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| <p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>PAUL R. SHANKMAN (SBN 113608) Of Counsel pshankman@jfortislaw.com Fortis LLP 650 Town Center Drive Suite 650 Costa Mesa, CA 92626 Tel: (714) 795-2092 Fax: (714) 795-2995</p> <p>General Bankruptcy Counsel for Rosendo Gonzalez, Chapter 7 Trustee</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Rosendo Gonzalez, Trustee</p> | <p>FOR COURT USE ONLY</p> |
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

| | |
|---|--|
| <p>In re:</p> <p>NADINE CHRISTIAN,</p> <p style="text-align: right;">Debtor(s).</p> | <p>CASE NO.: 2:19-bk-20040-BR CHAPTER: 7</p> <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p> |
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| | |
|---|------------------------------|
| <p>Sale Date: 08/15/2023</p> | <p>Time: 10:00 am</p> |
| <p>Location: Courtroom 1668, 16th Floor, 255 E. Temple Street, Los Angeles, CA 90012</p> | |

Type of Sale: Public Private **Last date to file objections:** 08/01/2023

Description of property to be sold:
SEE ATTACHED NOTICE OF MOTION.

Terms and conditions of sale:
SEE ATTACHED NOTICE OF MOTION.

Proposed sale price: \$ 60,000.00

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Overbid procedure (if any):

SEE ATTACHED NOTICE OF MOTION.

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

NOT APPLICABLE. SEE ATTACHED NOTICE OF MOTION.

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

PAUL R. SHANKMAN (SBN 113608)
Of Counsel
pshankman@jfortislaw.com
Fortis LLP
650 Town Center Drive
Suite 650
Costa Mesa, CA 92626
Tel: (714) 795-2092
Fax: (714) 795-2995

General Bankruptcy Counsel for Rosendo Gonzalez,

Date: 07/20/2023

1 PAUL R. SHANKMAN (SBN 113608)
Of Counsel
2 pshankman@jfortislaw.com
3 Fortis LLP
650 Town Center Drive
4 Suite 650
Costa Mesa, CA 92626
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6 Fax: (714) 795-2995

7 General Bankruptcy Counsel for Rosendo Gonzalez,
Chapter 7 Trustee

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

12 In re:

13
14 NADINE CHRISTIAN,

15 Debtor.

Case No. 2:19-bk-20040-BR

Chapter 7

**NOTICE OF TRUSTEE'S MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER: (1) APPROVING THE SALE
OF REAL PROPERTY INTEREST OF THE
ESTATE AS IS, WHERE IS AND BIDDING
PROCEDURES [11 U.S.C. §363(b); (2)]
FINDING BUYER IS A GOOD FAITH
PURCHASER [11 U.S.C. §363(m)]; AND (3)
WAIVING 14-DAY STAY OF FRBP 6004(h)**

SALE HEARING AND AUCTION DATE:

Date: August 15, 2023

Time: 10:00 a.m.

Ctrm: 1668

255 E. Temple Street, 13th Floor
Los Angeles, CA 90012

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28 **NOTICE OF TRUSTEE'S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR ORDER: (1) APPROVING THE SALE OF REAL PROPERTY INTEREST OF THE
ESTATE AS IS, WHERE IS AND BIDDING PROCEDURES [11 U.S.C. §363(b); (2)] FINDING BUYER IS A
GOOD FAITH PURCHASER [11 U.S.C. §363(m)]; AND (3) WAIVING 14-DAY STAY OF FRBP 6004(h)**

1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND TO ALL CREDITORS**
3 **AND PARTIES-IN-INTEREST AND THEIR COUNSEL OF RECORD, IF ANY:**
4

5 **PLEASE TAKE NOTICE** that a hearing will be held on August 15, 2023 at 10:00 a.m.
6 before the Honorable Barry Russell, United States Bankruptcy Judge in Courtroom 1668 at
7 the United States Bankruptcy Court located at 255 East Temple Street, 16th Floor, Los
8 Angeles, CA 90012 to consider the Motion (hereinafter referred to as the "Motion") filed by
9 the chapter 7 Trustee, herein, Rosendo Gonzalez (hereinafter referred to as the "Trustee"),
10 for the entry of an Order approving the auction sale and bidding procedures regarding the
11 Debtor's interest in real property by inheritance in New York State, subject to overbid, with a
12 finding of Good Faith pursuant to 11 U.S.C. §363(m) to a disinterested third party, based
13 upon the following background facts existing at the time of the filing of the Debtor's chapter
14 7 case:, based upon the following background facts existing at the time of the filing of the
15 Debtor's chapter 7 case:

16 1. On August 26, 2019, Ms. Nadine Christian, the Debtor herein
17 (hereinafter referred to as the "Debtor") filed her voluntary petition commencing the above-
18 captioned case under Chapter 7 of title 11, United States Code.

19 2. Rosendo Gonzalez was thereafter duly appointed as the Chapter 7
20 Trustee (hereinafter referred to as the "Trustee").

21 3. A tax lien foreclosure action (hereinafter referred to as the "Foreclosure
22 Action") was commenced by the NYCTL 1998-2 Trust (hereinafter referred to as the "Trust")
23 and was pending before the Supreme Court of the State of New York, County of Kings
24 (hereinafter referred to as the "State Court ") (Index No. 508855/19) regarding real property
25 located at 1355 Fulton Street, Brooklyn, New York 11216 (BBL 3-01850-0044) (hereinafter
26 referred to as the "Property") to pay off real property tax liens against the Property in the
27 approximate sum of \$225,000.00, or more at the time of the Debtor's filing of her chapter 7

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1 case. A true and correct copy of the Filed Caption of the Foreclosure Action is
2 attached to the concurrently filed Motion as Exhibit "1" and is incorporated herein by this
3 reference as if set forth in full.

4 4. The Debtor's interest in the Property as a claimed heir of Mr. James E.
5 Gordon has been verified by the Estate pursuant to the attached Birth Certificate of the
6 Debtor, her Family Genealogy Chart provided by the Debtor's family's Estate Counsel in
7 New York State to the Trustee by and through the Debtor's Counsel in the within Chapter 7
8 case, and any other evidence presented by the Debtor. True and correct copies of the
9 Debtor's Birth Certificate and Family Genealogy Chart are attached to the concurrently filed
10 Motion respectively as Exhibits "2" and "3" and are incorporated herein by this reference as
11 if set forth in full.

12 5. Upon careful review by the Trustee with his General Counsel of
13 relevant documents and facts as evidenced in the pending Foreclosure Action in New York
14 State, due to accruing interest and costs, it became apparent to the Trustee that any surplus
15 funds remaining after the Foreclosure Action would not likely be available to be distributed
16 to the within Chapter 7 Estate by virtue of the Debtor's asserted position in New York State
17 as an heir of the deceased former owner of the Property, Mr. James E. Gordon of Brooklyn,
18 New York.

19 6. The New York Foreclosure Action has now been suspended due to
20 procedures of the New York State Court and Government Officials presiding over same.

21 7. The Trustee instead successfully negotiated with his authorization by
22 and through his General Counsel a Noticed Sale of the Estate's interest in the Property to a
23 disinterested third party in New York, subject to overbid in accordance with the following
24 terms and conditions, in order to obtain sufficient funds to pay allowed General Unsecured
25 Creditors currently listed in the Court's Claims Register in the sum of \$33,167.41 (subject to
26 review and any appropriate Objections to Claims) a meaningful distribution to fulfill his
27 codified duties as Trustee of the Estate. As part of same, the Trustee's General Counsel

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1 has agreed to limit its Legal Fees and Costs in this case in representation of the Trustee at
2 a flat sum of \$20,000.00 (which significantly exceed same to date) in order to maximize a
3 return dividend to allowed General Unsecured Creditors in the Debtor's case which the
4 Trustee and his General Counsel believe is in the best interests of the Estate and its
5 Creditors.

6 A true and correct copy of the fully executed Asset Purchase Agreement regarding
7 the Estate's Property as defined hereinabove ("APA"), subject to this Court's approval, along
8 with the overbid procedures as described therein, is attached to the concurrently filed
9 Motion as Exhibit "4" and is incorporated herein by this reference as if set forth in full as
10 follows:

11
12 This Purchase and Sale Agreement (the "Agreement") is entered into between
13 "Rosendo Gonzalez, Chapter 7 Trustee, for the Bankruptcy Estate of Nadine Christian
14 ("Nadine") ("Trustee"), now pending in the United States Bankruptcy Court Central District
15 of California, Los Angeles Division (USBC Case No. 2:19-bk-20040-BR) (the "Bankruptcy
16 Case")", and BSD Investments, LLC, A California Limited Liability Company ("Purchaser").
17 Trustee and Purchaser may be collectively referred to herein as the "Parties" and agree
18 as follows, subject to approval of this United States Bankruptcy Court.
19

20 RECITALS

21 A. Whereas Purchaser alleges James Gordon and Alice Gordon, his wife, by
22 deed dated September 19, 1949, and recorded September 20, 1949, in the Kings County
23 Official Records became the fee owners of 1355 Fulton Street, Brooklyn, New York,

24 Exhibit A.

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1 B. On June 21, 1976, the said grantees were divorced by Judgement of the
2 New York State Kings County Supreme Court and by operation of law, became tenant-in-
3 common owners of the premises, **Exhibit B**.

4 C. On November 29, 1974, James Gordon died a resident of Kings County,
5 intestate, **Exhibit C**.

6 D. On February 14, 1994, Beatrice Christian, a surviving distributee/niece of
7 the decedent James Gordon died a resident of Los Angeles County intestate, survived
8 by six children including the debtor ("Nadine"), **Exhibit D**.

9 E. Therefore, by operation of law, under the intestacy laws of the State of New
10 York, the Debtor became a tenant-in-common owner of the premises, and under 11 U.S.C.
11 § 541(a), Debtor's interest in the property became the property of the bankruptcy estate
12 upon the Petition date.
13

14 F. On April 19, 2019, NYCTL 1998-2 TRUST and the Bank of New York Mellon
15 as Collateral Agent and Custodian commenced a Tax Lien foreclosure proceeding against
16 Cecil D. Worrell, as Administrator of the Estate of James Gordon and the Kings County
17 Public Administrator, as Administrator of the Estate of Alec Gordon a/k/a Ales Parker
18 Gordon, to foreclose on the property for tax arrears of \$86,795.62, **Exhibit E**.

19 G. On December 2, 2020, there was a motion filing for Relief from the
20 "Automatic Stay" relating to the above tax lien foreclosure action, **Exhibit F**.

21 H. On January 19, 2021, by stipulation, an order was entered granting relief
22 from the automatic stay under 11. U.S.C. § 362, **Exhibit G**.

23 I. On February 11, 2021, due to a subsequent sale/assignment of the tax
24 liens/certificates to Mooring Tax Lien Group attorneys for NYCTL 1998-2 TRUST and the
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1 Bank of New York Mellon as Collateral Agent and Custodian filed a notice ("Notice of
2 Discontinuance") of discontinuance of the foreclosure proceedings, **Exhibit H**.

3 J. Despite the discontinuance, interest continues accruing thereon from the
4 Applicable tax lien Sale Date at the rate of eighteen percent (18%) per annum,
5 compounded daily from August 2018 plus any subsequent taxes due, which the yearly
6 taxes are currently \$11,723.00, **Exhibit I**.

7
8 K. Besides the outstanding tax lien obligations, significant building code
9 violations exist against the property for failure to maintain building walls, facade, and back
10 walls, and a vacate order is outstanding against the property for its unsafe conditions,
11 **Exhibit J**.

12 L. As a result of the impracticability, the estate would never receive anything
13 more significant than the proposed offer, and there is no known time frame as to when the
14 matters above will conclude and at what amounts in terms of accruing interest, fees, and
15 penalties. After ongoing good faith discussions, the Trustee has agreed to sell- and the
16 Purchaser has agreed to buy all the estate's rights, title, and undivided interest in (i) the
17 asset more commonly known and described as 1355 Fulton Street, Brooklyn, New York,
18 Block 1850 Lot 44 (ii) including without limitation: all rights; under 11 U.S.C. § 363 and all
19 relevant sections including h; and (iii) the United States Bankruptcy Court for the Central
20 District of California, maintaining exclusive jurisdiction over any anticipated adversary
21 proceeding under the sections above under the terms and conditions set forth below.

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1 **ASSET PURCHASE AGREEMENT TERMS AND CONDITIONS**

2
3 **NOW THEREFORE**, in consideration of the foregoing and the mutual covenants
4 contained herein, Trustee and Purchaser agree as follows:

5
6
7 1. **United States Bankruptcy Court Approval**. This is subject to approval by
8 written order of the United States Bankruptcy Court for the Central District of California by
9 the Hon. Barry Russell presiding Bankruptcy Judge in the above-mentioned proceeding
10 upon such notice to Cecil D. Worrell, as Administrator of the Estate of James Gordon and
11 Richard Buckheit Esq., Kings County Public Administrator, as Administrator of the Estate
12 of Alec Gordon a/k/a Ales Parker Gordon as may be required. The Trustee by and through
13 his counsel will make an application for approval, not including fourteen days after entry of
14 a final order approving the sale, with a closing of a sale of the Property which shall occur
15 within 120 calendar days after entry of the Court's Order Entered Approving said Sale, with
16 a waiver of the Fourteen-Day Stay of said Order for the reasons set forth herein pursuant
17 to Federal Rule of Bankruptcy 6004(h).
18

19 2. **Purchase Price**. Purchaser shall pay to Trustee the sum of Fifty Thousand
20 Dollars (\$50,000.00) (the "Purchase Price"), as follows: \$2,500.00 down payment upon
21 execution of this Agreement and \$47,500.00 due at closing. The payments shall be made
22 payable to Rosendo Gonzalez, Esq., Chapter 7 Trustee for the Bankruptcy Estate of
23 Nadine Christian, Case Number: 2:19-bk-20040-BR and delivered to Trustee or his
24 counsel as so directed by Trustee. This agreement is subject to Overbid on Notice to
25 Creditors and all Parties in interest in \$10,000.00 increments. The Purchaser is solely
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1 responsible for any closing costs associated with the said purchase, excluding customary
2 transfer taxes, and recording fees.

3 3. **Conveyance**. Upon receipt of the full Purchase Price, the Trustee shall
4 convey all the estate's interest by executing and delivering to Purchaser a Warranty Deed,
5 General Assignment, Surrogate's Assignment and Bill of Sale in appropriate New York
6 form to be prepared by the Purchaser's counsel, the Trustee or its counsel and reasonably
7 acceptable to the parties. As to the estate's interest, the conveyance shall be AS IS,
8 WHERE IS, except that the Trustee shall represent and warrant those applicable rules
9 were complied with in obtaining Court approval of this Agreement and the transactions
10 contemplated herein.

11
12 4. **Enforcement of Agreement**. In the event, the Hon. Barry Russell United
13 States Bankruptcy Judge for the Central District of California enters an Order approving
14 this Agreement and any Party thereafter fails to perform any obligation, act or duty herein
15 undertaken, the non-breaching Party may bring any action necessary to enforce the
16 provisions of this Agreement or recover damages for the breach thereof by the breaching
17 party. The United States Bankruptcy Court for the Central District of California shall
18 exclusively retain Jurisdiction to resolve same.

19
20 5. **Voluntary Agreement**. Each Party hereto represents and warrants that he
21 or she has consulted with and relied upon legal counsel of his or her own choosing
22 concerning the terms and consequences of this Agreement. Each Party hereto further
23 represents and warrants that he or she is relying solely upon his or her own investigation,
24 knowledge, information, belief, and judgment of the advice of such Party's own counsel,
25 and not upon any statement, opinions or representations of any other Party hereto or such
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1 other Party's attorneys, employees, agents, officers or directors, in settling their claims and
2 executing and delivering this Agreement.

3 6. **Governing Law and Forum**. This Agreement shall be governed by and
4 construed in accordance with the laws of the State of California and the United States
5 Bankruptcy Court for the Central District of California.

6
7 7. **Attorneys' Fee**. If any action at law or in equity is necessary to enforce or
8 interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable
9 attorneys' fees, costs, and necessary disbursements in addition to any other relief to which
10 such party may be entitled.

11 8. **Binding Nature**. Upon execution of this Agreement, it shall be binding upon
12 and inure to the benefit of the Parties hereto and their respective successors and assigns.
13 This Agreement shall not be assigned by either Party without the express written consent of
14 the other Party.

15
16 9. **Paragraph Headings**. The section and paragraph headings contained in this
17 Agreement are for reference purposes only and shall not affect in any way the meaning or
18 interpretation thereof.

19 10. **Counterparts**. This Agreement may be executed in one or more counterparts,
20 each of which shall be deemed an original but all of which together shall constitute one and
21 the same instrument.

22
23 11. **Facsimile Signature**. Transmission of a signed counterpart of this Agreement
24 by one party (or its counsel) to the other party (or its counsel) by electronically affixed
25 signature, or by fax, e-mail, or similar electronic means of transmission, will have the same
26 force and effect as delivery of an ink-original, manually signed counterpart.

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1 12. **Further Assurances**. Each Party to this Agreement hereby agrees to execute
2 and deliver such other and further documents as may be reasonably requested by the other
3 Party to more fully effectuate the terms, conditions and transactions contemplated by this
4 Agreement.

5 13. **Good Faith Finding by Court Pursuant to 11 U.S.C §363(m)** The Court finds
6 that the successful purchaser of the Property of the Estate has purchased same in good faith
7 under the protections of 11 U.S.C. §363(m). The Trustee and his General Counsel have
8 communicated in detail to the Broker for the proposed Buyer set forth in **Exhibit “4”** attached
9 to the concurrently filed Motion and, based thereon, are informed, believe, and based thereon
10 allege the following disclosures in their Declarations attached to the concurrently filed Motion
11 to support a section 363(m) good faith determination:
12

- 13
- 14 a) The Buyer has no pre-petition nor post-petition relationship with other bidders,
15 the Trustee, the Debtor, the Estate, the Estate’s creditors, or equity security
16 holders in the case, or any of the Trustee’s officers, directors, agents,
17 attorneys or employees;
 - 18 b) The Buyer will have no relationship after the sale with the Trustee, Debtor or
19 the Trustee’s present or former officers, directors, agents, or employees
20 (including no offers of employment or compensation have been made or will
21 be offered to the Trustee’s present or former officers, directors, agents, or
22 employees);
 - 23 c) No consideration is contemplated or promised to be transferred or has been
24 transferred by the Buyer in connection with the sale to any person other than
25 the Trustee for the sole benefit of the Debtor’s Estate; and
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1 d) There exists no evidence of fraud or collusion between the Buyer and any
2 other bidders, or the Trustee's, or Debtor's, or Estate's officers, directors,
3 agents or employees, or any attempt to take unfair advantage of other bidders.

4 (See Gonzalez Dec. at ¶20 a) through (d) and Shankman Dec. at ¶3 a) through d).

5
6 14. **Waiver by Seller and Purchaser of 14-Day Stay of Order Approving Sale**
7 **of Estate's Property by Purchaser Otherwise Required Pursuant to Federal Rule of**
8 **Bankruptcy Procedure 6004(h) for Cause** Each Party to this Agreement hereby waives the
9 14-Day Stay of the Order Approving the within Sale of the Property of the Estate to the
10 purchaser to reasonably expedite the conclusion of said sale, as any objecting party to the
11 within sale will have adequate notice and due process to marshal any objections to same at
12 the time of the hearing on the within Motion to approve the APA, subject to a full right of
13 overbid as proposed herein and in the attached APA.
14

15 16 **ARGUMENT AND PROPOSED BID AND OVERBID PROCEDURES**

17 By way of this Motion, the Trustee requests the entry of an Order: **(1)** Approving the
18 following bid and overbid procedures; **(2)** authorizing the Trustee to sell the Real Property
19 Interest of the Estate as described herein and in the APA, as is, where is and the other
20 interests to Buyer, pursuant to 11 U.S.C. § 363(b); **(3)** finding the Purchaser at the auction
21 to be a good faith purchaser as described in 11 U.S.C. § 363(m); and **(4)** waiving the 14-day
22 stay set forth in Bankruptcy Rules 6004(h). The Motion is supported by the Declarations of
23 the chapter 7 Trustee, Rosendo Gonzalez and his General Counsel, Paul R. Shankman,
24 Esq. attached to the concurrently filed Motion.
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A. The Auction Procedures Are Fair And Designed To Bring In The Highest Price For The Real Property.

By this Notice and concurrently filed Motion, the Trustee seeks the Court to approve of the following proposed bid and overbid procedures. The table below summarizes the bid procedures requested as a part of the within motion. The terms of the Purchase Agreement and the Court-Approved Bid Procedures control in the event of any inconsistency with this summary:

| | |
|-----------------------------------|---|
| Current Bid Exhibit "4" | \$50,000.00 |
| Subsequent Overbids | \$60,000.00 initial overbid, and then bidding in \$10,000.00 increments \$60,000.00 Cashier's Check payable to Rosendo Gonzalez, Chapter 7 Trustee to qualify to overbid at the Sale in Court |
| Representations/Warranties | The Property shall be sold on an "as is, where is" basis and without representations or warranties of any kind, nature or description. |
| Treatment of Liens | The Property shall be sold, subject to approval by court order after the Auction, as is, and the purchaser is assuming full responsibility for dealing with the liens alleged against the Property interest of the Estate in New York. |
| Qualification of Bidders | Only "Qualified Bidders" will be allowed to bid for the Property during the Auction. To qualify for bidding during the Auction, a bidder must: 1. Provide, prior to or simultaneous with the submission of a bid, evidence reasonably acceptable to Trustee of the Qualified Bidder's ability to fully and timely perform if its bid were to be accepted by the Trustee and approved by the Bankruptcy Court in an amount not less than \$60,000.00, subject to overbids in \$10,000.00 increments with evidence of Cashier's Checks to pay for same to the Trustee.. |

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| | <p>2. Provide evidence, to Debtor’s reasonable satisfaction, of the Potential Bidder’s financial wherewithal and capability to fully and timely close the sale.</p> <p>3. Submit a competing bid in conformity with the provisions of the Sale Procedures under which Debtor would receive cash consideration at closing in an amount not less than the Minimum Opening Bid.</p> <p>4. Deliver a good faith Cashier’s Check in open Court in the amount of \$60,000.00 (hereinafter referred to as the “Deposit”).</p> <p>5. Disclose all of its pre-petition and post-petition relationships, if any, with Debtor, the Trustee, other bidders, major creditors or equity security holders of the Debtor, or any of its Affiliates.</p> |
| <p>Form of Bids</p> | <p>In addition, a Qualified Bidder shall:</p> <p>1. Deliver a written copy of its bid to Trustee by not later than 5:00 p.m. (PST) three (3) business days prior to the Auction (“Bid Deadline”). The Trustee may extend the Bid Deadline once or successively but is not obligated to do so. If the Trustee extends the Bid Deadline, he shall promptly notify all potential bidders of the extension.</p> <p>2. Make its bid irrevocable and in an amount not less than the Minimum Bid Amount.</p> <p>3. Make its bid upon the terms and conditions set forth in the <i>Agreement for Purchase and Sale of Property</i> (“Purchase Agreement”), which is attached hereto as Exhibit “4”, subject to such modification as the Qualified Bidder proposes, which shall be presented in a document marked to show changes from the Purchase Agreement and in conformity with items (a) through (f) below (“Marked Agreement”). The proposed modifications shall:</p> <p>(a) not be conditioned upon obtaining financing or any internal approval, or upon the outcome or review of due diligence (the bid may, however, be subject to the accuracy in all material respects at the closing of specified representations and warranties or the satisfaction in all material respects at the closing of specified conditions, none of which shall be more burdensome than those set forth in the Purchase Agreement);</p> <p>(b) be irrevocable through the conclusion of the Auction;</p> |

NOTICE OF TRUSTEE’S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER: (1) APPROVING THE SALE OF REAL PROPERTY INTEREST OF THE ESTATE AS IS, WHERE IS AND BIDDING PROCEDURES [11 U.S.C. §363(b); (2)] FINDING BUYER IS A GOOD FAITH PURCHASER [11 U.S.C. §363(m)]; AND (3) WAIVING 14-DAY STAY OF FRBP 6004(h)

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| | <p>(c) not request or entitle the bidder to any breakup fee, termination fee, expense reimbursement or similar type of payment;</p> <p>(d) provide for the closing of the sale by the time specified for the "Closing" under the Purchase Agreement;</p> <p>(e) acknowledge and represent that the bidder (i) has had an opportunity to inspect and examine the Property and the transaction structure set forth in the Purchase Agreement, (ii) in making its bid, has relied solely on its own independent review, investigation and/or inspection of same, and (iii) has not relied on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied or by operation of law or otherwise regarding same, or the completeness of any information provided in connection therewith at the Auction, except as expressly stated in the Marked Agreement or these Bid Procedures; and</p> <p>(f) fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such bidding, and all terms of any such participation that, in the reasonable business judgment of the Trustee, are relevant to such bid.</p> |
| <p>Auction Procedures</p> | <p>The Auction shall be conducted pursuant to the following terms:</p> <ol style="list-style-type: none"> 1. At least one (1) business day before the Auction, the Trustee shall notify all Qualified Bidders of the Qualified Bid that, as determined in the Trustee's sole discretion, is the highest or otherwise best Qualified Bid ("Baseline Bid"). 2. The Auction shall commence at 10:00 a.m. on August 15, 2023 in Courtroom 1668 in the United States Bankruptcy Court located at 255 East Temple Street, 16th Floor, Los Angeles, CA 90012 before the Honorable Barry Russell, United States Bankruptcy Judge. 3. All Qualified Bidders must be present at the Auction in person or through a qualified representative, and only Qualified Bidders who have submitted Qualified Bids will be eligible to participate in the Auction. Unless specified by the Trustee, no Qualified Bidder will be permitted more than ten (10) minutes to respond to the previous bid. |

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| | <p>4. The Trustee will review each Qualified Bid on the basis of its financial and contractual terms and the factors relevant to the transaction process and the best interests of the bankruptcy estate, including those factors asserting the speed and certainty of consummating the transaction. Immediately prior to the conclusion of the Auction, the Trustee shall (i) identify the highest or otherwise best offer to purchase the Property ("Successful Bid"), (ii) identify the next highest or otherwise best offer after the Successful Bid ("Next Highest Bid"), and (iii) notify all Qualified Bidders present at the Auction the identities of the bidder that submitted the Successful Bid ("Successful Bidder") and of the bidder that submitted the Next Highest Bid ("Next Highest Bidder").</p> <p>5. The Trustee and the Successful Bidder shall close the sale within fifteen (15) calendar days after entry of a court order approving the Sale and not subject to any stay ("Approval Order"). If the Successful Bidder fails to close the sale, the Trustee is authorized (but not required) to close the sale with the Next Highest Bidder. If the Trustee decides to close with the Next Highest Bidder, then Debtor and Next Highest Bidder shall have an additional fifteen (15) calendar days to close.</p> <p>6. The Deposits of all Qualified Bidders will be held by the Trustee, Rosendo Gonzalez, in one or more non-interest bearing accounts. Deposits made by Qualified Bidders, other than those made by the Successful Bidder and Next Highest Bidder who agrees to maintain its status as a back-up bidder, shall be returned to such Qualified Bidders within fifteen (15) business days following the conclusion of the Auction.</p> |
|--|--|

B. The Sale Should Be Approved Pursuant to 11 U.S.C. § 363(b).

Section 363(b) of the Bankruptcy Code provides that after a notice and a hearing, a trustee or debtor-in-possession may sell property of the estate outside the ordinary course of business. 11 U.S.C. §§ 363(b) and 1107(a). In determining whether to approve a

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1 proposed sale under section 363, courts generally apply standards that, although stated
2 various ways, represent essentially a business judgment test. 3-363 Collier on Bankruptcy
3 ¶ 363.02[4]. “Ordinarily, the position of the trustee is afforded deference, particularly where
4 business judgment is entailed in the analysis or where there is no objection.” *In re*
5 *Fitzgerald*, 428 B.R. 872, 883 (B.A.P. 9th Cir. 2010) (citing *In re Lahijani*, 325 B.R. 282, 289
6 (B.A.P. 9th Cir. 2005).

7 The bankruptcy court reviews the Trustee’s business judgment only “to determine
8 independently whether the judgment is a reasonable one. The court should not substitute
9 its judgment for the trustee’s but should determine only whether the trustee’s judgment was
10 reasonable and whether a sound business justification exists supporting the sale and its
11 terms.” 3-363 Collier on Bankruptcy ¶ 363.02[4]. Here, the Trustee has acted to sell the
12 sole Property asset of the Estate at a price that proposes to pay a distribution of any
13 remaining cash from the sale and to pay as much as possible to the Allowed General
14 Unsecured Creditors of the Estate.

15 An additional consideration when approving a sale of assets of the estate is that such
16 sale is in the “best interests of the estate.” *In re Wilde Horse Enters., Inc.*, 136 B.R. 830,
17 841 (Bankr. C.D. Cal 1991); *In re Lionel*, 722 F. 2d 1063, 1070 (2nd Cir. 1983). While
18 subjecting the sale to an overbid procedure may ordinarily be the manner of sale which is
19 most likely to obtain the highest and best price for the property, and thus in the best
20 interests of the estate, it is not always a necessary component to such a sale. Rather, the
21 assessment of whether a sale is in the best interests of creditors involves an analysis of all
22 of the factors involved in the sale, including alternatives available to the estate for
23 disposition of the property.

24 Rule 6004(f)(1) provides that sales outside the ordinary course of business may be
25 by private sale or by public auction. It is within the discretion of the trustee to determine
26 whether a public auction or private sale is appropriate. *In re Alisa Partnership*, 15 B.R. 802
27 (Bankr. D. Del. 1981); see also Fed. R. Bankr. Proc. 6004(f); 11 U.S.C. § 363(b) (1).

28 **NOTICE OF TRUSTEE’S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
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1 Generally, “[t]here is no prohibition against a private sale or against a sale to insiders; and
2 there is no requirement that the sale be by public auction.” *In re Woodscape Ltd.*
3 *Partnership*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (discussing the sale of equity in a
4 chapter 11 plan); *see also In re Andy Frain Services, Inc.*, 798 F.2d 1113, 1125 (7th Cir.
5 1986) (a sale to an insider is not per se bad faith).

6 Here the Trustee’s proposed auction process meets all of the requirements of the
7 cases and the Code. At the close of the sale, the Trustee will have maximized a distribution
8 to all Allowed General Unsecured Creditors from the sole asset of the Estate which he
9 would not otherwise be able to accomplish, but for his successful efforts with his General
10 Counsel. Hence the sale should be approved pursuant to 11 U.S.C. § 363(b).

11
12 **C. The Buyer at the Auction Should be Determined to be a Good Faith**
13 **Purchaser Pursuant to 11 U.S.C. § 363(m).**

14 Section 363(m) provides that a purchaser of property of the estate is protected from
15 the effects of a reversal or modification on appeal of the authorization to sell as long as the
16 purchaser acted in good faith and the appellant failed to obtain a stay of the sale. The Code
17 does not define “good faith.” Courts have adopted various definitions. A good faith
18 purchaser is “one who buys property . . . for value, without knowledge or adverse claims.”
19 *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 8 (1st Cir. 1993). “Typically, lack of
20 good faith is shown by fraud, collusion between the purchaser and other bidders or the
21 trustee, or an attempt to take grossly unfair advantage of other bidders.” *In re Ewell*, 958
22 F.2d 276, 279 (9th Cir. 1992).

23 The Ninth Circuit has held that there is a presumption of good faith in favor of a buyer
24 in a sale under 11 U.S.C. 363(m) in its decision in *In re Cooper Commons, LLP.*, 424 F3d
25 963, 970 (9th Cir. 2005). In *Cooper Commons* the court noted that, as explained in *In re*
26 *Adams Apple*, 829 F2d 1484, 1489 (9th Cir. 1987), in connection even with a sale to a
27 creditor under Section 363(m), the court presumes the buyer’s good faith and then inquires

28 **NOTICE OF TRUSTEE’S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
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1 as to whether the presumption can be overcome. See *In re Zuercher Trust of 1999*, 2014
2 Bankr. Lexis 5061 (BAP 9th Cir. 2014).

3 The Buyer in this case will be the high bidder at the auction sale conducted before
4 this Court. As part of the bid procedures, all bidders must “5. Disclose all of its pre-petition
5 and post-petition relationships, if any, with Debtor, other bidders, major creditors or equity
6 security holders of the Debtor or any of its Affiliates.” Thus, there can be little doubt that the
7 successful Buyer is a good faith buyer for purposes of Section 363(m).

8 In addition, pursuant to the attached Gonzalez and Shankman Declarations as set
9 forth above, the existing bidder has made disclosures which lead the Trustee and his
10 General Counsel to aver as follows:

- 11 1. The Buyer has no pre-petition nor post-petition relationship with other
12 bidders, the Trustee, the Debtor, the Estate, the Estate’s creditors, or
13 equity security holders in the case, or any of the Trustee’s officers,
14 directors, agents, attorneys or employees;
- 15 2. The Buyer will have no relationship after the sale with the Trustee,
16 Debtor or the Trustee’s present or former officers, directors, agents, or
17 employees (including no offers of employment or compensation have
18 been made or will be offered to the Trustee’s present or former officers,
19 directors, agents, or employees);
- 20 3. No consideration is contemplated or promised to be transferred or has
21 been transferred by the Buyer in connection with the sale to any person
22 other than the Trustee for the sole benefit of the Debtor’s Estate; and
- 23 4. There exists no evidence of fraud or collusion between the Buyer and
24 any other bidders or the Trustee’s officers, directors, agents or
25 employees, or any attempt to take unfair advantage of other bidders.

26 (See Gonzalez Dec. at ¶¶20 a) through (d) and Shankman Dec. at ¶¶3 a) through d).

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GOOD FAITH PURCHASER [11 U.S.C. §363(m)]; AND (3) WAIVING 14-DAY STAY OF FRBP 6004(h)**

1 **D. This Court Should Waive the 14-Day Stay Set Forth in Bankruptcy Rules**
2 **6004(h).**

3 Bankruptcy Rule 6004(h) provides that an order authorizing the sale of property is
4 stayed until the expiration of 14 days after entry of the order unless the court orders
5 otherwise. Absent any objection to this Motion, the Trustee requests that the 14-day stay
6 set forth in Bankruptcy Rule 6004(h) be waived as any final Buyer will desire to move
7 forward as soon as possible to close the Real Property sale and all prospective parties will
8 have due process of Notice of the Sale and Bidding Terms and opportunity to participate
9 fairly and equitably in the sale process before the Court

10 The Motion is based upon this Notice of Motion, the Motion, the Declarations of the
11 Trustee and his General Counsel attached to the concurrently filed Motion, the
12 Memorandum of Points and Authorities filed in support hereof, all Exhibits attached to the
13 concurrently filed Motion, and upon such other and further oral argument and documentary
14 evidence considered by the Court at the time of the Hearing on the Motion.

15 **PLEASE TAKE FURTHER NOTICE** that the Trustee requests the Court make a
16 finding that the Purchaser is a good faith purchaser pursuant to 11 U.S.C. §363(m) as
17 supported herein and in the concurrently filed Motion.

18 **PLEASE TAKE FURTHER NOTICE** that Trustee requests that the Court waive the
19 14-day stay as set forth in Bankruptcy Rule 6004(h) as supported herein and in the
20 concurrently filed Motion.

21 **PLEASE TAKE FURTHER NOTICE** that any opposition shall be filed with the Court
22 and served on the initiating party at least 14 days prior to the actual scheduled hearing date.

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28 **NOTICE OF TRUSTEE'S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
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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:
650 Town Center Drive, Suite 1530, Costa Mesa, CA 92626

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 07/25/2023, 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:

SEE ATTACHED NEF LIST.

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* 07/25/2023, 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.

SEE ATTACHED MASTER MAILING LIST.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

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

07/25/2023
Date

Vanessa Parsons
Printed Name

/S/VANESSA PARSONS
Signature

NADINE CHRISTIAN CHAPTER 7 CASE NUMBER 2:19-bk-20040-BR
SERVICE LIST FOR TRUSTEE'S NOTICE OF MOTION AND MOTION:

ECF/NEF MAILING LIST BY COURT:

- **Heather J Canning** ecf@blclaw.com,
notices@blclaw.com;borowitzclark8@gmail.com
- **Rosendo Gonzalez (TR)** rgonzalez@ecf.axosfs.com,
rossgonzalez@gonzalezplc.com;jzavala@gonzalezplc.com;zig@gonzalezplc.com;
gig@gonzalezplc.com
- **John Rafferty** john.rafferty@bonialpc.com
- **Paul R Shankman** PShankman@fortislaw.com, info@fortislaw.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov

NADINE CHRISTIAN CHAPTER 7 CASE NUMBER 2:19-bk-20040-BR:
SERVICE LIST FOR TRUSTEE'S NOTICE OF MOTION AND MOTION:

USPS MAILING LIST:

Law Clerk to the Honorable Barry Russell,
United States Bankruptcy Judge
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

The Bank of New York Mellon,
as Collateral Agent and Custodian for NYCTL 1998-2 Trust
101 Barclay Street, 7 West, New York, NY 10286

Cecil D. Worrell, Administrator for the Estate of James Gordon
1470 Parkchester Rd, Apt #: 1E
Bronx, NY 10462

Javier Ortiz, Esq., Public Administrator, Kings County
360 Adams Street, #: 144A, Brooklyn, NY 11201

BSD Investments, LLC
1000 Town Center Dr, Suite #: 300
North Oxnard, CA 93036
Signer: Anthony Millar, Vice President

PYOD LLC
Resurgent Capital Services
PO Box 19008
Greenville, SC 29602

SL Biggs
10960 Wilshire Blvd., Ste. 1100
Los Angeles, CA 90024

[SEE ADDITIONAL SERVICE ADDRESSES ON MASTER MAILING LIST]

Label Matrix for local noticing
0973-2
Case 2:19-bk-20040-BR
Central District of California
Los Angeles
Thu Jul 20 14:18:23 PDT 2023

Franchise Tax Board
Bankruptcy Section MS: A-340
P.O. Box 2952
Sacramento, CA 95812-2952

SLBiggs
10960 Wilshire Blvd., Ste. 1100
Los Angeles, CA 90024-3714

Avenue
P.O. Box 182789
Columbus, OH 43218-2789

(p)EQUIFAX INC
1550 Peachtree Street NE
Atlanta, GA 30309

Global Credit & Collection Corp.
5440 North Cumberland Avenue,
Suite 300
Chicago, IL 60656-1486

Internal Revenue Service
Attention: Bankruptcy Department
P.O. Box 7346
Philadelphia, PA 19101-7346

Sam's Club
P.O. Box 530942
Atlanta, GA 30353-0942

Toyota Motor Credit
P.O. Box 9786
Cedar Rapids, IA 52409-0004

United States Trustee (LA)
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017-3560

Employment Development Dept.
Bankruptcy Group MIC 92E
P.O. Box 826880
Sacramento, CA 94280-0001

(p)OFFICE OF FINANCE CITY OF LOS ANGELES
200 N SPRING ST RM 101 CITY HALL
LOS ANGELES CA 90012-3224

Toyota Motor Credit Corporation
14841 Dallas Pkwy Suite 425
Dallas, TX 75254-8067

(p)JPMORGAN CHASE BANK N A
BANKRUPTCY MAIL INTAKE TEAM
700 KANSAS LANE FLOOR 01
MONROE LA 71203-4774

Experian - Credit Bureau
Corporate Headquarters
475 Anton Boulevard
Costa Mesa, CA 92626-7037

Global Credit & Collection Corp.
P.O. Box 129
Linden, MI 48451-0129

JPMorgan Chase Bank, N.A.
s/b/m/t Chase Bank USA, N.A.
c/o National Bankruptcy Services, LLC
P.O. Box 9013
Addison, Texas 75001-9013

Synchrony Bank
P.O. Box 965033
Orlando, FL 32896-5033

Trans Union - Credit Bureau
P.O. Box 2000
Chester, PA 19016-2000

Wal-Mart
P.O. Box 530927
Atlanta, GA 30353-0927

Fortis LLLP
650 Town Center Drive Ste 1530
Costa Mesa, CA 92626-7021

PYOD LLC
Resurgent Capital Services
PO Box 19008
Greenville, SC 29602-9008

Los Angeles Division
255 East Temple Street,
Los Angeles, CA 90012-3332

Chase
P.O. Box 6494
Carol Stream, IL 60197-6494

Franchise Tax Board
Attention: Bankruptcy Department
P.O. Box 942857
Sacramento, CA 94257-0001

Home Design
P.O. Box 965036
Orlando, FL 32896-5036

Quantum3 Group LLC as agent for
Comenity Bank
PO Box 788
Kirkland, WA 98083-0788

Synchrony Bank
c/o PRA Receivables Management, LLC
PO Box 41021
Norfolk VA 23541-1021

United States Trustee
Los Angeles Division
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017-3560

Heather J Canning
Borowitz & Clark LLP.
100 North Barranca Street, Suite 250
West Covina, CA 91791-1613

Nadine Christian
9919 Ramona Street, #308
Bellflower, CA 90706-7311

Rosendo Gonzalez (TR)
Gonzalez & Gonzalez Law, P.C.
530 S. Hewitt Street, Suite 148
Los Angeles, CA 90013-1906

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Los Angeles City Clerk
P.O. Box 53200
Los Angeles, CA 90053-0200

Chase
Attention: Bankruptcy Department
P.O. Box 15298
Wilmington, DE 19850

(d)Chase
P.O. Box 6294
Carol Stream, IL 60197

Equifax- Credit Bureau
P.O. Box 740241
Atlanta, GA 30374

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)SLBiggs
10960 Wilshire Boulevard
Suite 1100
Los Angeles, CA 90024-3714

(d)PYOD, LLC
Resurgent Capital Services
PO Box 19008
Greenville, SC 29602-9008

| End of Label Matrix | |
|---------------------|----|
| Mailable recipients | 31 |
| Bypassed recipients | 2 |
| Total | 33 |