

1 BRAD D. KRASNOFF (State Bar No. 125065)  
*bkrasnoff@dgdk.com*  
2 AARON E. DE LEEST (State Bar No. 216832)  
*adeleest@dgdk.com*  
3 SONIA SINGH (State Bar No. 311080)  
*ssingh@dgdk.com*  
4 DANNING, GILL, DIAMOND & KOLLITZ, LLP  
1900 Avenue of the Stars, 11<sup>th</sup> Floor  
5 Los Angeles, California 90067-4402  
Telephone: (310) 277-0077  
6 Facsimile: (310) 277-5735

7 Attorneys for Amy L. Goldman, Chapter 7 Trustee

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

11 In re  
12 VARDOUI MADATIAN,  
13 Debtor.

Case No. 1:16-bk-10048-MB  
Chapter 7

**TRUSTEE'S NOTICE OF MOTION AND  
MOTION TO: (1) APPROVE SALE OF  
REAL PROPERTY COMMONLY  
KNOWN AS 14202 DELANO STREET,  
VAN NUYS, CALIFORNIA FREE AND  
CLEAR OF LIENS AND CLAIMS,  
(2) AUTHORIZE PAYMENT OF REAL  
ESTATE BROKERS' COMMISSIONS,  
AND (3) FIND THAT THE BUYERS ARE  
GOOD FAITH PURCHASERS WITHIN  
THE MEANING OF 11 U.S.C. § 363(m);  
MEMORANDUM OF POINTS AND  
AUTHORITIES, DECLARATIONS OF  
AMY L. GOLDMAN, DERRICK  
VARTANIAN, AND SAM S. LESLIE, AND  
REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT THEREOF**

Date: January 30, 2019  
Time: 11:00 a.m.  
Place: Courtroom 303  
21041 Burbank Boulevard  
Woodland Hills, California 91367

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1	
2	
3	MEMORANDUM OF POINTS AND AUTHORITIES .....6
4	I. FACTUAL STATEMENT .....6
5	A. Bankruptcy Background .....6
6	B. The Property .....6
7	C. Title to the Property .....6
8	D. The Property and Tenants .....7
9	E. The Trustee’s Authority to Operate the Property and Use Cash Collateral .....7
10	F. The Marketing Efforts for the Property .....7
11	G. The Proposed Sale to the Buyers .....8
12	H. Liens and Claims Against the Property and Proposed Treatment Thereof .....9
13	1. Identity of Liens and Claims.....9
14	2. Proposed Treatment of Liens and Claims.....9
15	I. Proposed Overbid Procedures.....10
16	J. Approval of Payment of Commissions to Real Estate Brokers Through Escrow .....11
17	K. Good Faith Purchaser Status for Buyers and Backup Buyer .....11
18	L. Notice to Creditors and Potential Overbidders .....12
19	II. LEGAL ARGUMENT .....12
20	A. The Sale is Supported by the Trustee’s Sound Business Judgment and is in the Best Interests of the Estate and its Creditors .....12
21	B. The Court Should Approve the Sale of the Property Free and Clear of Liens and Claims .....13
22	1. Penalties .....14
23	C. Good Faith Purchaser Finding .....15
24	D. The Court Should Waive the Effects of Federal Rule of Bankruptcy Procedure 6004(h) .....15
25	
26	
27	III. CONCLUSION.....16
28	

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
3 DECLARATION OF AMY L. GOLDMAN .....	18
4 DECLARATION OF DERRICK VARTANIAN .....	21
5	
6 DECLARATION OF SAM S. LESLIE.....	24

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**CASES**

*Ewell v. Diebert (In re Ewell)*,  
958 F.2d 276, 281 (9th Cir. 1992) ..... 15

*In re Continental Air Lines, Inc.*,  
780 F.2d 1223 (5th Cir. 1986) ..... 12

*In re Derivium Capital, LLC*,  
380 B.R. 392 (Bankr. D.S.C. 2007)..... 12, 13

*In re Lahijani*,  
325 B.R. 282 (B.A.P. 9th Cir. 2005) ..... 13

*In re Lionel Corp.*,  
722 F.2d 1063 (2d Cir. 1983) ..... 12, 13

*In re Pine Coast Enters., Ltd.*,  
147 B.R. 30, 33 (Bankr. N.D. Ill. 1992) ..... 15

*Kham and Nate’s Shoes No. 2 v. First Bank*,  
908 F.2d 1351, 1355 (7th Cir. 1990) ..... 15

*Stephens Indus., Inc. v. McClung*,  
789 F.2d 386 (6th Cir. 1986) ..... 13

**STATUTES**

11 U.S.C. § 363(b)(1) ..... 12

11 U.S.C. § 363(f)..... 13, 14

11 U.S.C. § 363(f)(3)..... 14

11 U.S.C. § 363(f)(4)..... 14

11 U.S.C. § 363(f)(5)..... 14

11 U.S.C. § 363(m)..... passim

11 U.S.C. § 704(a)(1) ..... 12

11 U.S.C. § 724(a) ..... 14

11 U.S.C. § 724(a)(4) ..... 14

11 U.S.C. § 726(a)(4) ..... 14

California Probate Code § 18200 ..... 7

**TABLE OF AUTHORITIES**  
**(Continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**RULES**

Fed. R. Bank. Proc. 6004(h) .....	4, 15, 16
Local Bank. R. 6004-1(c) .....	1
Local Bank. R. 9013-1 .....	1
Local Bank. R. 9013-1(f) .....	4
Local Bank. R. 9013-1(h) .....	5

1 NOTICE IS GIVEN that on January 30, 2019, at 11:00 a.m., or as soon thereafter as the  
2 matter may be heard, in Courtroom 303 of the United States Bankruptcy Court, 21041 Burbank  
3 Boulevard, Woodland Hills, California, Amy L. Goldman, the Chapter 7 trustee (the "Trustee") for  
4 the estate of Vardoui Madatian (the "Debtor"), will and hereby does move the Court (the "Motion")  
5 for an order: (1) under 11 U.S.C. § 363 and Local Bankruptcy Rules 6004-1(c) and 9013-1 for an  
6 order confirming the sale by the Trustee of all of the estate's right, title and interest in a parcel of  
7 real property improved with a 6-unit apartment building commonly known as 14202 Delano Street,  
8 Van Nuys, California 91401, assessor's parcel number 2240-021-012 (the "Property"), to Zaven  
9 Grigorian and Vehanoosh Grigorian (the "Buyers") for \$1,120,000 or, alternatively, to a successful  
10 overbidder, or backup buyer if applicable; (2) authorizing the Trustee to pay commissions to the  
11 real estate brokers; and (3) finding that the Buyers and any backup buyer are good faith purchasers  
12 within the meaning of 11 U.S.C. § 363(m).

13 Pursuant to Local Bankruptcy Rule 6004-1(c), the Trustee provides the following  
14 information:

15 **A. Date, Time and Place of Hearing:** The date, time and place of the hearing on the  
16 Motion are set forth above. The Court may entertain higher and better bids at the time of the  
17 hearing on the Motion.

18 **B. Proposed Buyer:** The Buyers are Zaven Grigorian and Vehanoosh Grigorian.

19 **C. Description of the Property to be Sold:** The Trustee proposes to sell all of the  
20 estate's right, title and interest in the Property to the Buyers. The Property is a 6-unit apartment  
21 building.

22 **D. Terms and Conditions of the Proposed Sale, Including the Price and All**  
23 **Contingencies:** The terms and conditions of the sale of the Property to the Buyers are  
24 memorialized in the purchase and sale agreement (the "Sale Agreement") attached as Exhibit "1" to  
25 the Declaration of Amy L. Goldman (the "Trustee's Declaration") attached hereto. Without  
26 limiting or altering the terms detailed in the Sale Agreement, those terms are summarized as  
27 follows: the purchase price for the Property is \$1,120,000 cash. The Property is being sold "as is"  
28

1 and “where is,” with no warranty or recourse whatsoever. There are no contingencies except for  
2 Court approval.

3 No credit will be given to the Buyers for any tenant deposits. The Trustee will credit the  
4 Buyers through close of escrow pro rata for any rents actually received that month. The Buyers  
5 shall, at their own expense, pay for any tenant deposits or refunds that may be due to the tenants  
6 after the close of escrow. The Trustee has further agreed to assign unpaid rent to the Buyers  
7 without any representation or recourse.

8 **E. Whether the Proposed Sale is Free and Clear of Liens, Claims and Interests, or**  
9 **Subject to Them:** The Trustee proposes to sell the Property free and clear of all liens, claims and  
10 interests, including the liens in favor of the County of Los Angeles (the “County”), JPMorgan  
11 Chase Bank, N.A. (“Chase”) and Iris Manuel (“Manuel”), which will be removed from the  
12 Property, with the allowed amounts of certain liens and claims to be paid through escrow, and any  
13 disputed amounts to attach to like amounts to the net sale proceeds, with the same force, effect,  
14 validity and priority that they had as of the petition date as against the Property. If the Trustee no  
15 longer disputes an amount, in whole or in part, then he requests authority to pay said amount from  
16 the net sale proceeds without any further notice, hearing or order of the Court.

17 **F. Whether the Proposed Sale is Subject to Higher and Better Bids:** The proposed  
18 sale is subject to overbids. Any person wishing to tender an overbid should deliver to the Trustee  
19 not later than 24 hours prior to the hearing on this Motion, a deposit in the form of a cashier’s  
20 check in the amount of \$56,500 payable to “Amy L. Goldman, Chapter 7 Trustee.” The minimum  
21 initial overbid amount is \$1,130,000, and bidding, if any, shall proceed in increments of \$1,000.  
22 Any person wishing to tender an overbid will be required to sign an overbid form, substantially in  
23 the form attached to the Trustee’s Declaration as Exhibit “2.” All overbids also must be  
24 accompanied by proof of funds demonstrating the party will be able to close the sale within 30 days  
25 of the entry of an order approving this Motion. The Trustee holds discretion in accepting or  
26 rejecting all overbids, subject to Court approval.

27 The prevailing overbidder’s deposit shall be nonrefundable in the event that the Court  
28 confirms the sale to that person but, for any reason whatsoever, the person fails to close the sale

1 timely. The overbidding party will be bound by all of the terms of the proposal set forth in the Sale  
2 Agreement proposed for confirmation except as to price, without contingencies, including any  
3 financing contingency, and shall close the escrow no more than 30 but no less than 15 calendar  
4 days after the entry of an order approving this Motion.

5 The Trustee also proposes that the Court confirm a back-up buyer so that, in the event the  
6 prevailing buyer fails to close the sale timely, the Trustee may sell the Property to the back-up  
7 buyer for the amount of such back-up buyer's last bid. The Trustee is authorized to hold the back-  
8 up buyer's deposit pending the closing of the sale to the prevailing bidder. If the prevailing bidder  
9 closes the sale, the Trustee will immediately return the back-up buyer's deposit. If the prevailing  
10 buyer fails to close the sale timely, the back-up buyer will be bound by all of the terms of the  
11 proposal set forth in the Sale Agreement proposed for confirmation except as to price, without  
12 contingencies, including any financing contingency, and shall close the escrow within 10 calendar  
13 days after written notice from the Trustee that the prevailing party has defaulted. The back-up  
14 buyer's deposit shall be nonrefundable in the event that the back-up buyer fails to close the sale  
15 timely.

16 **G. The Consideration to be Received by the Estate, Including Estimated**  
17 **Commissions, Fees and Other Costs of Sale:** The estate will receive the purchase price, net of  
18 payment of: (1) allowed debts secured by liens in favor of the County; (2) allowed debts secured by  
19 liens of Chase and Manuel; and (3) costs of sale (including brokers' commissions described in  
20 greater detail below), which costs of sale are estimated to be approximately 8%. The estimated net  
21 sale proceeds to be received by the estate are approximately \$331,567.45, calculated as follows:

22	Purchase Price	\$1,120,000.00
23	Less: County Lien	(\$4,714.03, estimate)
24	Chase Lien	(\$453,528.54)
25	Manuel Lien	(\$240,589.98)
26	Costs of Sale (8%)	(\$89,600.00)
27	Net Equity	\$331,567.45

28



1           **H. Brokers' Commissions:** The Trustee also seeks authority from the Court  
2 authorizing her to pay commissions to the brokers. Such commissions would aggregate 6% of the  
3 purchase price, with 3% paid to Keller Williams Silicon Beach (broker for the Trustee) and 3% to  
4 1st Eagle Realty Inc. in its capacity as broker for the Buyers. If the sale is confirmed to an  
5 overbidder represented by a different broker, the Buyers' broker's commission would be paid to  
6 that broker.

7           **I. Possible Tax Consequences to the Estate:** Based on a proposed sales price of  
8 \$1,120,000, the Trustee's accountants project current estimated Federal and California  
9 administrative taxes totaling approximately \$69,525. In reaching that conclusion, the Trustee's  
10 accountants assumed (a) the existence of a tax basis only from the review of the underlying deeds,  
11 and (b) primary deductions consisting of estimated sale costs, estimated administrative expenses,  
12 known capital improvements made on the Property and the Iris Manuel claim.

13           **J. Date by which any Objections Must be Filed and Served:** Any objection to the  
14 Motion must be filed and served not later than 14 days before the date of the hearing described  
15 below.

16           **K. Good Faith Purchaser:** The Trustee also seeks a Court ruling that the party to  
17 whom the Court confirms the sale, and any backup buyer, is a good faith purchaser for purposes of  
18 11 U.S.C. § 363(m).

19           **L. FRBP 6004(h):** If no objections are made to the Motion, the Trustee requests that  
20 the Court waive the applicability of Federal Rule of Bankruptcy Procedure 6004(h).

21           This Motion is based upon the separate Notice of Motion, the attached Memorandum of  
22 Points and Authorities, the Declarations of Amy L. Goldman, Derrick Vartanian, and Sam S.  
23 Leslie, the Request for Judicial Notice, the papers and pleadings on file in this case, and such other  
24 evidence as may be presented to the Court.

25           NOTICE IS GIVEN that pursuant to Local Bankruptcy Rule 9013-1(f), each interested  
26 party opposing, joining in, or responding to the Motion must, not later than 14 days before the date  
27 of the hearing, file with the Clerk of the Bankruptcy Court and serve upon the Trustee's general  
28 counsel, Brad D. Krasnoff and Sonia Singh, Danning, Gill, Diamond & Kollitz, LLP, 1900 Avenue

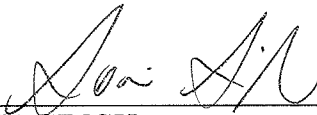
1 of the Stars, 11th Floor, Los Angeles, California 90067-4402, and the United States Trustee, 915  
2 Wilshire Blvd., Suite 1850, Los Angeles, California 90017, either: (i) a complete written statement  
3 of all reasons in opposition thereto or in support or joinder thereof, declarations and copies of all  
4 photographs and documentary evidence on which the responding party intends to rely, and any  
5 responding memorandum of points and authorities; or (ii) a written statement that the Motion will  
6 not be opposed.

7 Pursuant to Local Bankruptcy Rule 9013-1(h), failure to timely file and serve papers may  
8 be deemed by the Court to be consent to the granting of the Motion.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: January 9, 2019

DANNING, GILL, DIAMOND & KOLLITZ, LLP

By:   
SONIA SINGH  
Attorneys for Amy L. Goldman, Chapter 7 Trustee

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 FACTUAL STATEMENT

4 A. Bankruptcy Background

5 On January 8, 2016 (the "Petition Date"), Vardoui Madatian (the "Debtor") filed a  
6 voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy  
7 Code"), commencing bankruptcy case no. 1:16-bk-10048-MB (the "Bankruptcy Case"). The Court  
8 entered its order converting the Bankruptcy Case to Chapter 7 on February 15, 2018 (*docket no.*  
9 *186*). Thereafter on February 20, 2018, Amy L. Goldman was appointed as the Chapter 7 trustee  
10 (the "Trustee") for the estate and continues to serve in that capacity for the benefit of the estate and  
11 its creditors.

12  
13 B. The Property

14 The Debtor admitted on her Schedule A/B filed on January 22, 2016 (*docket no. 9*), that she  
15 owned a parcel of real property commonly known as 14202 Delano Street, Van Nuys, California  
16 91401 (the "Property"), that is improved with a 6-unit apartment building. However, title to the  
17 Property appears to be vested in the Debtor's revocable living trust. The Debtor's schedules reflect  
18 that the value of the Property was \$750,000. The Los Angeles County Tax Assessor has assigned  
19 assessor's parcel number 2240-021-012 to the Property.

20 In her Schedule D (*docket no. 9*), the Debtor scheduled two liens against the Property: a lien  
21 for \$400,000 in favor of Chase Mortgage and a lien for \$113,393.95 in favor of The Gary Hugh  
22 Green Law Firm c/o Iris Manuel.

23  
24 C. Title to the Property

25 Title to the Property appears to be vested in the Debtor's trust, "The Vardoui Rosa  
26 Madatian Living Trust, UTD 10-6, 2009, Varadoui R. Madatian, Trustee." As a revocable living  
27 trust, the Debtor's trust is subject to the claims of creditors who can pursue their claims directly  
28 against the Debtor's interest in the trust. Real property in a trust in which a settlor retains a right of

1 revocation is subject to the claims of creditors. See California Probate Code § 18200. As the  
2 Chapter 7 trustee of the Debtor’s estate, the Trustee has the power to revoke the Debtor’s trust, and  
3 hereby does so.

4  
5 D. The Property and Tenants

6 The Property consists of a 6 unit apartment complex. Presently, there is one vacant unit –  
7 Unit 6. The Trustee has encountered numerous difficulties with the Debtor, the Debtor’s family  
8 members and tenants at the Property in collecting rents from the Property. Accordingly, the  
9 Trustee filed her motion to employ a real property manager Raford Management Company, Inc.  
10 (“Raford”) (*docket no. 301*), which the Court granted in its order entered on October 16, 2018  
11 (*docket no. 315*). The Trustee and Raford, through an unlawful detainer attorney, have commenced  
12 unlawful detainer actions for tenants’ failure to make rental payments – to date, two unlawful  
13 detainer actions have been commenced for Units 1 and 3.

14 The Trustee has requested copies of the lease agreements for the tenants at the Property  
15 from the Debtor numerous times, but despite her efforts, the Trustee has been unable to obtain  
16 copies of these agreements. Accordingly, the Trustee is informed and believes that all the existing  
17 tenants in the Property have month to month tenancies, and therefore there are no leases with those  
18 tenants to be assumed and assigned to the buyer.

19  
20 E. The Trustee’s Authority to Operate the Property and Use Cash Collateral

21 Pursuant to orders of the Court entered on April 17, 2018 (*docket no. 226*) and December  
22 20, 2018 (*docket no. 339*), the Trustee obtained authority to operate the Property and use the cash  
23 collateral rents generated therefrom to maintain the Property.

24  
25 F. The Marketing Efforts for the Property

26 Pursuant to the order of the Court entered on December 12, 2018 (*docket no. 331*), the  
27 Trustee retained Keller Williams Silicon Beach Commercial (the “Broker”) to list and market the  
28 Property – the listing price was \$900,000. The Broker has been marketing the Property since that

1 time, listed the Property on the MLS (mls.com), Loopnet and Costar, created a website,  
2 14202DelanoSt.com, has created an Offering Memorandum for the Property that was sent to  
3 anyone who inquired about the Property, and has received 14 offers to date.

4 Following the receipt of numerous offers, the Trustee accepted the highest non-contingent  
5 offer from Zaven Grigorian and Vehanoosh Grigorian (the "Buyers") of \$1,120,000 and received  
6 the required deposit.

7 The Broker will post the hearing date for the Motion on the MLS, and the hearing date will  
8 also be posted on the Court's website, as well as the website of the Trustee's counsel.

9

10 G. The Proposed Sale to the Buyers<sup>1</sup>

11 The Trustee has entered into a proposed purchase and sale agreement with the Buyers to  
12 purchase the estate's interest in the Property (the "Sale Agreement"), which is attached as Exhibit  
13 "1" to the Declaration of Amy L. Goldman (the "Trustee's Declaration") attached hereto. The  
14 Buyers are represented by 1st Eagle Realty Inc. The proposed sale of the Property is "as is,"  
15 "where is," with no warranty or recourse whatsoever, subject only to overbid and Court approval.  
16 The \$1,120,000 purchase price will be paid in cash. The Buyers' purchase of the Property is not  
17 subject to any contingencies, other than entry of an order approving the sale.

18 No credit will be given to the Buyers for any tenant deposits. The Trustee will credit the  
19 Buyers through close of escrow pro rata for any rents actually received that month. The Buyers  
20 shall, at their own expense, pay for any tenant deposits or refunds that may be due to the tenants  
21 after the close of escrow. The Trustee has further agreed to assign unpaid rent to the Buyers  
22 without any representation or recourse.

23

24

25

26

27 <sup>1</sup> To the extent that any description, summary or discussion in this Motion of any term or provision  
28 of the Sale Agreement differs in any material respect from the actual provision in the Sale  
Agreement, the Sale Agreement shall control. All parties in interest and interested bidders are  
urged to read the Sale Agreement in its entirety.

1 H. Liens and Claims Against the Property and Proposed Treatment Thereof

2 1. Identity of Liens and Claims

3 The Trustee has obtained a preliminary title report relative to the Property dated December  
4 4, 2018 (the “Title Report”), which is attached as Exhibit “3” to the Trustee’s Declaration. The  
5 Trustee believes that the liens against the Property consist of the following:

6 (a) Liens for real property taxes in favor of the County of Los Angeles (the  
7 “County”);

8 (b) A deed of trust in favor of JPMorgan Chase Bank, N.A. (“Chase”), recorded  
9 on or about October 16, 2013 as instrument no. 20131480358 securing an original obligation of  
10 \$500,000;

11 (c) An abstract of judgment in favor of Iris Manuel (“Manuel”), recorded on or  
12 about August 8, 2014 as instrument no. 20140830149 securing an original obligation of  
13 \$99,086.78.

14 2. Proposed Treatment of Liens and Claims

15 The Trustee proposes to sell the Property free and clear of all liens, claims and interests,  
16 which will be removed from the Property, with the allowed amounts of certain liens and claims to  
17 be paid through escrow, and any disputed amounts to attach to the net sale proceeds, including the  
18 liens as provided below. The liens to be removed from the Property will attach to like amounts of  
19 the net sale proceeds, with the same force, effect, validity and priority that they had as of the  
20 Petition Date against the Property. If the Trustee no longer disputes an amount, in whole or in part,  
21 then he requests authority to pay said amount from the net sale proceeds without any further notice,  
22 hearing or order of the Court.

23 (a) The County

24 The Title Report reflects that the first installment of real property taxes for the current fiscal  
25 year 2018-2019 have not been paid and the second installment is open and not yet due. All  
26 undisputed sums due to the County will be paid through escrow. The Trustee is not seeking  
27 authority to sell the Property free and clear of any lien securing the payment of real property taxes  
28 and assessments that are or become due and payable after the date on which the sale closes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(b) Chase

At this time the Trustee is unaware of any disputes with Chase, but she has not yet seen a payoff demand. Based on the most recently paid mortgage statement for the Property for November 2018, approximately \$453,528.54 is currently owed to Chase. The Trustee proposes to pay the undisputed sums asserted by Chase under its deed of trust through escrow, with the disputed portions, if any, attaching to the net sale proceeds with the same, force, effect, validity and priority that they had as of the Petition Date as against the Property.

(c) Manuel

At this time, Manuel has an allowed secured claim against the Debtor in the Bankruptcy Case, based on her judgment obtained against the Debtor in a case before the Los Angeles Superior Court, in the amount of \$240,589.98 (*docket no. 166*). At this juncture, Manuel’s claim is based on a final, non-appealable order and the Trustee proposes to pay Manuel’s secured claim in full in the amount of \$240,589.98 at the time of closing. The disputed portions, if any, will attach to the net sale proceeds with the same, force, effect, validity and priority that they had as of the Petition Date as against the Property.

I. Proposed Overbid Procedures

The Trustee requests that the Court approve the following procedures for overbids: any person wishing to tender an overbid should deliver to the Trustee not later than 24 hours prior to the hearing on this Motion, a deposit in the form of a cashier’s check in the amount of \$56,500 payable to “Amy L. Goldman, Chapter 7 Trustee.” The minimum initial overbid amount is \$1,130,000, and bidding, if any, shall proceed in increments of \$1,000. Any person wishing to tender an overbid will be required to sign an overbid form, substantially in the form attached to the Trustee’s Declaration as Exhibit “2.” All overbids also must be accompanied by proof of funds demonstrating the party will be able to close the sale within 30 days of the entry of an order approving this Motion. The Trustee holds discretion in accepting or rejecting all overbids, subject to Court approval.

1           The prevailing overbidder’s deposit shall be nonrefundable in the event that the Court  
2 confirms the sale to that person but, for any reason whatsoever, the person fails to close the sale  
3 timely. The overbidding party will be bound by all of the terms of the proposal set forth in the Sale  
4 Agreement proposed for confirmation except as to price, without contingencies, including any  
5 financing contingency, and shall close the escrow no more than 30 but no less than 15 calendar  
6 days after the entry of an order approving this Motion.

7           The Trustee also proposes that the Court confirm a back-up buyer so that, in the event the  
8 prevailing buyer fails to close the sale timely, the Trustee may sell the Property to the back-up  
9 buyer for the amount of such back-up buyer’s last bid. The Trustee is authorized to hold the back-  
10 up buyer’s deposit pending the closing of the sale to the prevailing bidder. If the prevailing bidder  
11 closes the sale, the Trustee will immediately return the back-up buyer’s deposit. If the prevailing  
12 buyer fails to close the sale timely, the back-up buyer will be bound by all of the terms of the  
13 proposal set forth in the Sale Agreement proposed for confirmation except as to price, without  
14 contingencies, including any financing contingency, and shall close the escrow within 10 calendar  
15 days after written notice from the Trustee that the prevailing party has defaulted. The back-up  
16 buyer’s deposit shall be nonrefundable in the event that the back-up buyer fails to close the sale  
17 timely.

18  
19 J.       Approval of Payment of Commissions to Real Estate Brokers Through Escrow

20           The Trustee also seeks authority from the Court authorizing her to pay commissions to the  
21 brokers. Such commissions would aggregate 6% of the purchase price, with 3% paid to Keller  
22 Williams Silicon Beach (broker for the Trustee) and 3% to 1st Eagle Realty Inc. in its capacity as  
23 broker for the Buyers. If the sale is confirmed to an overbidder represented by a different broker,  
24 the Buyers’ broker’s commission would be paid to that broker.

25  
26 K.       Good Faith Purchaser Status for Buyers and Backup Buyer

27           The Trustee seeks a Court ruling that the party to whom the Court confirms the sale, and  
28 any backup buyer, are good faith purchasers for purposes of 11 U.S.C. § 363(m). The Property was



1 marketed by the Trustee's Broker, has been and continues to be listed on the multiple listing  
2 service, and notice of the Property's sale will be posted on the Trustee's attorney's website,  
3 [www.dgdk.com](http://www.dgdk.com), which has a special section reserved for bankruptcy estate sales. The Trustee  
4 obtained the offer from the Buyers to purchase the Property and negotiated at arm's length with the  
5 Buyers regarding the purchase. The Trustee has no connection with the Buyers and the Sale  
6 Agreement was negotiated at arm's length between third parties. As detailed herein, the sale is  
7 subject to overbid, and the notice of the Motion will contemporaneously herewith be served on all  
8 creditors and all known prospective purchasers and interested parties.

9

10 L. Notice to Creditors and Potential Overbidders

11 Notice of the Motion and proposed sale will be served on all creditors, parties in interest,  
12 and all known potential overbidders. As detailed in the Declaration of Derrick Vartanian attached  
13 hereto, the Property has been marketed since approximately December 12, 2018, and the details  
14 regarding the hearing on this Motion will be posted in the MLS, as well as [www.dgdk.com](http://www.dgdk.com).

15

16

II.

17

LEGAL ARGUMENT

18

A. The Sale is Supported by the Trustee's Sound Business Judgment and is in the Best  
19 Interests of the Estate and its Creditors

20

21

22

23

24

25

26

27

28

To enable the Trustee to fulfill her duty to "collect and reduce to money the property of the  
estate" (11 U.S.C. § 704(a)(1)), the trustee "after notice and a hearing, may use, sell, or lease,  
other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In  
this Circuit and others, courts will authorize sales where the trustee's decision to sell assets outside  
the ordinary course of business is based upon sound business judgment. In re Continental Air  
Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986); In re Derivium Capital, LLC, 380 B.R. 392, 404  
(Bankr. D.S.C. 2007) ("In determining whether to approve a sale proposed by a trustee, courts  
generally apply a business judgment test"). Based on the Second Circuit's decision in In re Lionel  
Corp., 722 F.2d 1063 (2d Cir. 1983), courts generally hold that the following four elements must

1 exist to satisfy the “sound business judgment test”: (1) sound business reasons; (2) accurate and  
2 reasonable notice to interested persons; (3) an adequate, fair and reasonable price; and (4) good  
3 faith. See Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (affirming sale of  
4 debtor’s assets proposed by trustee as being supported by a sound business purpose); Lionel, 722  
5 F.2d at 1071. “Ordinarily, the position of the trustee is afforded deference, particularly where  
6 business judgment is entailed in the analysis or where there is no objection.” In re Lahijani, 325  
7 B.R. 282, 289 (B.A.P. 9th Cir. 2005); Derivium, 380 B.R. at 404 (“the Trustee’s business judgment  
8 is to be given ‘great judicial deference,’ [however] the Court must scrutinize whether the Trustee  
9 has fulfilled his duty to ‘maximize the value obtained from a sale’”).

10 The proposed sale is clearly an exercise of the sound business judgment of the Trustee. The  
11 Trustee believes that the proposed conduct of sale of the Property, subject to overbid at the hearing,  
12 is the best method by which to maximize the value of the estate’s interest in the Property in order to  
13 pay expenses of administration and claims of creditors. As detailed above, the Trustee retained a  
14 licensed real estate broker to list, market and aid her in selling the Property for overbids. Of the  
15 multiple offers received by the Trustee, the Trustee accepted the highest non-contingent offer she  
16 received. The price was arrived at with the Buyers following arms-length negotiations and  
17 represents a fair and adequate price for the Property.

18 The proposed sale is subject to overbids, so any and all parties wishing to purchase the  
19 Property for a higher price may do so.

20  
21 B. The Court Should Approve the Sale of the Property Free and Clear of Liens and Claims

22 Section 363(f) of the Bankruptcy Code provides that, upon certain conditions, the trustee  
23 may sell property free and clear of a lien or interest in such property:

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

- 26 (1) applicable nonbankruptcy law permits sale of such property free  
27 and clear of such interest;  
28 (2) such entity consents;