Debtor does not intend to pay the maximum authorized amount.

28 ⁸ The Debtor will submit the PSA prior to the Sale Procedures Hearing.

1 reimbursement of expenses in favor of the Stalking Horse Bidder which in the aggregate does not exceed
2 1.5% of the proposed purchase price solely in the event the Debtor designates a bidder (other than the
3 Stalking Horse Bidder) as the proposed Buyer and the subject transaction is consummated with the Buyer
4 or any designated backup bidder (reference to the break-up fee and reimbursement provisions ultimately
5 agreed upon, if any, shall have hereinafter be referred to as, the “Break-Up Fee”). If a Stalking Horse
6 Bidder is selected parties in interest will be provided with the identity of the Stalking Horse Bidder, a
7 copy of the Stalking Horse Bidder’s purchase and sale agreement, and any modifications to these Sale and
8 Assignment Procedures necessitated by the selection of a Stalking Horse Bidder on or before **November**
9 **[11], 2013**.

10 2. Property for Sale.

- 11 a. Real and Personal Property: The assets to be sold pursuant to the PSA are (i) 7 acres
12 of real property located at 11820-11850 Valley Boulevard, El Monte, California,
13 91732 (as previously defined, the “Real Property”); (ii) the buildings, structures and
14 improvements erected and located on such land, including 92,000 square feet of
15 retail space (the “Improvements”); (iii) any rights and appurtenances pertaining to
16 the Real Property; (iv) all tangible personal property located on the Real Property;
- 17 b. Contracts and Leases: All the contracts and leases affecting the Property set forth
18 on Schedule “1” to the PSA and related rights, which the Buyer elects to assume,
19 including all assignable warranties of contractors, manufacturers or materialman
20 that relate to the Real Property set forth in Schedule “2” to the PSA (the “Contracts
21 and Leases”); and
- 22 c. Intangible Property: Saleable intangible property used exclusively in connection
23 with the Property.

24 3. Due Diligence: All parties interested in acquiring the Property (each, a “Prospective
25 Bidder”) will be allowed to conduct reasonable due diligence through **November [18], 2013** and are
26 directed to contact Samuel Alison, as indicated in Paragraph 7 of Exhibit A. As a condition to gaining
27 access, a Prospective Bidder must execute a confidentiality agreement, in form and substance satisfactory
28 to the Debtor (“Confidentiality Agreement”). The Debtor makes no representation and warranties

1 regarding any information provided, except as set forth in definitive asset purchase agreement or in the
2 PSA, as executed and delivered by the Debtor.

3 4. Opportunity to Bid. Any Prospective Bidder who becomes a “Qualified Bidder” will be
4 permitted to bid for the Property at the Auction. Each Prospective Bidder, by submitting a bid, shall be
5 deemed to acknowledge that it understands and is bound by the terms of the Sale and Assignment
6 Procedures and the order approving the Sale and Assignment Procedures (“Sale and Assignment
7 Procedures Order”). In order to constitute a Qualified Bidder, a proposed bidder must submit a bid
8 (“Submitted Bid”), no later than **November [4], 2013 at 5:00 p.m.** Pacific Time on (“Bid Deadline”) and
9 must satisfy the following requirements:

- 10 a. A Submitted Bid must be in the form of an executed purchase agreement, in the
11 form of the PSA, fully executed by the Prospective Bidder, and must be black-lined
12 off the PSA to show changes thereto (the “Bidder Purchase Agreement”).
- 13 b. A Submitted Bid must be accompanied by an initial deposit of \$100,000 (the
14 “Initial Deposit”). If a Submitted Bid is deemed to be a Qualified Bid, the
15 Prospective Bidder shall be required to provide an additional good faith deposit (the
16 “Good Faith Deposit”) in an amount equal to the difference between the Initial
17 Deposit and 5% of the total purchase price proposed in the Bidder Purchase
18 Agreement by 5:00 p.m. on the day prior to the Auction (i.e. by 5:00 p.m. on
19 **November [18], 2013.** Each Initial Deposit and Good Faith Deposit shall be held
20 by counsel for the Debtor in a non-interest bearing account.
- 21 c. A Submitted Bid must include an executed Confidentiality Agreement if not
22 previously delivered to the Debtor.
- 23 d. A Submitted Bid must provide written evidence (i) of an irrevocable commitment
24 for financing, without any contingency other than the entry of the Sale and
25 Assignment Order, or that the Prospective Bidder has the financial ability to close
26 the proposed sale transaction and to pay the cash component of its proposed
27 purchase price by the earlier of the closing date described in the Submitted Bid, or
28 the “Outside Date” of **December [4], 2013** and (ii) evidence of the Prospective

1 Bidder's ability to provide adequate assurance of future performance under any
2 Contracts and Leases to be assumed and assigned to the Prospective Bidder (the
3 "Financial Evidence").

4 e. A Submitted Bid must be accompanied by a board resolution or other document
5 demonstrating the authority of the Prospective Bidder to submit, execute, deliver
6 and close the proposed sale transaction.

7 f. A Submitted Bid must acknowledge and represent that the Prospective Bidder: (i)
8 will complete any and all due diligence regarding the Property prior to the Auction;
9 (ii) will waive all contingencies of the Submitted Bid at or prior to the Auction, (iii)
10 has relied solely upon its own independent review, investigation, and/or inspection
11 of any documents and/or the Property in making its bid, (iv) did not rely upon any
12 written or oral statements regarding the Property or in connection with the Auction,
13 except as expressly stated in the PSA.

14 g. All Prospective Bidders and Qualified Bidders (with the exception of the Stalking
15 Horse Bidder to the extent of the Break-Up Fee) shall bear their own costs and
16 expenses.

17 5. Auction Procedures. The Debtor proposes that the Auction be held on **November [19],**
18 **2013**, in the offices of Greenberg Glusker Fields Claman & Machtinger LLP, 1900 Avenue of the Stars,
19 21st Floor, Los Angeles, California 90067-4590, at 10:00 a.m. (Pacific Time), or such other location
20 designated by the Debtor or the Court. If there are two or more Qualified Bids, the Debtor shall conduct
21 the Auction in any reasonable manner that is not inconsistent with the Sale and Assignment Procedures
22 and the Sale and Assignment Procedures Order, and that provides Qualified Bidders with a fair
23 opportunity to participate, subject to the requirements set forth below:

24 a. Only Qualified Bidders that submit a Good Faith Deposit will be permitted to bid at
25 the Auction

26 b. The Debtor will notify all Prospective Bidders whether or not they are deemed to be
27 Qualified Bidders at least two (2) business days prior to the Auction.

28 c. The highest or best Qualified Bid received for the Property will be the Initial

1 Auction Bid. If a Stalking Horse Bidder is selected by the Debtor, the purchase
2 price of the Initial Auction Bid must exceed any purchase price set forth in the bid
3 of the Stalking Horse Bidder by \$100,000.00 plus the Break-Up Fee. The Debtor
4 will announce the Initial Auction Bid at least two (2) business days prior to the
5 Auction.

6 d. Each Qualified Bidder must appear in person or through a duly authorized
7 representative at the Auction. After the announcement of the Initial Auction Bid,
8 the Debtor will request additional bidding at the Auction.

9 e. A Qualified Bidder may increase its bid as many times as it chooses, provided that
10 each subsequent bid must exceed the prior bid for the Property by at least \$100,000.

11 f. The Auction shall continue until the Buyer has been determined by the Debtor. The
12 Buyer shall be the bidder making the highest or best bid at the Auction for the
13 Property, to be determined in the sole but reasonable discretion of the Debtor.

14 g. The Debtor reserves the right prior to, during and after the Auction (subject to
15 review by the Bankruptcy Court at the Sale Hearing), to reject any bid that is not in
16 conformity with these Sale and Assignment Procedures, the orders of the Court, or
17 the Bankruptcy Code, or in the best interests of the Debtor and its estate, as
18 determined by the Debtor.

19 6. Back-Up Bidder. As a condition to qualifying to participate in the Auction, each Qualified
20 Bidder shall be deemed to have consented to serve as a "Back-Up Bidder." If an Auction is conducted, the
21 party with the next highest bid after the Buyer at the Auction shall be required to serve as the Back-Up
22 Bidder, and such bid is to remain open for acceptance by the Debtor and consummation by the parties up
23 to and including ten (10) business days following **December [4], 2013**.

24 7. Selection of Buyer. Prior to the conclusion of the Auction, or as soon thereafter as
25 practicable, the Debtor will: (i) review each Qualified Bid, and consider each Qualified Bid, (ii) identify
26 the highest or best offer submitted for the Property received at the Auction (the "Prevailing Bid"),
27 (iii) designate the party that submitted the Prevailing Bid as the Buyer, and (iv) identify the Back-Up
28 Bidder. Upon the designation of the Prevailing Bid and the Buyer, the Debtor shall cause the Buyer and

1 the Back-Up Bidder to initial, or otherwise confirm, appropriate changes or modifications to their
2 respective PSAs submitted with their Qualified Bids to reflect the terms of their prevailing or back-up
3 bids, as applicable. Upon the completion of such confirmation to the satisfaction of the Debtor, the
4 Auction shall be concluded and no further bids shall be considered. The concluding date and time of the
5 Auction shall be stated on the record.

6 8. Results of Auction. Prior to the Sale Hearing, the Debtor will file a notice indicating
7 whether an Auction was held and, if so, summarizing the Auction and identifying the Buyer and Back-Up
8 Bidder.

9 9. Return of Deposits. Except as otherwise provided herein, all Initial Deposits and Good
10 Faith Deposits shall be returned to each bidder not selected by the Debtor in accordance with the above
11 procedures as the Buyer or the Back-Up Bidder by no later than the fifth (5th) business day following the
12 conclusion of the Auction. Unless the Buyer fails to close the sale of the Property, the Initial Deposits and
13 Good Faith Deposit of the Back-Up Bidder shall be held by the Debtor until, closing of the sale by the
14 Buyer. If the Buyer fails to close the purchase and sale of the Property by the Outside Date, as it may be
15 extended by agreement between the Debtor and the Buyer, then the Initial Deposits and Good Faith
16 Deposit of the Back-Up Bidder shall be applied as set forth in the PSA of the Back-Up Bidder.

17 10. Reservation of Rights; Deadline Extension. Notwithstanding any of the foregoing, the
18 Debtor reserves its rights to modify the Sale and Assignment Procedures, impose additional customary
19 terms and conditions on the sale of the Property, or otherwise modify the PSA.

20 **F. The Assumption and Assignment of Contracts and Leases and Determination of Cure**
21 **Amounts and Rejection of Contracts and Leases.**

22 In order to effectuate the sale of the Property, the Debtor requests authority to assume, assign and
23 sell the contracts and leases affecting the Property set forth on Schedule "1" to the PSA (the "Contracts
24 and Leases") and to reject the contracts and leases set forth on Schedule "2" to the PSA and any other
25 contracts and leases between the Debtor and a non-debtor entity not listed on Schedule "1" to the PSA.
26 (the "Rejected Contracts").

27 Within five (5) business days of entry of the Sale and Assignment Procedures Order, the Debtor
28 will file with the Court and serve on the non-debtor parties to the Contracts and Leases, a notice

1 (“Contract Notice”) (a) indicating the Debtor’s estimate of the amounts, if any, required to satisfy the cure
2 and compensation requirements of Bankruptcy Code section 365(b)(1) (“Cure Amount”) with respect to
3 all Contracts and Leases that might be assigned in connection with a sale of the Property, (b) providing
4 notice that Qualified Bidders may propose to take an assignment of any of the Contracts and Leases, and
5 (c) providing notice of the deadline for responses or objections to the proposed assumption and
6 assignment of the Contracts and Leases, and the Cure Amount, if any, with respect thereto. As soon as
7 practicable after the conclusion of the Auction, the Debtor will file with the Court and serve on the
8 affected parties a notice identifying the Buyer and stating which Contracts and Leases will be assumed
9 and assigned.

10 To the extent that any entity does not timely object to the Contract Notice, such entity shall be (a)
11 forever barred from objecting to the assumption and assignment of any of the Contracts identified on the
12 Contract Notice, including, without limitation, asserting any additional cure payments or requesting
13 additional adequate assurance of future performance, (b) deemed to have consented to the applicable Cure
14 Amount, if any, and to the assumption and assignment of the applicable contract or lease, (c) bound to
15 such corresponding Cure Amount, if any, (d) deemed to have agreed that the Buyer has provided adequate
16 assurance of future performance within the meaning of section 365(b)(1)(C) of the Bankruptcy Code, (e)
17 deemed to have agreed that all defaults have been cured as a result or precondition of the assignment, such
18 that the Buyer and the Debtor shall have no liability or obligation with respect to any default occurring or
19 continuing prior to the assignment, (f) deemed to agree that from and after the date of the assignment the
20 applicable contract or lease shall remain in full force and effect for the benefit of the Buyer and such
21 entity in accordance with its terms, (g) deemed to have relieved the Debtor and the estate from any
22 liability for breach of such contract or lease occurring after such assignment; (h) deemed to have waived
23 any right to terminate the applicable contract or lease or designate any early termination date under the
24 applicable contract or lease as a result of any default that occurred and/or was continuing prior to the
25 assignment date, and (i) deemed to have agreed that the terms of the Sale and Assignment Procedures
26 Order shall apply to the assumption and assignment of the applicable contract or lease.

1 **G. The Break-Up Fee**

2 Prospective bidders have indicated that they may require a break-up fee and certain other bid
3 protections (or at least the opportunity to attain such) if there is going to be an auction. While the Debtor
4 does not know whether it will be interested in having a stalking horse bidder; the Sale and Assignment
5 Procedures preserve the Debtor's optionality in this regard as it authorizes the Debtor to provide a break-
6 up fee and expense reimbursement subject to a cap, which has been agreed to by the Noteholder. If the
7 Debtor and the Stalking Horse Bidder execute a signed asset purchase agreement that includes the Break-
8 Up Fee, the Debtor will provide the Court and parties in interest notice of the identity of the Stalking
9 Horse Bidder, a copy of the Stalking Horse Bidder's purchase and sale agreement, and notice of any
10 modifications to the proposed Break-Up Fee.

11 **H. Proposed Sale Hearing and Related Deadlines.**

12 The Debtor requests that the hearing on the Motion be held on **November [21], 2013** or as soon
13 thereafter as the Court's calendar may permit. The Debtor requests that the Court set the deadline to file
14 and serve any objection and supporting evidence with respect to the proposed sale of assets free and clear
15 of liens, claims and interests, and/or the assumption and assignment of executory contracts and unexpired
16 leases, including any objections to the proposed Cure Amount with respect thereto as **November [18],**
17 **2013** (three (3) business days prior to the Sale Hearing). The Debtor requests that the Court set the
18 deadline to file and serve any reply in support of such relief, and supporting evidence with respect thereto,
19 as **November [20], 2013** (one (1) day prior to the Sale Hearing). Finally, the Debtor requests that the
20 Court hear objections regarding the Buyer's ability to provide adequate assurance of future performance at
21 the Sale Hearing.

22 **I. Notice**

23 The Debtor respectfully requests that the Court approve the form and manner of notice described
24 in the following paragraphs as reasonable, sufficient, and in accordance with the Bankruptcy Code and
25 Bankruptcy Rules with respect to the relief requested in the Motion.

26 1. Service of the Motion: The Debtor will serve this Motion and all exhibits and by email,
27 facsimile or next business day delivery on: (a) the United States Trustee, (b) counsel for the Noteholder,
28 (c) counsel for the Rodds; (d) the Debtor's top twenty (20) unsecured creditors, (e) the Stalking Horse

1 Bidder, if any, (f) entities who have expressed an interest in purchasing the Property, (h) the state and
2 federal agencies required by Bankruptcy Rule 2002(j) and Local Rule 2002(b), and (i) all parties that have
3 requested notice of matters in this case (collectively, “Service Parties”).

4 2. Service of the Sale and Procedures Notice: Within five business days of entry of the Sale
5 and Assignment Procedures Order, the Debtor intends to serve the Sale and Assignment Procedures
6 Notice attached hereto as Exhibit C (to which the Sale and Assignment Procedures will be attached), by
7 email, facsimile or next business day delivery on the Service Parties, and by first class mail on all parties
8 listed in the master mailing list that was filed with the Debtor’s chapter 11 petition. In addition, as
9 required by Local Bankruptcy Rule 6004-1(f), a copy of the Sale and Procedures Notice will be provided
10 to the clerk at the time of filing, together with local form 6004-2, to be published on the Court’s website.

11 3. Service of the Contract Notice and Other Pleadings: Within five (5) business days of entry
12 of the Sale and Assignment Procedures Order, the Debtor will file serve the Contract Notice attached
13 hereto as Exhibit D, together with the attachment contemplated thereby, by email, facsimile or next
14 business day delivery on: (a) the non-debtor parties to the Contracts and Leases (the “Contract and Lease
15 Parties”) and (b) the Service Parties. At the time of service of the Contract Notice, the Debtor also will
16 serve the Contract and Lease Parties by first class mail with the Motion and the Sale and Assignment
17 Procedures Notice.

18 III.

19 ARGUMENT

20 A. The PSA and the Sale of the Property Reflects a Reasonable Exercise of the Debtor’s 21 Business Judgment and Therefore Should Be Approved.

22 Courts have repeatedly held that a bankruptcy court should authorize a debtor to use estate
23 property under section 363(b)(1) whenever the request is supported by some rational, articulated business
24 purpose.⁹ This was explained by the Bankruptcy Appellate Panel for the Ninth Circuit in *In re Walter*:

25
26
27 ⁹ See, e.g., *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Continental Air Lines, Inc.*,
780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1066 (2d Cir. 1983); *Walter v. Sonwest*
28 *Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1987).

1 [T]here must be some articulated business justification for using, selling, or
2 leasing the property outside the ordinary course of business Whether the
3 preferred business justification is sufficient depends on the case. As the
4 Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient
5 factors pertaining to the proceeding and, accordingly, act to further the diverse
6 interests of Debtor, creditors and equity holders, alike.¹⁰

7
8 Where a debtor proffers a rational justification, there is a strong presumption that the decision was
9 made in good faith and in the company's best interests.¹¹ Moreover, under the "business judgment rule,"
10 there is a presumption that, where the debtor's appropriate governing authority implements and follows
11 fair procedures in making a decision, it acts in good faith and for a rational business purpose.¹²
12 Bankruptcy Code section 363 does not require, however, that the Court substitute its own business
13 judgment for that of the debtor.¹³ Rather, the Court should ascertain whether the debtor has articulated a
14 valid business justification for the proposed transaction.¹⁴ This is consistent with the "broad authority to
15 operate the business of a debtor . . . [which] indicates congressional intent to limit court involvement in
16 business decisions by a trustee . . . [so that] a court may not interfere with a reasonable business decision
17 made in good faith by a trustee."¹⁵

18
19 For the reasons detailed in the Settlement Motion, the sale of the Property as provided for in the
20 Settlement Agreement is in the best interests of the Debtor's estate.

21 ¹⁰ *Id.* (quoting *Continental Air Lines*, 780 F.2d at 1226); see also *In re Ernst Home Ctr.*, 209 B.R. 974, 979
22 (Bankr. W.D. Wash. 1997) ("The Court may approve the FADCO Transaction if [the debtor] has established
23 some articulated business justification for the transaction.") (internal quotations omitted).

24 ¹¹ See, e.g., *In re Integrated Resources*, 147 B.R. 650, 656 (S.D.N.Y. 1992).

25 ¹² See, e.g., *In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) ("The Board of Directors is in the
26 business of running the corporation. If the procedures utilized by the Directors were applied fairly, and the
27 Directors do not violate any of their fiduciary duties, then, under the business judgment rule their decision will
28 not be second-guessed.") (internal citations omitted).

¹³ See, e.g., *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 678 (Bankr. S.D.N.Y. 1989); *In re Highway Equip. Co.*,
61 B.R. 58, 60 (Bankr. S.D. Ohio 1986).

¹⁴ See, e.g., *Lewis v. Anderson*, 615 F.2d 778, 781 (9th Cir. 1979), cert. denied, 449 U.S. 869 (1980).

¹⁵ *In re Airlift Int'l, Inc.*, 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982).

1 **B. The Court is Authorized to Approve the Sale of the Property Free and Clear of All**
2 **Liens and Claims.**

3 Bankruptcy Code section 363(f) provides that the Court may authorize a sale of property of the
4 estate, “free and clear of any interest in such property of an entity other than the estate,” if:

5 (1) applicable nonbankruptcy law permits sale of such property free and
6 clear of such interest; (2) such entity consents; (3) such interest is a lien and
7 the price at which such property is to be sold is greater than the aggregate
8 value of all liens on such property; (4) such interest is in bona fide dispute;
9 or (5) such entity could be compelled, in a legal or equitable proceeding, to
10 accept a money satisfaction of such interest.¹⁶

11 Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one
12 of its five requirements will suffice to warrant approval of the sale of the Debtor’s assets “free and
13 clear.”¹⁷ Under section 363(f)(2) of the Bankruptcy Code, a debtor in possession may sell estate property
14 free and clear of liens, claims and interests if the persons or entities asserting them consent. In this case,
15 the Noteholder is the only one known entity asserting a lien on the Property¹⁸ and, under the Settlement
16 Agreement the Noteholder has consented to the sale. To the extent that any other creditor asserting a lien
17 does not object to the Motion, they should be deemed to have consented to the requested relief and the
18 proposed free and clear sale under Bankruptcy Code section 363(f)(2).¹⁹ To the extent that any objection
19 to this Motion is received on the basis that the proposed sale of assets cannot be free and clear of liens,
20 claims and interests pursuant to Bankruptcy Code section 363(f), the Debtor reserves the right to argue
21 that any of the other bases for a sale “free and clear” under section 363(f) apply. Consequently and in the
22 absence of any such objection, the proposed sale free and clear of all liens, claims, encumbrances, and
23 interests satisfies Bankruptcy Code section 363.

24 ¹⁶ 11 U.S.C. § 363(f).

25 ¹⁷ *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002).

26 ¹⁸ According to the preliminary title report from Chicago Title Company, there is a deed of trust on the Property in
27 favor of Grocers Capital Company in the amount of \$1,000,000.00 that predates the Deed of Trust. Since this was
28 not an exception or issue when the Loan closed, this is likely a “delayed reconveyance” which was mistakenly not
concluded although the loan was repaid. The Debtor is working to have this removed from the title report.

¹⁹ *See, e.g., In re James*, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997).

1 **C. The Court Should Find that the Sale is in Good Faith**

2 “[W]hen a bankruptcy court authorizes a sale of assets pursuant to section 363(b)(1), it is required
3 to make a finding with respect to the ‘good faith’ of the purchaser.”²⁰ The purpose of such a finding is to
4 facilitate the operation of section 363(m) of the Bankruptcy Code, which provides a safe harbor for
5 purchasers of a debtor’s property when the purchase is made in “good faith.” Bankruptcy Code section
6 363(m) provides as follows:

7 (m) The reversal or modification on appeal of an authorization under
8 subsection (b) or (c) of this section of a sale or lease of property does not
9 affect the validity of a sale or lease under such authorization to an entity that
10 purchased or leased such property in good faith, whether or not such entity
knew of the pendency of the appeal, unless such authorization and such sale
or lease were stayed pending appeal.²¹

11 Bankruptcy Code section 363(m) serves the important purposes both of encouraging good faith
12 transactions and of preserving the finality of the bankruptcy court’s orders unless stayed pending appeal.²²
13 As one court recognized, “[i]f purchasers at judicially approved sales of property of a bankrupt estate, and
14 their lenders, cannot rely on the deed that they receive at the sale, it will be difficult to liquidate bankrupt
15 estates at positive prices.”²³ That court noted that, although the law balances the competing interests
16 between lien holders and purchasers of assets of the estate, it weighs such interests “heavily in favor of the
17 bona fide purchaser.”²⁴

18 The Property will be marketed, and the proposed sale of the Property will be at an Auction, subject
19 to overbids. The Debtor will submit additional evidence regarding the arms’ length negotiation of the
20 final PSA entered into with the Buyer. Accordingly, the Debtor submits that the proposed sale is in good
21 faith and that the Buyer should be entitled to the protection afforded to good faith purchasers under
22 Bankruptcy Code section 363(m).

23
24 ²⁰ *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986).

25 ²¹ 11 U.S.C. § 363(m); *see also Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 279 (9th Cir. 1992).

26 ²² *Abbotts Dairies*, 788 F.2d at 147; *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 54-55 (7th Cir.
1983)

27 ²³ *In re Edwards*, 962 F.2d 641, 643 (7th Cir. 1992).

28 ²⁴ *Id.* at 643.

1 **D. The Sale And Assignment Procedures Should Be Approved**

2 Bankruptcy Code section 363(b)(1) provides: “[t]he trustee, after notice and a hearing, may use,
3 sell, or lease, other than in the ordinary course of business, property of the estate” A debtor should
4 be authorized to sell assets other than in the ordinary course of business pursuant to Bankruptcy Code
5 section 363(b)(1) if it demonstrates a sound business purpose for doing so.²⁵ Although no court expressly
6 has addressed whether a proposed overbid procedure constitutes a transaction out of the ordinary course,
7 numerous courts have approved overbid procedures proposed by debtors in possession in advance of the
8 debtor's sale motion.²⁶

9 The proposed Sale and Assignment Procedures are designed to increase the likelihood that the
10 Debtor will receive the best offer for the Property and also set forth a schedule for doing so in an
11 expeditious manner.

12 First, pre-approval of the bidding procedures will provide interested parties with notice of the
13 specific bidding procedures authorized by this Court, including the minimum bid requirements and the
14 opportunity to competitively bid for assets.²⁷ Second, pre-approval of the rules of the proposed sale will
15 ensure fair comparability between competing bids.²⁸ Finally, by open solicitation of higher bids, the
16 Debtor is making every effort to maximize the value of the Property to the estates and its creditors. The
17 Sale and Assignment Procedures provide a framework for the Debtor to entertain competing bids and, if
18 the Debtor receives such bids, to conduct the Auction in a fair and open fashion that will encourage
19 participation by financially capable bidders. Here, as described below, there can be no question that the
20 proposed Sale and Assignment Procedures are reasonable, supported by sound business justifications and

21 ²⁵ See, e.g., *Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005)
22 (“The court’s obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the
23 circumstances. . . . Ordinarily, the position of the trustee is afforded deference, particularly where business
24 judgment is entailed in the analysis or where there is no objection.”); *In re Fed. Mogul Global, Inc.*, 293 B.R.
124, 126 (D. Del. 2003) (finding that “a court should approve a debtor’s use of assets outside the ordinary
course of business if the debtor can demonstrate a sound business justification for the proposed transaction”).

25 ²⁶ See, e.g., *Doehring v. Crown Corp. (In re Crown Corp.)*, 679 F.2d 774, 775 (9th Cir. 1982); *In re Table Talk,*
Inc., 53 B.R. 937, 939 (Bankr. D. Mass. 1985)

26 ²⁷ See, e.g., *Doehring v. Crown Corp. (In re Crown Corp.)*, 679 F.2d 774 (9th Cir. 1982) (summarizing notice of
27 bidding rules approved by the bankruptcy court); *In re Table Talk, Inc.*, 53 B.R. 937, 939 (Bankr. D. Mass.
1985).

28 ²⁸ See *In re Financial News Network, Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991).

1 will maximize the likelihood of competitive bidding.²⁹

2 The Debtor believes that the proposed timetable for the auction will not limit the number of
3 bidders that would otherwise be inclined to participate in this process on a more drawn-out timeline.
4 While somewhat condensed the timeline affords sufficient time for the real estate brokers to effectively
5 market the Property. In addition, while formal marketing of the Property will begin shortly, as a result of
6 the Case and the nature of the local real estate investment community, a number of potential buyers have
7 already expressed, to both Debtor and the Noteholder, an interest in purchasing the Property.

8 The timeline provides the Debtor with a sufficient opportunity to evaluate bids in advance of the
9 auction to determine whether or not to designate a stalking horse bidder and, of course, ensuring that only
10 financially qualified bidders participate. Absent these requirements, and a deadline, there would be no
11 ability to pre-screen bids or evaluate whether a bidder is financially capable of promptly closing the
12 proposed transaction. In addition, requiring potential bidders to submit a black-lined version of the
13 proposed purchase and sale agreement to the PSA₂ will allow the Debtor to accurately compare and
14 evaluate the potential bids.

15 In sum, the Debtor respectfully submits that the proposed Sale and Assignment Procedures are fair
16 and reasonable, and consistent with those procedures previously approved in numerous other chapter 11
17 cases.³⁰

18 **E. The Court Should Approve the Assumption and Assignment of the Contracts and**
19 **Leases and the Rejection of the Rejected Contracts.**

20 Bankruptcy Code section 365(a) provides that “the [debtor in possession], subject to the Court’s
21 approval, may assume or reject any executory contract or unexpired lease of the debtor.”³¹ Although the

22 ²⁹ See *Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527, 535-37 (3d
23 Cir. 1999) (Holding that bid procedures are appropriate when they provide a benefit to the estate, by
maximizing the value of its assets, and enhancing competitive bidding.)

24 ³⁰ See, e.g., *In re Station Casinos, Inc., et al.*, Case No. 09-52477 (GWZ) (Bankr. D. Nev. June 4, 2010); *In re*
25 *Advanced Materials, Inc., et al.*, Case No. 09-16548 (TA) (Bankr. C.D. Cal. July 2, 2009); *In re Fleetwood*
26 *Enters., Inc., et al.*, Case No. 09-14254 (MJ) (Bankr. C.D. Cal. March 10, 2009); *In re Care Level Mgmt.*
27 *Group, LLC, et al.*, Case No. 08-12913 (MT) (Bankr. C.D. Cal. May 7, 2008); *In re VI Acquisition Corp.*, Case
28 No. 08-10623 (KG) (Bankr. D. Del. Apr. 3, 2008); *In re Linens Holding Co.*, Case No. 08-10832 (CSS) (Bankr.
D. Del. May 2, 2008); *In re Global Home Prods., LLC.*, Case No. 06-10340 (KG) (Bankr. D. Del. April 10,
2006).

³¹ 11 U.S.C. § 365(a).

1 Bankruptcy Code does not itself set forth guidelines for courts to apply in determining whether to approve
2 the decision of a debtor in possession to assume or reject an executory contract or unexpired lease, the
3 overwhelming majority of courts have consistently applied the well-established “business judgment”
4 test.³² A debtor-in-possession satisfies the “business judgment” test when it decides, in good faith, that
5 assumption or rejection may benefit the estate.³³ Bankruptcy courts thus generally approve a debtor-in-
6 possession’s decision to assume or reject unless there is: (i) a showing of bad faith or abuse of discretion;
7 or (ii) a clear demonstration that assumption or rejection will not benefit the estate or creditors.³⁴

8 In *In re Summit Land Co.*,³⁵ the bankruptcy court explained why such deference is given to the
9 debtor-in-possession’s assumption or rejection decisions:

10 [C]ourt approval under section 365(a), if required, except in extraordinary
11 situations, should be granted as a matter of course. To begin, this rule
12 places responsibility for administering the estate with the [debtor-in-
13 possession], not the court, and therefore furthers the policy of judicial
14 independence considered vital by the authors of the Code. Second, this
15 rule expedites the administration of estates, another goal of the Bankruptcy
16 Reform Act. Third, the rule encourages rehabilitation by permitting the
17 replacement of marginal with profitable business arrangements. Fourth, the
18 rule is supported by pre-Code cases in this Circuit.³⁶

16 Here, the Debtor has amply demonstrated sound business judgment in preparing the PSA, which
17 provides for the assumption, assignment and sale of the Contracts and Leases set forth in Schedule “1”
18 thereto and the rejection of the Rejected Leases as Leases set forth in Schedule “2” thereto.³⁷

19 1. The Provisions of Bankruptcy Code Section 365(f)(1) Have Been Satisfied.

20 Bankruptcy Code section 365(f)(2) provides as follows:

21 ³² See, e.g., *In re Chi-Feng Huang*, 23 B.R. 798, 800 (B.A.P. 9th Cir. 1982); *Richmond Leasing Co. v. Capital*
22 *Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 43
(2d Cir. 1979).

23 ³³ *In re FCX, Inc.*, 60 B.R. 405, 411 (Bankr. E.D.N.C. 1986); *In re Chipwich, Inc.*, 54 B.R. 427, 430-31 (Bankr.
24 S.D.N.Y. 1985); *In re Hawaii Dimensions*, 47 B.R. 425, 427 (Bankr. D. Haw. 1985).

25 ³⁴ *FCX, Inc.*, 60 B.R. at 411; *Chipwich, Inc.*, 54 B.R. at 430-31.

26 ³⁵ 13 B.R. 310 (Bankr. D. Utah 1981).

27 ³⁶ *Id.* at 315.

28 ³⁷ As noted above, under the Initial Bidder APA, RAC has the right to remove any contract or lease from the list
of Assigned Contracts at any time before the Closing, in which case such contract or lease will not be an
Assigned Contract.

1 The trustee may assign an executory contract or executory lease of the
debtor only if —

2 (A) the trustee [or debtor in possession] assumes such contract or
3 lease in accordance with the provisions of this section [section
365(b)(1)]; and

4 (B) adequate assurance of future performance by the assignee of such
5 contract or lease is provided, whether or not there has been a default in
6 such contract or lease.³⁸

7
8 As a precondition to the assumption and assignment, therefore, the Debtor must cure, or provide
9 adequate assurance that it promptly will cure, any defaults existing under the Leases and Contracts,³⁹ and
10 the Buyer must provide adequate assurance of future performance thereunder.⁴⁰ The Debtor believes that
11 there are no other defaults under the Contracts and Leases identified on Schedule “1” to the PSA other
12 than the dollar amounts set forth in such Exhibit. These amounts (or such less amounts as may be agreed
13 to by the Buyer and the non-debtor parties) shall be paid contemporaneously with, or otherwise provide
14 for, to the satisfaction of the Debtor, at the closing. Therefore, no further cure or compensation payments
15 are required, and the Debtor should be permitted to assume and assign these contracts and leases upon the
16 Buyer’s provision of adequate assurance of future performance. Whether an assignee has provided
17 “adequate assurance of future performance” depends upon the facts and circumstances presented.⁴¹ In
18 terms of the Leases, upon consummation of the Sale, the Buyer will be in possession of the Property, and
19 to the extent the Buyer so desires, should be able to continue to perform under the Contract and Leases.

20 Accordingly, the Court can and should grant the Debtor the authority to assume and assign the
21 Contracts and Leases.

22
23

³⁸ 11 U.S.C. § 365(f)(2).

24 ³⁹ 11 U.S.C. §§ 365(b)(1), 365(f)(1)(A)

25 ⁴⁰ 11 U.S.C. § 365(f)(1)(B)

26 ⁴¹ *See, e.g., In re Evelyn Byrnes, Inc.*, 32 B.R. 825, 829 (Bank. S.D.N.Y. 1983). *See also In re Nacto Indus., Inc.*,
27 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (holding that adequate assurance of future performance does not
28 require an absolute assurance that the debtor will pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R.
789, 803 (Bankr. N.D. Ill. 1985) (“[a]lthough no single solution will satisfy every case, the required assurance
will fall considerably short of an absolute guarantee of performance”).

1 2. The Debtors' Sound Business Judgment Supports Rejection of the Rejected
2 Contracts.

3 Similarly, this Court can and should authorize the rejection of the Rejected Contracts. The Debtor
4 has concluded that there is no residual value in the Rejected Contracts. Thus, rejection of the Rejected
5 Contracts will facilitate the sale of the Property. Accordingly, the Debtor believes that it is in the best
6 interests of the estate that the Rejected Contracts be rejected.

7 **F. The Break-Up Fee Should Be Approved As It Reflects a Reasonable Exercise of the**
8 **Debtor's Business Judgment**

9 As discussed above, there may be circumstances where it would be prudent for the Debtor to
10 designate a stalking horse bidder and confer upon it certain bid protections, including the Break-Fee, to
11 best facilitate a competitive auction and enhance the ultimate sale price of the Property. The
12 appropriateness of a break-up fee and expense reimbursement to encourage bidding has been widely
13 recognized by courts. As one court noted, “[b]reak-up fees are important tools to encourage bidding and
14 to maximize the value of the debtor’s assets. . . . In fact, because the directors of a corporation have a duty
15 to encourage bidding, break-up fees can be *necessary* to discharge the directors’ duties to maximize
16 value.”⁴² As a consequence, bankruptcy courts frequently approve break-up or “topping fees” and
17 expense reimbursement in connection with proposed bankruptcy sales.⁴³ Moreover, in the event that the
18 Debtor proceeds with a Stalking Horse Bidder at the Auction, there is no detriment to the estate in
19 including the Break-Up Fee in the PSA because the Initial Auction Bid must exceed any purchase price
20 set forth in the bid of the Stalking Horse Bidder by \$100,000.00 plus the Break-Up Fee. Thus, the estate
21 will realize additional consideration beyond the purchase price set forth in the bid of the Stalking Horse

22 ⁴² *In re Integrated Res., Inc.*, 147 B.R. 650, 659-60 (S.D.N.Y. 1992) (emphasis in original); *see also id.* at 661
23 (stating that break-up fees can prompt bidders to commence negotiations and “ensure that a bidder does not
24 retract its bid”); *see also In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding
25 incentives such as “[b]reakup fees . . . may ‘be legitimately necessary to convince a “white knight” to enter the
26 bidding by providing some form of compensation for the risks it is undertaking”’) (citation omitted); *In re Hupp*
Indus., Inc., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“[W]ithout such fees, bidders would be reluctant to
make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who
would capitalize on the initial bidder’s (i.e., ‘stalking horse’s’) due diligence.”).

27 ⁴³ *See, e.g., Gey Assocs. Gen. P’ship v. 310 Assocs. (In re 310 Assocs.)*, 346 F.3d 31, 33 (2d Cir. 2003) (affirming
28 approval of break-up fee of the higher of (i) \$100,000 or (ii) one-half the difference between the stalking horse
bidder’s purchase price and the actual sale price, where the purchase price was \$3.1 million).

1 Bidder even if a Break-Up Fee is required.

2 **G. The Proposed Form and Manner of Notice of the Proposed Sale And Assignment**
3 **Procedures Is Reasonable and Appropriate**

4 Pursuant to Bankruptcy Rules 2002(a)(2), 2002(c)(1), and 6004(a), a debtor in possession is
5 required to notify its creditors of any proposed sale of its assets, including a general description of the
6 assets to be sold and a disclosure of the time and place of an auction, the terms and conditions of the sale,
7 and the deadline for filing any objections. The Debtor respectfully submits that the Sale and Procedures
8 Notice fully complies with Bankruptcy Rules 2002 and 6004 and Local Rule 6004-1, provides adequate
9 and appropriate notice of the relief requested in this Motion, and sufficient information to enable
10 interested parties to submit Qualified Bids and participate in the Auction. The Debtor further submits that
11 service of the Sale and Procedures Notice by email, facsimile or next business day delivery on the Service
12 Parties, and by first class mail on the master mailing list as proposed above will provide adequate and
13 appropriate notice of the proposed sale of the Property free and clear of liens, claims and interests.

14 **H. The Court Should Waive the Stay Under Bankruptcy Rules 6004(h) and 6006(d) .**

15 Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, an order authorizing the
16 sale of Property pursuant to section 363 of the Bankruptcy Code is automatically stayed for fourteen days
17 after entry of the order.⁴⁴ Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to
18 assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for
19 fourteen days, unless the court orders otherwise.⁴⁵

20 The Debtor respectfully submits that a waiver of these stay provisions is justified under the
21 circumstances. The dates and deadlines proposed for providing notice of the opportunity to bid, notice of
22 the sale, notice of the proposed assumption of executory contracts and unexpired leases, and the Sale
23 Hearing all seek to balance the needs of due process against the stark reality that the Debtor needs to
24 consummate the Sale as soon as possible, and no later than the end of the calendar year.

27 ⁴⁴ Fed. R. Bankr. P. 6004(h).

28 ⁴⁵ Fed. R. Bankr. P. 6006(d).

1 IV.

2 CONCLUSION

3 WHEREFORE, the Debtor respectfully moves the Court for orders:

4 (1) setting the Sale Procedures Hearing as soon as the Court's calendar may permit, to
5 consider the relief requested in the following paragraphs 2 through 7;

6 (2) approving Sale and Assignment Procedures, including those relating to:

7 a. the submission and consideration of bids in respect of the proposed sale;

8 b. the conduct of the Auction by the Debtor on November 19, 2013, or such other date
9 that the Court may direct;

10 c. the provision of notice to potential bidders, counterparties to executory contracts and
11 unexpired leases that may be assumed and assigned, and other parties in interest; and

12 d. the proposed sale of substantially all of the assets of the Debtor free and clear of liens
13 claims and interests to Buyer.

14 (3) approving the PSA;

15 (4) approving the Sale and Assignment Procedures Notice;

16 (5) approving the Contract Notice;

17 (6) authorizing the Break-Up Fee in favor the Stalking Horse Bidder;

18 (7) setting (a) the Sale Hearing on November 15, 2013, or as soon thereafter as the Court's
19 calendar may permit, (b) the deadline to file and serve any objection to such relief, and (c) the deadline to
20 file and serve any reply in support of such relief;

21 (8) (a) approving the assumption and assignment of executory contracts and unexpired leases
22 of the Debtor pursuant to the PSA, (b) determining that there are no defaults under such contracts and
23 leases other than payment of certain cure costs, if any, proposed by the Debtor, and (c) determining, at the
24 Sale Hearing that the Buyer has provided adequate assurance of future performance;

25 (9) finding that the Buyer is a good faith purchaser entitled to the protections of Bankruptcy
26 Code 363(m);

1 (10) providing that all of the foregoing relief shall be effective immediately upon entry of the
2 applicable order granting such relief and that any stay of such order under Bankruptcy Rules 6004(h) and
3 6006(d) is waived and shall not be applicable; and

4 (11) granting such other relief as may be appropriate under the circumstances.

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DATED: October 14, 2013

/s/ Lauren N. Gans
Jonathan S. Shenson
Lauren N. Gans
SHENSON LAW GROUP PC
Counsel for 11850 Del Pueblo, LLC

EXHIBIT A

EXHIBIT A

SALE AND ASSIGNMENT PROCEDURES

These sale and assignment procedures (the “Sale and Assignment Procedures”) set forth the process by which 11850 Del Pueblo, LLC, debtor and debtor in possession (the “Debtor”), is authorized to conduct a sale by auction of approximately 7 acres of real property and 92,000 square feet of retail space located at 11820-11850 Valley Boulevard, El Monte, California 91732 (the “Real Property”), any rights and appurtenances to the Real Property, all tangible personal property located on the Real Property and miscellaneous agreements affecting the Real Property, and permits and licenses pertaining to the Real Property, and to assume and assign certain specified leases related to the Real Property (collectively, the “Property”).

1. Motion for Court Approval of Sale and Assignment. On October 11, 2013, the Debtor filed a motion (the “Sale and Assignment Motion”) in the United States Bankruptcy Court for the Central District of California (the “Court”), seeking, among other things, (i) approval of these Sale Procedures, through which the Debtor will determine the highest and best offer for the Property, (ii) authority to conduct a sale by auction (the “Auction”), if necessary, of the Property, (iii) providing a procedure for the Debtor to assume and assign certain leases related to the Real Property, and (iv) a hearing to approve the sale of the Property, free and clear of all liens, claims, interest and encumbrances in accordance with the purchase and sale agreement attached to the Sale and Assignment Motion as Exhibit B (the “PSA”) to the prevailing bidder (the “Buyer”).

2. Entry of Sale and Assignment Procedures Order. The Court entered its order (the “Sale and Assignment Procedures Order”) approving the Sale and Assignment Procedures on October [__] 2013. *See* Docket No. [____].

3. Stalking Horse Bidder. The Debtor in its sole discretion may execute a purchase and sale agreement with a stalking horse bidder (“Stalking Horse Bidder”) prior to the Auction. If a Stalking Horse Bidder is selected in advance of the Auction, parties in interest will be provided with notice of the identity of the Stalking Horse Bidder, a copy of the Stalking Horse Bidder’s purchase and sale agreement, and any modifications to these Sale Procedures necessitated by the selection of a Stalking Horse Bidder on or before **November [11], 2013**.

4. Break-Up Fee. In the event that a Staking Horse Bidder is selected and is not the successful bidder for the Property, and does not overbid at the Auction, after the sale proceeds are distributed pursuant to the Settlement Agreement, as defined in the Sale and Assignment Motion, the Staking Horse Bidder shall be paid from the proceeds of the sale a break-up fee not to exceed 1.5% of the gross amount of the Stalking Horse Bid (the “Break-Up Fee”).¹

¹ Although the Debtor seeks authority to pay a Break-Up Fee of up to 1.5% of the proposed purchase price offered by the Stalking Horse Bidder, the Debtor does not intend to pay the maximum authorized amount.

5. Property for Sale.

- a. Real and Personal Property: The assets to be sold pursuant to the PSA are (i) 7 acres of real property located at 11820-11850 Valley Boulevard, El Monte, California, 91732 (as previously defined, the “Real Property”); (ii) the buildings, structures and improvements erected and located on such land, including 92,000 square feet of retail space (the “Improvements”); (iii) any rights and appurtenances pertaining to the Real Property; (iv) all tangible personal property located on the Real Property;
- b. Contracts and Leases: All the contracts and leases affecting the Property set forth on Schedule 1 to the PSA and related rights, which the Buyer elects to assume, including all assignable warranties of contractors, manufacturers or materialman that relate to the Real Property set forth in Schedule 2 to the PSA (the “Contracts and Leases”); and
- c. Intangible Property: Saleable intangible property used exclusively in connection with the Property.

6. Sale Hearing. On **November [21], 2013** at __:__ .m. (Pacific time), as further described below, in the Sale and Assignment Motion, and in the Sale and Assignment Procedures Order, a hearing will be held before the Honorable Robert J. Kwan, United States Bankruptcy Judge for the Central District of California, or such other judge presiding over such hearing, in Courtroom 1675 of the Edward R. Roybal Federal Building and Courthouse, 255 E. Temple Street, Los Angeles, CA 90012 at which the Debtor will seek (i) approval of the sale of the Property in accordance with the Buyer’s PSA, (ii) the assumption and assignment of the Contracts and Leases to the Buyer (as defined below), and (iii) the other relief requested in the Sale Motion.

7. Due Diligence. All parties interested in acquiring the Property (each, a “Prospective Bidder”) will be allowed to conduct reasonable due diligence through **November [18], 2013**. CBRE, the broker and listing agent, will provide Prospective Bidders with reasonable access to the Property, related books and records, and other information for the purpose of conducting due diligence.

8. Any party that wishes to conduct due diligence should promptly contact the broker and listing agent for the Property, CBRE, Attn: Samuel Alison, Telephone: (818) 907-4727, Address: 111 Universal Hollywood Drive, Suite 2700, Los Angeles, CA 91608, Email: Sam.Alison@cbre.com (the “Broker”). Before the Debtor provides any confidential information to an interested party, such interested party shall have delivered to the Debtor a fully executed confidentiality agreement in a form reasonably acceptable to the Debtor (the “Confidentiality Agreement”). The Debtor may impose any and all limitations, restrictions or conditions upon an interested party’s ability to conduct due

diligence that the Debtor deems reasonably necessary to (i) avoid disruption of the Debtor's operation; (ii) preserve the value of the Property; (iii) protect confidential, proprietary or otherwise sensitive information; or (iv) address any other concerns the Debtor has with respect to any particular factual circumstances surrounding or unique to any particular party. The Debtor makes no representation or warranty as to the information to be provided through the due diligence process or otherwise, except to the extent set forth in a definitive purchase and sale agreement with the Buyer (as such term is defined herein), or in the PSA, as executed and delivered by the Debtor.

9. Consideration of Bids. Any Prospective Bidder wishing to bid for the Property at the Auction must have first submitted, pursuant to the requirements of these Sale and Assignment Procedures, an initial, qualified bid ("Qualified Bid"). A bidder who submits a Qualified Bid in accordance with the procedures specified herein is a "Qualified Bidder."

10. Bid Deadline. **To become a Qualified Bidder, a Prospective Bidder must submit a Qualified Bid in writing so that it is received by the Debtor and the Broker, by hard copy or by email, on or before 5:00 pm (Pacific time) on November [4], 2013 (the "Bid Deadline").** The Debtor will as promptly thereafter as possible, and in any event at least two (2) business days prior to the Auction, notify each Prospective Bidder whether it has been deemed a Qualified Bidder.

11. Requirements for a Qualified Bid. Each Prospective Bidder, by submitting a bid, shall be deemed to acknowledge that it understands and is bound by the terms of the Sale and Assignment Procedures and the Sale and Assignment Procedures Order. To be designated a Qualified Bid, a bid must be submitted prior to the Bid Deadline (a "Submitted Bid") and must satisfy the following requirements:

- a. A Submitted Bid must be submitted in the form of an executed purchase agreement in the form of the PSA, fully executed by the Prospective Bidder, and must be black-lined off the PSA to show changes thereto (the "Bidder Purchase Agreement"). The clean version of the Bidder Purchase Agreement must be signed by a duly authorized officer of the Prospective Bidder.
- b. A Submitted Bid must be accompanied by a \$100,000 initial deposit by wire transfer, certified or cashier's check (the "Initial Deposit"). Each Initial Deposit shall be held by counsel for the Debtor, Shenson Law Group PC, in a non-interest bearing account. If a Submitted Bid is deemed to be a Qualified Bid, the Prospective Bidder shall be required to provide an additional good faith deposit (the "Good Faith Deposit") by wire transfer, certified or cashier's check in an amount equal to the difference between the Initial Deposit and 5% of the total purchase price proposed in the Bidder Purchase Agreement by 5:00 p.m. on the day prior to the Auction (i.e. by **5:00 p.m. on November [18], 2013**). Each Good Faith Deposit shall be held by counsel for the Debtor in a non-interest bearing account. The Initial Deposits and the Good Faith Deposits of all Prospective Bidders, other than the Buyer and the Back-Up Bidder (as

defined herein), shall be returned in accordance with the procedures set forth in paragraph 17 below.

- c. If not previously delivered to the Debtor, a Submitted Bid must be accompanied by an executed Confidentiality Agreement, in form and substance satisfactory to the Debtor.
- d. At or prior to the Auction, a Prospective Bidder must provide written evidence of an irrevocable commitment for financing, without any contingency other than the entry of the Sale and Assignment Order approving the Prospective Bidder as the Buyer, or other satisfactory written evidence that the Prospective Bidder has the financial ability to close the transaction contemplated in the Submitted Bid and to pay the cash component of its proposed purchase price in cash by the earlier of the closing date described in the Submitted Bid, or the "Outside Date" of **December 4, 2013** set forth in the PSA (the "Financial Evidence").
- e. The Financial Evidence shall also include evidence of the Prospective Bidder's ability to provide adequate assurance of future performance under any Contracts and Leases to be assumed and assigned to the Prospective Bidder under the Bidder Purchase Agreement.
- f. The Submitted Bid must be accompanied by a board resolution or other similar document demonstrating the authority of the Prospective Bidder to submit, execute, deliver and close the proposed sale transaction.
- g. The Submitted Bid must include an acknowledgement and representation that the Prospective Bidder: (i) will complete any and all due diligence regarding the Property prior to the Auction; (ii) will waive all contingencies of the Submitted Bid at or prior to the Auction, (iii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, and (iv) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the PSA.
- h. All Prospective Bidders and Qualified Bidders (with the exception of the Stalking Horse Bidder to the extent of the Break-Up Fee) shall bear their own costs and expenses in connection with submission of bids, the Auction, the sale process and preparation of those documents necessary to effectuate a transfer of title of the assets purchased.
- i. After review of these documents, the Debtor in its sole discretion, will determine whether a party submitting a bid (i) has demonstrated the financial capacity to consummate the proposed purchase of the Property and provide

adequate assurance of future performance in respect of the Contracts and Leases to be assigned to such party, (ii) is reasonably likely to consummate the contemplated transactions if selected as the Buyer, and (iii) has otherwise satisfied the requirements described above, so as to render the Prospective Bidder a Qualified Bidder.

12. Contracts and Leases. By November __, 2013, the Debtor will file with the Court and serve on the non-debtor parties to the Contracts and Leases, a notice (“Contract Notice”) (a) indicating the Debtor’s estimate of the amounts, if any, required to satisfy the cure and compensation requirements of Bankruptcy Code section 365(b)(1) (“Cure Amount”) with respect to all Contracts and Leases that might be assigned in connection with a sale of the Property, (b) providing notice that Qualified Bidders may propose to take an assignment of any of the Contracts and Leases, and (c) providing notice of the deadline for responses or objections to the proposed assumption and assignment of the Contracts and Leases, and the Cure Amount, if any, with respect thereto. As soon as practicable after the conclusion of the Auction, the Debtor will file with the Court and serve on the affected parties a notice identifying the Buyer and stating which Contracts and Leases will be assumed and assigned.

13. Auction Procedures. The Debtor will conduct an Auction on **November [19], 2013** in the offices of Greenberg Glusker Fields Claman & Machtinger LLP, 1900 Avenue of the Stars, 21st Floor, Los Angeles, California 90067-4095, at [9:00 a.m.] (Pacific time), or such other location designated by the Debtor or the Court. If there are two or more Qualified Bids, the Debtor shall conduct the Auction in any reasonable manner that is not inconsistent with these Sale and Assignment Procedures and the Sale and Assignment Procedures Order, and that provides Qualified Bidders with a fair opportunity to participate, subject to the requirements set forth below.

- a. Only Qualified Bidders that submit a Good Faith Deposit will be permitted to bid at the Auction.
- b. The Debtor will notify all Prospective Bidders whether or not they are deemed to be Qualified Bidders at least two (2) business days prior to the Auction.
- c. The highest or best Qualified Bid received for the Property will be the Initial Auction Bid. If a Stalking Horse Bidder is selected by the Debtor, the purchase price of the Initial Auction Bid must exceed any purchase price set forth in the bid of the Stalking Horse Bidder by \$100,000 plus the amount of any Break-Up Fee to be paid to the Stalking Horse Bidder pursuant to the Stalking Horse Bidder purchase and sale agreement. The Debtor will announce the Initial Auction Bid at least two (2) business days prior to the Auction.
- d. Each Qualified Bidder must appear in person or through a duly authorized representative at the Auction, provided however that the Debtor reserves

the right to authorize Qualified Bidders to appear via internet or telephone. After the announcement of the Initial Auction Bid, the Debtor will request additional bidding at the Auction.

- e. A Qualified Bidder may increase its bid as many times as it chooses, provided that each subsequent bid must exceed the prior bid, including the Initial Auction Bid, by at least \$100,000.
- f. Notwithstanding the foregoing, the Stalking Horse Bidder, in lieu of exceeding the prior bid, may also match any competing bid for the Property, and the Debtor will deem the Stalking Horse Bidder's matching bid the highest or best offer based on the Break-Up Fee that otherwise would be paid to the Stalking Horse Bidder.
- g. The Auction shall continue until the Buyer has been determined by the Debtor. The Buyer shall be the bidder making the highest or best bid at the Auction for the Property, to be determined in the sole but reasonable discretion of the Debtor.

The Debtor reserves the right prior to, during and after the Auction (subject to review by the Court at the Sale Hearing), to reject any bid that is not in conformity with these Sale and Assignment Procedures, the orders of the Court, or the Bankruptcy Code, or in the best interests of the Debtor and its estate, as determined by the Debtor.

14. Back-Up Bidder. As a condition to qualifying to participate in the Auction, each Qualified Bidder shall be deemed to have consented to serve as a "Back-Up Bidder." If an Auction is conducted, the party with the next highest bid after the Buyer at the Auction shall be required to serve as the Back-Up Bidder, and such bid is to remain open for acceptance by the Debtor and consummation by the parties up to and including ten (10) business days following the Outside Date of **December [4], 2013** specified in the PSA; provided, however, that nothing else herein shall be deemed to modify or otherwise alter any provision in the PSA.

15. Selection of Buyer. Prior to the conclusion of the Auction, or as soon thereafter as practicable, the Debtor will: (i) review each Qualified Bid, and consider each Qualified Bid, on the basis, without limitation, of the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder's ability to close a transaction and the timing thereof, the certainty of the financing, the number, type and nature of any changes to the PSA requested by each bidder, and the net benefit to the Debtor's estate, (ii) identify the highest or best offer submitted for the Property received at the Auction (the "Prevailing Bid"), (iii) designate the party that submitted the Prevailing Bid as the Buyer, and (iv) identify the Back-Up Bidder. Upon the designation of the Prevailing Bid and the Buyer, the Debtor shall cause the Buyer and the Back-Up Bidder to initial, or otherwise confirm, appropriate changes or modifications to their respective PSAs submitted with their Qualified Bids to reflect the terms of their prevailing or back-up bids, as applicable. Upon the completion of such confirmation to the satisfaction of the Debtor,

the Auction shall be concluded and no further bids shall be considered. The concluding date and time of the Auction shall be stated on the record.

16. Results of Auction. Prior to the Sale Hearing, the Debtor will file a notice with the Court indicating whether an Auction was held and, if so, summarizing the Auction and identifying the Buyer and the Back-Up Bidder. At the Sale Hearing, the Court, pursuant to Bankruptcy Code sections 363 and 365, will consider (i) whether to approve the sale of the Property to the Buyer, and to the Back-Up Bidder in the event that the Buyer fails to perform according to the terms of its Prevailing Bid, (ii) whether to approve the assumption and assignment of Contracts and Leases to the Buyer, and (iii) any objections by parties with standing to the entry of an order providing such relief.

17. Return of Good Faith Deposits. Except as otherwise provided herein, all Good Faith Deposits shall be returned to each bidder not selected by the Debtor in accordance with the above procedures as the Buyer or the Back-Up Bidder by no later than the fifth (5th) business day following the conclusion of the Auction. Unless the Buyer fails to close the sale of the Property, the Good Faith Deposit of the Back-Up Bidder shall be held by the Debtor until, closing of the sale by the Buyer. If the Buyer fails to close the purchase and sale of the Property by the Outside Date, as it may be extended by agreement between the Debtor and the Buyer, then the Good Faith Deposit of the Back-Up Bidder shall be applied as set forth in the PSA of the Back-Up Bidder.

18. Reservation of Rights; Deadline Extension. Notwithstanding any of the foregoing, the Debtor reserves its rights, in the exercise of its fiduciary obligations, to modify the Sale Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Property, or otherwise modify the PSA, including, without limitation, extending the deadlines set forth in these Sale Procedures, modifying bidding increments, adjourning the Auction and/or adjourning the Sale Hearing in open court without further notice, withdrawing from the Auction the Property at any time prior to or during the Auction or canceling the Auction, and rejecting any and all Qualified Bids.

19. Settlement Agreement: If and to the extent that the terms of these Sale and Assignment Procedures conflict with the terms of the Settlement Agreement, as defined in the Sale and Assignment Motion, then the terms of the Settlement Agreement shall control.

EXHIBIT B

The form purchase and sale agreement (“PSA”) will be submitted before the Sale Procedures Hearing.

EXHIBIT C

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Lauren N. Gans (CA State Bar No. 247542)

3 *lgans@shensonlawgroup.com*

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5 Telephone: 310-400-5858

6 Counsel for 11850 Del Pueblo, LLC,

7 Debtor and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **LOS ANGELES DIVISION**

11 In re

12 11850 Del Pueblo, LLC,
13 A California limited liability company,

14 Debtor and Debtor in
15 Possession.

Case No. 2:12-bk-44726

Chapter 11

**NOTICE OF SALE AND SALE AND
ASSIGNMENT PROCEDURES**

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20 **PLEASE TAKE NOTICE** that 11850 Del Pueblo, LLC, debtor and debtor in possession (the
21 “Debtor”) seeks to sell substantially all of its assets as further described in this Notice.

22 **PLEASE TAKE FURTHER NOTICE** that on October __, 2013, the Debtor filed a motion
23 seeking approval of, among other things, the sale and assignment procedures (the “Sale and Assignment
24 Procedures”) that govern the manner in which substantially all of the Debtor’s assets (as defined in further
25 detail below, the “Property”) are to be sold. The Court entered an Order (the “Sale and Assignment
26 Procedures Order”) approving, among other things, the Sale and Assignment Procedures on October __,
27 2013.

28 **PLEASE TAKE FURTHER NOTICE** that all interested parties are invited to make offers to
purchase the Property in accordance with the Sale and Assignment Procedures and the Sale and
Assignment Procedures Order.

1 **PLEASE TAKE FURTHER NOTICE** that the parties have the opportunity to present competing
2 bids for the Property. Attached hereto as Exhibit 1 is a copy of the Sale and Assignment Procedures
3 approved by the Sale and Assignment Procedures Order, setting forth dates, deadlines and procedures for
4 due diligence, the submission of competing bids, the conduct of an auction and related matters. As set
5 forth in Exhibit 1, the deadline for submission of bids is [], 2013.

6 **PLEASE TAKE FURTHER NOTICE** that on [], 2013, the Debtor filed the
7 Application For Entry of Order Authorizing The Debtor To Employ CBRE, Inc. as Real Estate Broker
8 (“Broker Application”) [Docket No.] (“Broker Application”). On [] the Court entered the order
9 approving the Broker Application and thereafter the broker began diligently marketing the Property.

10 **PLEASE TAKE FURTHER NOTICE** that the purchase and sale agreement (“PSA”) is attached
11 as Exhibit B to the Sale and Assignment Motion. The assets subject to sale pursuant to the PSA (the
12 “Property” as more specifically described and/or limited in the PSA) principally comprise: (a) (i) 7 acres
13 of real property located at 11820-11850 Valley Boulevard, El Monte, California, 91732 (the “Real
14 Property”); (ii) the buildings, structures and improvements erected and located on such land, including
15 92,000 square feet of retail space (the “Improvements”); (iii) any rights and appurtenances pertaining to
16 the Real Property; (iv) all tangible personal property located on the Real Property; (b) certain executory
17 contracts and unexpired personal property leases of the Debtor to be specified by the Buyer and (c)
18 Saleable intangible property used exclusively in connection with the Property.

19 **PLEASE TAKE FURTHER NOTICE** that on [] [], 2013 at __:00 a.m., or as soon
20 thereafter as the matter can be heard, a continued hearing (the “Sale Hearing”) on the Motion For Order
21 Approving (1) Sale Procedures, (2) Sale of All or Substantially All Of Debtor’s Assets Free And Clear of
22 Liens, Claims and Interests Pursuant to Section 363(f) and (3) Assumption and Assignment Of Unexpired
23 Leases and Executory Contracts Pursuant to Section 365 [Docket No.] (“Sale and Assignment Motion”)
24 filed by the Debtor, will be held before the Honorable Robert Kwan, United States Bankruptcy Judge, in
25 Courtroom 1675, in the Roybal Federal Building, and Courthouse at 255 East Temple Street, Los Angeles,
26 CA, 90012.

27 **PLEASE TAKE FURTHER NOTICE** the by order of the Court, [_____], 2013 is the
28 deadline to file and serve any opposition and supporting evidence with respect to the proposed sale of the
Property free and clear of liens, claims and interests.

Except as to the question of adequate assurance of future performance, the deadline to file any
opposition and evidence in support thereof with respect to the assumption and assignment of executory
contracts and unexpired leases, including any objections to the proposed Cure Amounts with respect
thereto is [], 2013. As to the question of adequate assurance of future performance, the deadline
to file and serve any opposition and evidence in support thereof with respect to the assumption and
assignment of executory and unexpired leases, shall be at the Sale Hearing. The foregoing deadlines shall
be referred to as the “Applicable Objection Deadline.”

PLEASE TAKE FURTHER NOTICE that the failure of any person or entity to file an objection
on or before the Applicable Objection Deadline, or at the Sale Hearing, as applicable, shall be deemed to
constitute consent to the sale of the Property to the Buyer and the other relief requested in the Motion, and
be a bar to the assertion of any objection to the Motion, the Auction, the sale of the Property, or the
Debtor’s consummation and performance of the terms of the purchase and sale agreement entered into

1 with the Buyer (including, without limitation, the sale of the Property free and clear of all claims and
2 liens), if authorized by the Court.

3 **PLEASE TAKE FURTHER NOTICE** that failure of the non-debtor parties to the executory
4 contracts and unexpired leases that may be assumed and assigned in connection with the sale to object to
5 the assumption and assignment of their contracts and leases, including any objection to their proposed
6 Cure Amount or adequate assurance of future performance by the Buyer prior to the Applicable Objection
7 Deadline, or at the Sale Hearing, as applicable, shall constitute deemed acceptance of the relief requested
8 in the Motion with respect to such executory contracts and unexpired leases.

9 **PLEASE TAKE FURTHER NOTICE** that copies of the Sale and Assignment Motion and the
10 declaration filed in support thereof may be obtained by accessing PACER through the United States
11 Bankruptcy Court website for the Central District of California at www.cacb.uscourts.gov, or by
12 contacting the Debtor's general bankruptcy attorneys, Shenson Law Group, PC, Attn: Lauren Gans, by
13 telephone at (310) 400-5858, facsimile at (424) 251-8361, or email at lgans@shensonlawgroup.com.

14 DATED: [], 2013

/s/

Jonathan S. Shenson

Lauren N. Gans

SHENSON LAW GROUP PC

Counsel for 11850 Del Pueblo, LLC

EXHIBIT D

Jonathan S. Shenson (CA State Bar No. 184250)

jshenson@shensonlawgroup.com

Lauren N. Gans (CA State Bar No. 247542)

lgans@shensonlawgroup.com

SHENSON LAW GROUP PC

1901 Avenue of the Stars, Suite 360

Los Angeles, California 90067

Telephone: 310-400-5858

Counsel for 11850 Del Pueblo, LLC,

Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re

11850 Del Pueblo, LLC,
A California limited liability company,

Debtor and Debtor in
Possession.

Case No. 2:12-bk-44726

Chapter 11

**NOTICE OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES SUBJECT TO ASSUMPTION
AND ASSIGNMENT PURSUANT TO PENDING
SALE AND ASSIGNMENT MOTION; PROPOSED
CURE AMOUNTS WITH RESPECT THERETO;
HEARING AND DEADLINE FOR OBJECTIONS;
AND RELATED MATTERS**

Objection Deadline

[] __, 2013

Hearing

Date: [] __, 2013

Time: __: __: __m

Place: Courtroom 1545

255 E. Temple Street

Los Angeles, CA 90012

PLEASE TAKE NOTICE that on [] [], 2013 at __: __ __.m., or as soon thereafter as the matter can be heard, a continued hearing (the "Sale Hearing") on the Motion For Order Approving (1) Sale Procedures, (2) Sale of All or Substantially All Of Debtor's Assets Free And Clear of Liens, Claims and Interests Pursuant to Section 363(f) and (3) Assumption and Assignment Of Unexpired Leases and Executory Contracts Pursuant to Section 365 [Docket No.] ("Sale and Assignment Motion") which has been filed by 11850 Del Pueblo, LLC, the above captioned debtor and debtor in possession (the "Debtor")

1 will be held before the Honorable Robert Kwan, United States Bankruptcy Judge, in Courtroom 1675, in
2 the Roybal Federal Building, and Courthouse at 255 East Temple Street, Los Angeles, CA, 90012.

3 If you have received this Notice, you also should have received a copy of the Sale and Assignment
4 Motion, the supporting declarations, and notice of the Sale and Sale and Assignment Procedures.

5 **PLEASE TAKE FURTHER NOTICE** that among other relief, the Sale and Assignment Motion
6 requests entry of an Order pursuant to Bankruptcy Code section 365: (1) approving the assumption and
7 assignment of executory contracts and unexpired leases of the Debtor, (2) determining there are no
8 defaults under such contracts and leases other than the payment of certain amounts required by
9 Bankruptcy Code section 365(b)(1) (the "Cure Amounts") proposed by the Debtor, if any, and (3)
10 determining that the Buyer has demonstrated adequate assurance of future performance under such
11 contracts and leases.

12 **PLEASE TAKE FURTHER NOTICE** that attached as Exhibit A hereto is a schedule listing the
13 executory contracts and unexpired leases of the Debtor that pursuant to the Motion may potentially be
14 assumed and assigned to the Buyer at the Auction. **PARTIES RECEIVING THIS NOTICE SHOULD
15 CAREFULLY REVIEW WHETHER THEIR NAMES AND CONTRACTS OR LEASES ARE LISTED
16 ON THE ATTACHED SCHEDULE OF CONTRACTS AND LEASES THAT MAY BE ASSUMED
17 AND ASSIGNED PURSUANT TO THE MOTION.**

18 **PLEASE TAKE FURTHER NOTICE** that the Schedule of Contracts and Leases: (i) lists the
19 name of each non-debtor party to the Contracts and Leases, and (ii) specifies the Cure Amount, if any, that
20 the Debtor proposes to pay to cure any and all defaults under each of the Contracts and Leases in the event
21 it is assumed and assigned pursuant to the Sale Motion.

22 **PLEASE TAKE FURTHER NOTICE** that as soon as practicable after the conclusion of the
23 Auction, the Debtor will file with the Court a notice identifying the Buyer and stating which contracts
24 and leases will be assumed and assigned (the "Transferred Contracts List"). The Transferred Contracts
25 List will also be served via first-class mail on all non-Debtor counterparties to the contracts and leases set
26 forth on the Transferred Contracts List within three (3) business days of entry of the Sale Order, together
27 with a copy of the Sale Order.

28 **PLEASE TAKE FURTHER NOTICE** that the Debtor will request at the Sale Hearing a
determination, under Bankruptcy Code section 365, that payment of the Cure Amount, if any, listed for
each of the Contracts and Leases on the attached Exhibit A will cure any and all defaults thereunder as a
prerequisite to assumption and assignment of those Contracts and Leases that the Buyer has designated for
assignment. The Debtor believes that there are no defaults under the Contracts and Leases listed on
Exhibit A, and that there are no amounts that need to be paid in order to cure the Contracts and Leases
listed thereon, other than payment of the amounts listed on Exhibit A, if any. If any party is aware of any
defaults or other unpaid obligations under any of the Contracts and Leases, or any facts or circumstances
indicating that the Court should not grant the relief specified in the first sentence of this paragraph, then
such party must file a written response and evidence substantiating such facts or circumstances, as
directed in the following paragraph, or forever be barred from asserting any such claim or challenging any
such finding. The Debtor intends to rely on the absence of any such response and proceed with the
contemplated transactions in reliance thereon.

1 **PLEASE TAKE FURTHER NOTICE** that except as to the question of adequate assurance of
2 future performance, the deadline to file any opposition and evidence in support thereof with respect to the
3 assumption and assignment of executory contracts and unexpired leases, including any objections to the
4 proposed Cure Amounts with respect thereto is [], 2013. As to the question of adequate assurance
5 of future performance, the deadline to file and serve any opposition and evidence in support thereof with
6 respect to the assumption and assignment of executory and unexpired leases, shall be at the Sale Hearing.
7 The foregoing deadlines shall be referred to as the “Applicable Objection Deadline.”

8 **PLEASE TAKE FURTHER NOTICE** that failure of the non-debtor parties to the executory
9 contracts and unexpired leases that may be assumed and assigned in connection with the sale to object to
10 the assumption and assignment of their contracts and leases, including any objection to their proposed
11 Cure Amount or adequate assurance of future performance by the Buyer prior to the Applicable Objection
12 Deadline, or at the Sale Hearing, as applicable, shall constitute deemed acceptance of the relief requested
13 in the Motion with respect to such executory contracts and unexpired leases.

14 **PLEASE TAKE FURTHER NOTICE** that copies of the Sale Motion and the supporting
15 declarations may be obtained by accessing PACER through the United States Bankruptcy Court website
16 for the Central District of California at www.cacb.uscourts.gov, or by contacting the Debtor’s general
17 bankruptcy attorneys, Shenson Law Group, PC, Attn: Lauren Gans, by telephone at (310) 400-5858,
18 facsimile at (424)251-8361, or email at lgans@shensonlawgroup.com.

19 DATED: [], 2013

20 /s/
21 _____
22 Jonathan S. Shenson
23 SHENSON LAW GROUP PC
24 Counsel for 11850 Del Pueblo, LLC
25
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DECLARATION OF BIJAN H. RODD

I, Bijan Rodd, declare as follows:

1. I am a member of the above captioned debtor (the “Debtor”). Each of the facts contained in this declaration is based upon my personal knowledge and, if called as a witness to do so, I could competently testify thereto.

2. I make this declaration in support of the Debtor’s motion for the entry of approving: (1) the Sale and Assignment Procedures, including, without limitation, setting date and time for hearing on proposed sale and approving the form of notice for the auction and sale hearing, (2) the sale of the Property free and clear of liens, claims and interests pursuant to Bankruptcy Code section 363(f); and (3) assumption and assignment of unexpired leases and executory contracts, pursuant to Bankruptcy Code section 365 (the “Motion”). Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motions.

3. The Debtor is a California limited liability company that owns and operates a shopping mall located at 11820-11850 Valley Boulevard, El Monte, California 91732 (the “Property”). The Property is comprised of approximately 7 acres of real property and 92,000 square feet of retail space. The Debtor was formed and acquired the Property, its principal asset, in July 2006.

4. As a result of a failed attempt to remodel the Property and the deepening global economic crisis, the Debtor’s financial condition deteriorated and in December 2011, the Debtor was no longer able to service its debt and ceased making monthly payments on the Loan. On October 15, 2013, the Debtor filed this Case. While the Debtor is a debtor-in-possession, the Receiver is in custody of the Debtor’s shopping center.

5. As detailed in the Settlement Motion, the Noteholder, the Debtor and the Rodds have entered into a global settlement, subject to this Court’s approval, which provides a blue-print for resolving this Case through a consensual sale of the Property and an allocation of the sale proceeds in a manner which allows for the Debtor’s estate to share in a portion of the sale proceeds before the

1 Noteholder is potentially paid in full on its asserted secured claim and the exchange of general releases
2 (the "Settlement Agreement").

3 6. Pursuant to the terms of the Settlement Agreement, if the sale of the Property is not
4 consummated on or before the Relief Date, subject to a limited right to extend for up to an additional
5 thirty (30) days, the Noteholder will be entitled to relief from the automatic stay to foreclose on the
6 Property. As such, time is of the utmost importance and the Debtor would like to proceed with the
7 marketing and sale of the Property on an expedited timeline to avoid a foreclosure by the Noteholder.

8 7. The Sale and Assignment Procedures describe, among other things, the assets that are
9 subject to sale, the date and time of the Sale Hearing, the manner in which prospective bidders may gain
10 access to due diligence materials, the manner in which bidders may submit qualified bids and become
11 qualified bidders, the process for conducting the Auction and the ultimate selection of the Buyer. The
12 Sale and Assignment Procedures allow for the Debtor to designate a Stalking Horse Bidder (without
13 further order from the Court) and, in connection therewith, confer upon such stalking horse certain bid
14 protections including a break-up fee and expense reimbursement which, in the aggregate, does not
15 exceed 1.5 % of the gross amount of the stalking horse bid.

16 8. The Sale and Assignment Procedures will afford all qualified bidders the opportunity to
17 present a bid to acquire the Property (1) in the event there is a Stalking Horse Bidder, upon substantially
18 the same terms and conditions set forth in the purchase and sale agreement to be entered into by and
19 between the Debtor and Stalking Horse Bidder by offering an amount higher than that which the Stalking
20 Horse Bidder has agreed to pay under the agreement or (2) in the event there is no Stalking Horse
21 Bidder, upon such other terms as may be agreeable to the Debtor and the qualified bidder whether
22 pursuant to the PSA or otherwise.

23 9. Within five (5) business days of entry of the Sale and Assignment Procedures Order, the
24 Debtor will file with the Court and serve on the non-debtor parties to the Contracts and Leases, the
25 Contract Notice (a) indicating the Debtor's estimate of the Cure Amount with respect to all Contracts
26

1 and Leases that might be assigned in connection with a sale of the Property, (b) providing notice that
2 Qualified Bidders may propose to take an assignment of any of the Contracts and Leases, and (c)
3 providing notice of the deadline for responses or objections to the proposed assumption and assignment
4 of the Contracts and Leases, and the Cure Amount, if any, with respect thereto. As soon as practicable
5 after the conclusion of the Auction, the Debtor will file with the Court and serve on the affected parties a
6 notice identifying the Buyer and stating which Contracts and Leases will be assumed and assigned.

7 10. Prospective bidders have indicated that they may require a break-up fee and certain other
8 bid protections (or at least the opportunity to attain such) if there is going to be an auction. While the
9 Debtor does not know whether it will be interested in having a stalking horse bidder; the Sale and
10 Assignment Procedures preserve the Debtor's optionality in this regard as it authorizes the Debtor to
11 provide a break-up fee and expense reimbursement subject to a cap, which has been agreed to by the
12 Noteholder. If the Debtor and the Stalking Horse Bidder execute a signed asset purchase agreement that
13 includes the Break-Up Fee, the Debtor will provide the Court and parties in interest notice of the identity
14 of the Stalking Horse Bidder, a copy of the Stalking Horse Bidder's purchase and sale agreement, and
15 notice of any modifications to the proposed Break-Up Fee.

16 11. The Debtor will serve this Motion and all exhibits and by email, facsimile or next
17 business day delivery on: (a) the United States Trustee, (b) counsel for the Noteholder, (c) counsel for
18 the Rodds; (d) the Debtor's top twenty (20) unsecured creditors, (e) the Stalking Horse Bidder, if any, (f)
19 entities who have expressed an interest in purchasing the Property, (h) the state and federal agencies
20 required by Bankruptcy Rule 2002(j) and Local Rule 2002(b), and (i) all parties that have requested
21 notice of matters in this case (collectively, "Service Parties").

22 12. Within five business days of entry of the Sale and Assignment Procedures Order, the
23 Debtor intends to serve the Sale and Procedures Notice, by email, facsimile or next business day delivery
24 on the Service Parties, and by first class mail on all parties listed in the master mailing list that was filed
25 with the Debtor's chapter 11 petition. In addition, as required by Local Bankruptcy Rule 6004-1(f), a
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1 copy of the Sale and Procedures Notice will be provided to the clerk at the time of filing, together with
2 local form 6004-2, to be published on the Court's website.

3 13. Service of the Contract Notice and Other Pleadings: Within five business days of entry of
4 the Sale and Assignment Procedures Order, the Debtor intends to serve the Contract Notice, together
5 with the attachment contemplated thereby, by email, facsimile or next business day delivery on: (a) the
6 non-debtor parties to the Contracts and Leases (the "Contract and Lease Parties") and (b) the Service
7 Parties. At the time of service of the Contract Notice, the Debtor also will serve the Contract and Lease
8 Parties by first class mail with the Motion and the Sale and Assignment Procedures Notice.

9 14. The Noteholder is the only one known entity asserting a lien on the Property and, under
10 the Settlement Agreement the Noteholder has consented to the sale. According to the preliminary title
11 report from Chicago Title Company, there is a deed of trust on the Property in favor of Grocers Capital
12 Company in the amount of \$1,000,000.00 that predates the Deed of Trust. Since this was not an
13 exception or issue when the Loan closed, it is likely a "delayed reconveyance" which was mistakenly not
14 concluded although the loan was repaid. The Debtor is working to have this removed from the title
15 report.

16 15. The Debtor will submit additional evidence regarding the arms' length negotiation of the
17 final PSA entered into with the Buyer.

18 16. I believe that the proposed timetable for the auction will not limit the number of bidders
19 that would otherwise be inclined to participate in this process on a more drawn-out timeline. While
20 somewhat condensed the timeline affords sufficient time for the real estate brokers to effectively market
21 the Property. In addition, while formal marketing of the Property will begin shortly, as a result of the
22 Case and the nature of the local real estate investment community, a number of potential buyers have
23 already expressed, to both Debtor and the Noteholder, an interest in purchasing the Property.

1 17. I believe that the Settlement Agreement providing for the consensual sale of the Property
2 and an allocation of the sale proceeds in a manner which allows for the Debtor's estate to share in a
3 portion of the sale proceeds before the Noteholder is potentially paid in full on its asserted secured claim
4 and the exchange of general releases is in the best interests of the estate and creditors in this Case.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed this 11th day of October, 2013 at Los Angeles, California.

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Brian H. Rodd, a member of the Debtor

Main Document Page 54 of 55
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:

**SHENSON LAW GROUP PC
1901 AVENUE OF THE STARS, SUITE 360
LOS ANGELES, CALIFORNIA 90067**

A true and correct copy of the foregoing document entitled (*specify*): **MOTION FOR ORDERS APPROVING (1) SALE AND ASSIGNMENT PROCEDURES, (2) SALE OF ALL OR SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO SECTION 363(F) AND (3) ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS, PURSUANT TO SECTION 365 ; DECLARATION OF BIJAN F. RODD IN SUPPORT THEREOF** 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 10/14/2013, 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 -----, 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.

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, 10/14/2013 I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Personal Delivery
The Honorable Robert Kwan
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and
Courthouse 255 E. Temple Street, Suite 1682 /
Courtroom 1675 Los Angeles, CA 90012

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.

10/14/2013 Lauren N. Gans /s/ Lauren N. Gans
Date *Printed Name* *Signature*

Main Document Page 55 of 55
PROOF OF SERVICE OF DOCUMENT

- Jerome S Cohen jsc@jscbklaw.com
- Christopher D Crowell ccrowell@frandzel.com, efiling@frandzel.com;shom@frandzel.com
- Brian L Davidoff bdavidoff@greenbergglusker.com,
jreinglass@greenbergglusker.com;kwoodson@greenbergglusker.com;calendar@greenbergglusker.com;
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- Jonathon Shenson jshenson@shensonlawgroup.com
- Daniel I Singer bankruptcy@zievelaw.com
- Levi Reuben Uku Levireuben@gmail.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Reed S Waddell rwaddell@frandzel.com, efiling@frandzel.com;sking@frandzel.com
- Craig A Welin cwelin@frandzel.com, efiling@frandzel.com;bwilson@frandzel.com