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9 GROVE PLAZA PARTNERS, LLC

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 In re
13 GROVE PLAZA PARTNERS, LLC,
14 Debtor.

Case No. 16-30531-DM-11

Chapter 11

MOTION FOR AUTHORITY TO SELL REAL
PROPERTY PURSUANT TO CONFIRMED
PLAN FREE AND CLEAR OF LIENS
(Molina Health and Shops at Grove I)

Time and Place of Hearing and Auction:

Date: January 20, 2017
Time: 10:00 am
Place: 450 Golden Gate Avenue, 16th Floor
Courtroom 17
San Francisco, California

Honorable Dennis Montali

Proposed Purchaser

PRATHNA LLC, its related assignee, or highest and best bid

Assets to be Sold

Molina Health
(APN 1051-321-52)

Price

\$4,225,000.00

Shops at Grove I
(APN 1051-321-51 and APN 1051-321-55)

Located at 1151 E. Walnut Avenue and 2528-2538 S. Grove Avenue in Ontario, California

Secured Creditors

San Bernardino Tax Collector
Cantor Group II, LLC
Amor Architectural Corp.
JG Construction
Universal Site Services

Priority

Tax Priority
First
Second
Third
Fourth

1 COMES NOW Grove Plaza Partners, LLC, Debtor-in-Possession herein, and moves for entry
2 of an order approving the sale of certain real property described below, subject to the submission of
3 higher and better bids.

4 The Court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a
5 core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28
6 U.S.C. §§ 1408 and 1409.

7 This Motion is made pursuant to the Plan (defined below), Bankruptcy Code Sections 105(a),
8 363(b), 363(f), 1123(b)(4), Rule 6004 of the Federal Rules of Bankruptcy Procedure and Bankruptcy
9 Local Rule 6004-1. This Motion is based on the memorandum of points and authorities below, the
10 Declarations of George A. Arce, Jr. and Joshua Rey, filed herewith, any other pleadings or
11 declarations that may be filed in support hereof, and will be based upon such other evidence and
12 arguments as may be presented prior to or at the hearing on this Motion.

13 **I. BACKGROUND AND SUMMARY OF RELIEF SOUGHT**

14 **A. Proposed Sale**

15 1. The within case was commenced by filing a voluntary chapter 11 petition on May 13,
16 2016. A trustee has not been appointed and the Debtor is in possession of the estate.

17 2. The Debtor anticipates that, at the hearing set for January 11, 2017, or shortly
18 thereafter, the Court will have confirmed the Combined Plan of Reorganization and Disclosure
19 Statement (Dated October 21, 2016) (the “Plan”).

20 3. The Plan provides the Debtor with authority to sell certain real property free and clear
21 of liens. Such properties are identified in the Plan as well as the Supplemental Disclosure Regarding
22 Assessor’s Parcel Numbers filed on December 9, 2016 (the “Supplemental Disclosure”), as follows:

23

<u>Group Name</u> (from Part 1 of Plan)	<u>Parcel Description</u>	<u>APN</u>	<u>Minimum Value</u>
Anchor Tenants	99¢ Only & Ross	1051-321-62	\$4,970,464.14
Molina Health	Molina Healthcare	1051-321-52	\$1,569,620.25
Shop Space	Shops at Grove I	1051-321-51	\$2,652,963.43
		1051-321-55	
	Shops at Grove II	1051-321-63	\$1,385,157.44
	Shops at Grove III	1051-171-42	\$2,959,769.43
Front Pad	Pad to Grove Plaza	1051-171-44	\$1,962,025.32

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1 4. The property to be sold consists of Molina Healthcare (APN 1051-321-52) and the
2 Shops at Grove I (APN 1051-321-51 and APN 1051-321-55) located at 1151 E. Walnut Avenue and
3 2528-2538 S. Grove Avenue in Ontario, California (the "Property"). The Plan provides that the
4 Debtor shall sell such parcels for at least \$4,222,583.68. The Debtor proposes to sell the Property
5 for the gross price of \$4,225,000.00, subject to higher and better bids.

6 5. The San Bernardino Tax Collector, Cantor Group II, LLC, Amor Architectural
7 Corporation, JG Construction and Universal Site Services (collectively, the "Secured Creditors") all
8 assert liens against the Property and other real property collateral in the aggregate amount of
9 approximately \$14,656,145.33. \$2,847,300.52 of Cantor Group's claim is disputed.

10 6. Part 1 of the Plan provides, *inter alia*, as follows:

11 Secured creditors shall be afforded any rights to credit bid to which they are
12 otherwise entitled under the Bankruptcy Code and applicable law. Each sale shall
13 be free and clear of the secured claims of creditors identified in the motion and
14 served with notice. All liens shall attach to the proceeds of sale with the same
15 validity, extent, priority and amount as immediately prior to the sale, including
16 any proceeds held in the disputed claims reserve. Notwithstanding the foregoing,
17 escrow fees, transfer taxes and other ordinary closing costs may be paid from the
18 proceeds of each sale; provided, however, that the Debtor's broker's commissions
19 shall not be paid until Cantor Group II, LLC's claim is paid (or paid and reserved
20 for) in full. The sales may be consummated notwithstanding any anti-assignment,
21 consent or similar clause in any loan agreement.

22 ***

23 The allowed claims of secured creditors will be paid from the proceeds of each
24 sale until paid in full, prior to any other class of claims, in their order of priority
25 under California law. Debtor shall pay Cantor Group II, LLC all principal and
26 interest at the applicable contract and default rate of interest through the date of
27 confirmation of this Plan and thereafter until paid in full. Debtor shall pay other
28 secured creditors in full with interest at the applicable contract rate or legal rate
(10% per annum assumed above; San Bernardino Tax Collector to be paid at
effective rate of 18% per annum).

 7. This Motion requests authority to sell the Property free and clear of all liens, claims
and encumbrances of the Secured Creditors pursuant to the Plan.

 8. Prathna LLC has agreed to purchase the Property for the gross price of
\$4,225,000.00. The sale is subject to higher and better bids. A copy of the Purchase Agreement (the
"PSA") is attached as Exhibit "A" to the Declaration of George A. Arce, Jr., filed herewith.

1 9. Marcus & Millichap Real Estate Investment Services represents the Debtor
2 exclusively. Marcus & Millichap earns a commission of four percent (4%) of the gross price of each
3 sale. This Motion requests approval of Marcus & Millichap's commission but does not request
4 authority to pay it, reserving payment in accordance with the excerpt of the Plan quoted above. If
5 the Property is sold to Prathna for \$4,225,000.00, Marcus & Millichap's commission will be
6 \$168,903.34.

7 10. This Motion requests a determination that Red Bridge Partners is a good-faith buyer
8 and is entitled to the protections of Bankruptcy Code Section 363(m). Prospective bidders will be
9 requested to provide a declaration in support of a finding of good faith including those matters set
10 forth at Item 5 of the Court's Guidelines re Sale Orders, and the successful bidder should be deemed
11 a good faith purchaser within the meaning of Bankruptcy Code Section 363(m).

12 11. The Debtor requests that the provisions of Rule 62(a) of the Federal Rules of Civil
13 Procedure and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure that would stay the order
14 approving the sale be waived under the circumstances.

15 **B. Proposed Bidding and Sale Procedures**

16 12. The Debtor requests approval of the following bidding and sale procedures. The
17 Debtor may request approval of such procedures in advance by way of motion.

18 • The auction shall be held on January 20, 2017, at 10:00 am, in the courtroom
19 of the Honorable Dennis Montali, located at 450 Golden Gate Avenue, 16th Floor, Courtroom 17, in
20 San Francisco, California, or at another time or location if ordered by the Court and announced at the
21 aforesaid time and place.

22 • All potential bidders must contact counsel for the Debtor at least three (3)
23 business days prior to the hearing. At the time and place of auction, all bidders shall present the
24 Debtor with evidence of funds or financing acceptable to the Debtor in an amount necessary to meet
25 the initial bid plus the minimum initial overbid amount (\$4,275,000.00).

26 • The minimum initial overbid shall be \$50,000, and the minimum amount of
27 all subsequent bids shall be \$50,000. Bids shall be accepted from bidders or their authorized
28 representatives who are present at the auction in person; bids by telephone, facsimile, email, letter or

1 similar means will not be accepted unless the Debtor expressly agrees otherwise.

2 • All bids shall be on terms equivalent to or better than the terms provided in
3 the PSA, including terms with respect to due diligence, inspections, contingencies and the time for
4 closing. Deadlines set and running under the PSA will continue to run and will not be extended.
5 The highest and best bid shall be reduced to a written agreement on or before three (3) calendar days
6 following the hearing on approval of the sale.

7 • Secured Creditors shall be afforded any rights to credit bid to which they are
8 otherwise entitled under the Bankruptcy Code and applicable law. For the purposes of this Motion
9 only, Cantor Group's credit bid may include the disputed amount of its claim; provided, however,
10 that payment thereof shall not terminate any litigation or proceedings involving the claim. The
11 Debtor reserves all rights with respect thereto.

12 • The sale shall be free and clear of all liens, claims and encumbrances of the
13 Secured Creditors. All such liens shall attach to the proceeds of sale with the same validity, extent,
14 priority and amount as immediately prior to the sale, including any proceeds held in the disputed
15 claims reserve. Sale proceeds subject to such liens shall be promptly distributed to the Secured
16 Creditors in their order of priority upon close of escrow, except for proceeds held in the disputed
17 claims reserve.

18 • The sale shall be on an "as is," "where is," and "with all faults" basis.

19 • If Prathna is overbid and is not the successful bidder, all deposits shall be
20 refunded. The successful bidder shall deposit \$100,000.00 to escrow within three (3) calendar days
21 of the hearing. Said deposit shall be refundable only upon terms equivalent to or better than those
22 provided in the PSA; otherwise it shall be non-refundable. Deposits shall be applied toward the
23 gross purchase price.

24 **II. SUMMARY OF PROPOSED SALE**

25 13. The following is a summary of the material terms of the PSA:

26 a. Prathna, or its related assignee, will purchase the Property for the gross price
27 of \$4,225,000.00.

28 b. The sale will close on or before February 20, 2017, unless extended pursuant

1 to the terms of the agreement or order of the Court.

2 c. The agreement provides for a due diligence period ending on December 15,
3 2017. The agreement provides for a financing contingency to be waived on or before February 14,
4 2017. Approximately 65% of the gross price is to be financed.

5 d. Prathna has deposited \$50,000.00 to escrow. As of the time of hearing,
6 Prathna will have deposited an additional \$50,000.00, for a total of \$100,000.00. Said deposits are
7 refundable only if: (1) the agreement is terminated prior to removal of waiver of the contingencies
8 provided in the PSA; or (2) Prathna is overbid and is not the successful bidder.

9 e. Unpaid real property taxes shall be pro-rated. Escrow fees shall be split
10 evenly between the buyer and seller. All other closing costs shall be allocated in accordance with
11 the custom and practice prevailing in Riverside County.

12 The foregoing summary is provided for the convenience of the Court and parties in interest,
13 and the terms of the PSA shall control in the event of any discrepancy.

14 **III. ANALYSIS OF SALE**

15 **A. Marketing of Assets**

16 14. The Property was appropriately marketed. The property has been exposed to Loopnet
17 – Premium, Costar Property, Mnet (Marcus & Millichap Internal System) and CREXI (Commercial
18 Real Estate Exchange, Inc.). Moreover, the property has been e-blasted out on multiple occasions to
19 approximately 20,000 email contacts that consist of agents and principles. This resulted in over
20 5,000 email views. Additionally, the Property has been presented during sales meetings at Marcus
21 Millichap’s Southern California offices including Ontario, Newport Beach, Los Angeles, Encino and
22 San Diego. Those efforts resulted in more than 20 inquiries and more than 10 property tours to
23 numerous buyers. Prathna’s offer was the highest offer received, and the Debtor has determined the
24 terms thereof to be the best achievable under the circumstances.

25 **B. Alternatives to Sale**

26 15. The most likely alternative to the proposed sale is for Cantor Group to foreclose its
27 lien against the Property. The Debtor expects that this would leave unsecured creditors with no
28 recovery. Accordingly, the Debtor has determined that the proposed sale is in the best interests of

1 the estate.

2 **C. No Relationship to Purchaser**

3 16. Neither the Debtor, its manager (Centers Dynamic) nor its Responsible Individual
4 (George A. Arce, Jr.) have any known relationship to Prantha. Prantha has no known relationship
5 with any of the estate's major creditors or known parties in interest. The proposed sale is the result
6 of arms-length negotiations. Prantha may assign the Property to a related assignee. Prantha expects
7 that such assignee would be a subsidiary of Prantha or owned by a combination of Prantha's existing
8 investors, or both. Prantha does not contemplate assigning the Property to any individual or entity
9 related to the Debtor.

10 **D. Insider Compensation**

11 17. Except for the aforesaid purchase price, Prantha has not offered any compensation to
12 the Debtor, its manager, its responsible individual or any employee or agent thereof. To the best of
13 the Debtor's knowledge, Prantha does not contemplate paying any consideration to any person or
14 entity other than the Debtor in connection with the sale.

15 **IV. ARGUMENT**

16 **A. THE PROPOSED SALE IS IN THE BEST INTERESTS OF THE ESTATE**

17 18. The Debtor is entitled to sell the Property upon the terms described above because
18 such a sale is provided for in the Plan and is within the Debtor's reasonable business judgment. *In re*
19 *Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (standard under 11 U.S.C. §
20 363(b)(1) is "business judgment"); *In re Ernst Home Center, Inc.*, 209 B.R. 974, 979 (Bankr.
21 W.D.Wash. 1997). "[T]he bankruptcy court should presume that the debtor-in-possession acted
22 prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in
23 the best interests of the bankruptcy estate." *In re Pomona Valley Medical Group, Inc.*, 476 F.3d 665,
24 670 (9th Cir. 2007) (applying business judgment standard). Where a sale is proposed in good faith
25 and upon a reasonable basis, "[t]he court will not entertain objections to a trustee's conduct of the
26 estate." *In re Curlew Valley Associates*, 14 B.R. 506, 513-514 (Bankr. D. Utah 1981); *see also In re*
27 *Southern Biotech, Inc.*, 37 B.R. 318, 322-323 (Bankr. M.D. Fla. 1983). This is because the
28 "[Debtor], not the Court, is selling this property." *In re Gulf States Steel, Inc.*, 285 B.R. 497, 516

1 (Bankr. N.D. Ala. 2002).

2 19. The Debtor submits that the sale is in the best interests of the estate. An auction sale
3 is generally considered to establish sufficient value for the assets being sold. *See, eg., In re Abbotts*
4 *Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149 (3rd Cir. 1986). The Ninth Circuit has held that the
5 precise value of an asset will only be recognized at, and as a result of, the sale of the asset. *Arnold &*
6 *Baker Farms v. United States*, 85 F.3d 1415, 1421 (9th Cir. 1996). As discussed above, the Property
7 will be subject to overbid.

8 **B. THE STAYS PROVIDED IN RULE 62(a) OF THE FEDERAL RULES**
9 **OF CIVIL PROCEDURE AND RULE 6004(h) OF THE FEDERAL**
10 **RULES OF BANKRUPTCY PROCEDURE SHOULD BE WAIVED**

11 20. The Debtor requests that the stays imposed by Rule 62(a) of the Federal Rules of
12 Civil Procedure and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure be waived. All
13 creditors and parties-in-interest have been provided with notice and afforded an opportunity to
14 object, and no party will be prejudiced by waiver of the applicable stays.

15 **V. PRAYER FOR RELIEF**

16 **WHEREFORE**, the Debtor prays for an order as follows:

- 17 1. Granting the Motion and approving the sale to Prantha or the party that makes the
18 highest and best bid;
- 19 2. Approving the proposed bidding and sale procedures;
- 20 3. Authorizing the Debtor to consummate and carry out the actions reasonably necessary
21 to close the sale;
- 22 4. Approving the sale free and clear of all liens, claims and encumbrances of the
23 Secured Creditors;
- 24 5. Waiving the stays imposed by Rule 62(a) of the Federal Rules of Civil Procedure and
25 Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and
- 26 6. For such other and further relief as is appropriate in the premises.

27 DATED: December 23, 2016

MACDONALD FERNANDEZ LLP

28 By: /s/ Reno F.R. Fernandez III
Reno F.R. Fernandez III
Attorneys for Debtor-in-Possession,
Grove Plaza Partners, LLP