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7 **UNITED STATES BANKRUPTCY COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **SANTA ANA DIVISION**

10 In re:

11 THE TULVING COMPANY, INC., a
12 California corporation,

13 Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**NOTICE OF MOTION AND MOTION
FOR ORDER: (1) SCHEDULING
AUCTION AND SALE HEARING IN
CONNECTION WITH SALE OF
DEBTOR'S CUSTOMER LISTS, PHONE
NUMBERS, WEB ADDRESS, CERTAIN
CUSTOMER FILES, AND RELATED
PERSONAL PROPERTY OF THE
ESTATE; (2) APPROVING SALE
PROCEDURES; (3) APPROVING BREAK-
UP FEE; (4) APPROVING NOTICE OF
AUCTION AND SALE HEARING; AND
(5) GRANTING RELATED RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF R.
TODD NEILSON**

Procedures Hearing

Date: August 19, 2014
Time: 10:30 a.m.
Place: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92701

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE, THE**
2 **OFFICE OF THE UNITED STATES TRUSTEE AND ANY PARTIES THAT HAVE FILED**
3 **REQUESTS FOR SPECIAL NOTICE, AND OTHER INTERESTED PARTIES:**

4 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 7 trustee (the
5 "Trustee") for The Tulving Company, Inc. (the "Debtor"), in the above-entitled chapter 7 case (the
6 "Case"), hereby moves (the "Motion") the Court for the entry of orders, pursuant to sections 105,
7 363 and of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and
8 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"):

9 (a) approving the sale and bid procedures (the "Sale Procedures") set forth in the
10 proposed form of order approving the Sale Procedures attached hereto as Exhibit A (the "Proposed
11 Procedures Order"),¹ in connection with the Trustee's proposed sale (the "Sale") of certain personal
12 property of the bankruptcy estate of the Debtor (the "Estate") consisting of the following: customer
13 lists, business-related telephone and fax number(s), a domain name, certain customer sales journals,
14 and other related personal property (as more specifically described in the APA, the "Property") to
15 Greatcollections.com LLC d/b/a Great Collections (the "Stalking Horse Bidder") pursuant to that
16 certain Asset Purchase Agreement (the "APA") (substantially in the form attached hereto as Exhibit
17 B) or, alternatively, to the successful bidder determined in accordance with the Sale Procedures (the
18 "Successful Bidder") pursuant to the applicable agreement with such Successful Bidder, free and
19 clear of all liens, claims, interests and encumbrances pursuant to sections 363(b) and (f) of the
20 Bankruptcy Code, with any such liens, claims, interests and encumbrances to attach to the Sale
21 proceeds of the Property with the same validity (invalidity), priority and perfection as existed
22 immediately prior to such Sale;

23 (b) approving a proposed break-up fee (the "Break-Up Fee") of \$7,500, to
24 compensate the Stalking Horse Bidder for the fees and expenses incurred in connection with acting
25 as the Stalking Horse Bidder, payable by the Estate to the Stalking Horse Bidder solely from the
26 proceeds of any alternate sale of the Property, in accordance with the APA and Sale Procedures;

27 _____
28 ¹ Any capitalized term not defined in this Notice shall have the meaning ascribed to such term in the Motion
or the Proposed Procedures Order, as applicable.

- 1 (c) approving the form and manner of notice of the Sale;
2 (d) setting the date for a hearing (the “Sale Hearing”) at which the Court will
3 consider whether to authorize and approve the Sale; and
4 (e) granting such other related relief as provided in the Proposed Procedures
5 Order.

6 **PLEASE TAKE FURTHER NOTICE** that the Trustee has filed concurrently herewith the
7 *Motion for Order: (1) Approving Asset Purchase Agreement; (2) Approving Sale of Estate’s*
8 *Property (Debtor’s Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and*
9 *Related Personal Property) Free and Clear of All Liens, Claims, Encumbrances, and Interests; and*
10 *(3) Granting Related Relief (the “Sale Approval Motion”),* pursuant to which the Trustee seeks the
11 approval of the proposed Sale of the Property, free and clear of all liens, claims and encumbrances.
12 The proposed Sale to the Stalking Horse Bidder shall be subject to overbid at an auction in
13 accordance with the Sale Procedures (the “Auction”). As explained more fully in the attached
14 Memorandum of Points and Authorities, after marketing and discussions with various potential
15 buyers, the Trustee determined in his sound business judgment that the proposed Sale of the Property
16 to the Stalking Horse Bidder, subject to overbid, for \$150,000 cash, is in the best interest of the
17 Debtor’s estate. Pursuant to LBR 6004-1(b)(2), the following is a summary of the proposed Sale
18 Procedures²:

19 (a) upon execution of a confidentiality agreement, any person identified by the
20 Trustee, with the assistance of his advisors, as reasonably likely to be a Qualified Bidder that wishes
21 to conduct due diligence on the Property with respect to a potential overbid may be granted access to
all material information that has been or will be provided to the Stalking Horse Bidder;

22 (b) any Potential Bidder that wishes to participate in the bidding process for the
23 Property must, no later than the Bid Deadline, do all of the following: (1) submit to the Trustee an
24 irrevocable offer in the form of an executed Modified Agreement (together with a blacklined copy)
25 without financing, internal approval or due diligence contingencies, at a price that conforms with the
26 following paragraph and on such other terms that are no less favorable to the Estate than those
27 contained in the APA; (2) agree, in such Modified Agreement, to a purchase price that provides for
payment in cash at closing in an initial minimum amount equal to or exceeding the sum of \$165,000
(\$150,000 plus \$15,000); (3) make a Bid Deposit in an amount equivalent to 10% of its proposed
purchase price; and (4) provide written evidence reasonably satisfactory to the Trustee of, *inter alia*,

28 _____
² The following is a summary only and is subject to the Proposed Procedures Order.

1 the bidder's financial ability to fully and timely perform all obligations under the Modified
2 Agreement;

3 (c) if the Trustee receives at least one Qualified Bid from a Qualified Bidder
4 other than the Stalking Horse Bidder prior to the Bid Deadline, then the Trustee shall conduct an
Auction to be held at the Los Angeles office of the Trustee's counsel³;

5 (d) at any Auction, subsequent bid increments shall be set at \$10,000;

6 (e) at the Auction (if held), the Trustee shall determine which bid(s) shall be
7 deemed the Successful Bid and Back-Up Bid (if any); and the Trustee shall request at the Sale
8 Hearing that the Court authorize the Trustee to consummate the Sale of the Property to the
Successful Bidder and, should the Successful Bidder fail to close, to the Back-Up Bidder⁴;

9 (f) if the Stalking Horse Bidder is not the Successful Bidder, subject to the terms
10 and conditions in the APA, the Trustee shall, pursuant to the APA and Procedures Order, pay the
Stalking Horse Bidder the Break-Up Fee;

11 (g) if no qualified competing bid is received, the Stalking Horse Bidder's bid
12 shall be determined to be the Successful Bid for the purchase of the Property; and

13 (h) the Estate shall retain the deposit(s) made by the Successful Bidder and/or the
14 Back-Up Bidder if either the Successful Bidder and/or the Back-Up Bidder (as applicable) fails to
15 close the Sale within five (5) business days after entry of a Bankruptcy Court order approving the
Sale of the Property.

16 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 6004-1(c)(3), the Trustee
17 discloses that (i) the Trustee does not seek authority to pay any commission in connection with this
18 transaction and (ii) the Trustee is presently unaware of any tax liabilities to the Estate as a result of
19 the proposed Sale.

20 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on the Memorandum of
21 Points and Authorities and Declaration of R. Todd Neilson (the "Neilson Declaration") attached
22 hereto, the statements, arguments and representations of counsel who appear at the Procedures
23 Hearing, the record in this case, any other evidence properly before the Court prior to or at the
24 Procedures Hearing and all matters of which this Court may properly take judicial notice.

25 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 6004-1(b)(1), the hearing (the
26 "Procedures Hearing") on the Motion with respect to the approval of the Sale Procedures and other
27

28 ³ As set forth in the Motion, the Trustee requests an Auction date of on or about September 12, 2014.

⁴ As set forth in the Motion, the Trustee requests a Sale Hearing to be held no later than September 16, 2014.

1 relief set forth in the Proposed Procedures Order (the “Procedures Matters”) shall be held on August
2 19, 2014 at 10:30 a.m. (Pacific time) before the Honorable Erithe Smith, United States Bankruptcy
3 Judge, 411 West Fourth Street, Courtroom 5A, Santa Ana, CA 92701. The Procedures Hearing may
4 be adjourned from time to time without further notice to creditors or parties in interest other than by
5 announcement of the adjournment in open court on the date scheduled for the Procedures Hearing.
6 Objections, if any, to the Procedures Matters requested by the Motion must be filed with the clerk of
7 the Bankruptcy Court and served upon the Trustee’s counsel, Linda Cantor, Esq., Pachulski, Stang,
8 Ziehl & Jones LLP, Suite 1300, Los Angeles, CA 90067, fax: 310-201-0760, lcantor@pszjlaw.com,
9 and the Stalking Horse Bidder’s counsel, Armen Vartian, 1601 N. Sepulveda Blvd. #581, Manhattan
10 Beach, CA 90266, fax: 866-427-3820, armen@vartianlaw.com, so as to be received no later than
11 August, 18 2014 at 5:00 p.m. (Pacific time). UNLESS AN OBJECTION IS TIMELY SERVED
12 AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY
13 THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF
14 REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

15 **WHEREFORE**, the Trustee respectfully requests that the Court enter an order: (a)
16 approving the Sales Procedures, including provision for the Break-Up Fee; (b) authorizing the
17 Trustee to hold the Auction and close the sale transaction at the times and place set forth in the
18 Motion; and (c) granting such other relief as is fair and equitable.

19 Dated: August 7, 2014

PACHULSKI STANG ZIEHL & JONES LLP

21 By /s/ Linda F. Cantor
Linda F. Cantor

22 Attorneys for R. Todd Neilson, Chapter 7
23 Trustee
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25
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27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The Trustee seeks authorization to sell customer lists and other personal property more
5 particularly described below owned by the Estate to the Stalking Horse Bidder or other Successful
6 Bidder for \$150,000 in cash as set forth in the APA or such higher amount that may be bid by the
7 Successful Bidder (the "Sale Proceeds"). Based on his marketing efforts and discussions and
8 negotiations with the Stalking Horse Bidder and other potential bidders, the Trustee believes that the
9 proposed Sale represents a fair and reasonable offer for the Property. Nonetheless, the proposed
10 Sale is subject to overbid in the event another party is willing to provide greater consideration than
11 that offered by the Stalking Horse Bidder.

12 **II.**

13 **JURISDICTION**

14 The court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334. This
15 proceeding is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (D). Venue of this case and
16 this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory
17 predicates for the relief sought herein are sections 105 and 363(b), (f) and (m) of the Bankruptcy
18 Code and Bankruptcy Rules 2002, 6004, and 9014.

19 **III.**

20 **BACKGROUND**

21 **A. The Background of the Debtor's Businesses**

22 The Debtor is a California corporation. The Debtor was in the business of selling and
23 purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by
24 phone. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered
25 orders were increasingly made to the Better Business Bureau against the Debtor and in early March,
26 2014, a class-action lawsuit was filed against the Debtor and its principal in the United States
27 District Court, Northern District of California. The Debtor ceased operations on or about March 3,
28 2014. Shortly before the initiation of these proceedings, a raid was conducted at the business offices

1 of the Debtor by the Secret Service and the Department of Justice and the Debtor's computers and
2 documents were seized for an ongoing criminal investigation.

3 **B. Procedural Background of Case**

4 The Debtor commenced this case by the filing of a voluntary petition for relief under chapter
5 11 of the Bankruptcy Code on March 10, 2014. In light of pending criminal investigation and other
6 ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing*
7 *Chapter 11 Trustee* [Docket No. 15] ("Stipulation"), which was signed by both the Debtor and its
8 attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No.
9 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's*
10 *Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as Trustee of
11 the Debtor's estate [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a
12 chapter 7 and R. Todd Neilson continues to serve as the chapter 7 Trustee [Docket 108].

13 **IV.**

14 **THE PROPOSED SALE AND OVERBIDDING/AUCTION PROCEDURES**

15 **A. Debtor's Property to Be Sold and the Trustee's Efforts to Obtain Offers**

16 The Debtor's business is no longer in operation. While the Trustee has previously sold
17 Debtor's tangible personal property, certain intellectual property remains in the Estate consisting of
18 customer lists including over 12,600 customer names, business-related telephone and fax number(s),
19 a domain name, certain customer sales journals, and other related personal property (collectively, as
20 more specifically described in the APA, the "Property").¹ The Property is no longer necessary to the
21 administration of the estate and must be disposed of with the goal of maximizing any value. The
22 Trustee has had contact with various potential interested purchasers, and based thereon is informed
23 and believes that the value of the Property will diminish over time and that the best opportunity to
24

25 ¹ Section 363(b)(1) provides that the Trustee may not sell personally identifiable information if the Debtor, in
26 connection with offering its products or services, has a policy prohibiting the transfer of such information and
27 if such policy is in effect on the petition date, unless "such sale is consistent with such policy" or a consumer
28 ombudsman is appointed. Based on a review of the Debtor's records available to him, including contents on
the Debtor's website prior to the Petition Date, and other information, the Trustee is unaware of any consumer
information privacy policy that was implemented by the Debtor as of the Petition Date. Thus, the Trustee
does not believe there is any 363(b)(1) issue in that there appears to be no prepetition policy restricting the
Estate's transfer of customer information.

1 maximize value is to sell the Property as soon as practicable subject to the overbid/auction
2 procedures set forth in the Proposed Procedures Order.

3 As discussed in the Neilson Declaration, prior to the submission of this Motion, the Trustee
4 and his agents engaged in discussions with various potential bidders for the Property. In total, five
5 parties have expressed interest in some or all of the Property. After interested parties executed
6 nondisclosure agreements, the Trustee and his agents entered into discussions regarding potential
7 sales. The Stalking Horse Bidder expressed a more immediate interest in moving forward with a
8 potential transaction, and the Trustee entered into extensive negotiations with the Stalking Horse
9 Bidder, which resulted in the terms of the parties' APA.

10 **B. Consideration**

11 The consideration to be paid by the Stalking Horse Bidder (the "Consideration") consists of
12 \$150,000, all cash.

13 **C. Property to be Sold Free and Clear of Interests**

14 The Property shall be sold free and clear of all liens, claims, rights, interests and
15 encumbrances whatsoever ("Interests"), in accordance with section 363(b) and (f) of the Bankruptcy
16 Code, with all then-existing Interests, if any, to attach to the net proceeds of the Sale with the same
17 validity, enforceability, and priority, if any, as existed with respect to the Property as of the date of
18 the commencement of the Debtor's case.

19 **D. Sale Procedures and Opportunity For Overbid²**

20 **1. Opportunity for Due Diligence and Participation in Sale Process**

21 The Trustee requests that the Court authorize the Trustee to conduct an auction of the
22 Property (the "Auction") at the offices of his counsel, whose address is set forth at the top left-hand
23 corner of the first page of this Motion, on or about September 12, 2014, at 10:00 a.m., with a Sale
24 Hearing held no later than September 16, 2014 (subject to the Court's availability), and that the
25 closing of the Sale occur no later than late September 2014. The Trustee's goal is to efficiently and
26 expeditiously administer the Estate's assets for the benefit of the Estate's creditors. To preserve the

27 _____
28 ² The following discussion is a summary only, and is subject to the more specific Sale Procedures set forth in
the Proposed Procedures Order attached hereto as Exhibit A.

1 value of the Estate, minimize the deterioration of the value of the Property, and limit the costs of
2 administering the Property and Case, an expedient conclusion to the Sale process will inure to the
3 benefit of the Estate and its creditors. Thus, the Trustee believes that closing a Sale as promptly as
4 practicable (by mid/late September as noted above) is in the best interest of the Estate.

5 Provided that the Sale Procedures are approved by the Court, the Trustee will serve within
6 three business days of entry of the Procedures Order a notice of the Auction and Sale Procedures
7 ("Sale Notice") on among others, all parties whom the Trustee believes may have an interest in
8 purchasing the Property, including those parties who expressed interest in purchasing the Property
9 during the marketing process. Assuming that the Sale Notice is served on applicable parties by no
10 later than about August 21, 2014 and the bid deadline is three business days prior to the Auction
11 (*i.e.*, a September 8 bid deadline based on a September 12 Auction), prospective bidders would have
12 approximately 18 days to conduct due diligence and prepare a bid package (although potential
13 bidders will be served with a copy of this Motion (with the APA as an exhibit) on or shortly after the
14 date hereof, resulting in potential bidders actually having considerably more than 18 days as a
15 practical matter to prepare a potential bid), which period is reasonable in the Trustee's view, given
16 the limited nature of the Property and the circumstances of the Case.

17 The Trustee will provide parties interested in acquiring the Property ("Potential Purchasers")
18 with reasonable access to the due diligence information it has previously provided to interested
19 parties.

20 **2. Submission of Offer**

21 Any person or entity interested in submitting a bid on the Property is urged to deliver an offer
22 to counsel for the Trustee, so that such bid is actually received no later than 5:00 p.m. PDT on a date
23 which is three business days prior to the Auction to be set by the Court (each such offer, an "Offer").
24 An Offer shall, at a minimum, provide that: (i) the purchase price shall provide at least \$15,000
25 above the current Consideration to the Estate (*i.e.*, \$165,000); (ii) the Potential Purchaser offers to
26 purchase all of the Property; (iii) such Offer is not subject to, or conditioned on, and does not
27 contain, any contingencies to the validity, effectiveness, and/or binding nature of the Offer,
28 including, without limitation, contingencies for financing, due diligence, or inspection; (iv) such

1 Potential Purchaser is prepared to abide by these procedures; and (v) the Purchase Price shall be paid
2 in full in cash or immediately available funds at closing. Any Potential Purchaser must accompany
3 its offer with a cash deposit equivalent to ten percent (10%) of its proposed purchase price (the "Bid
4 Deposit") and to provide information, acceptable to the Trustee, which demonstrates that the
5 Potential Purchaser (a) has sufficient cash on hand or a binding financial commitment from an
6 established and financially sound financial institution to ensure such Potential Purchaser's ability to
7 meet its commitments pursuant to its bid and to close the transaction within the time frame
8 established, and (b) has the legal capacity to complete the purchase.

9 **Notwithstanding the foregoing, the Trustee, in his sole discretion, shall determine**
10 **whether an Offer has satisfied all the conditions set forth above or if the Trustee believes it is**
11 **in the best interest of the Estate to waive any or all of the above conditions, including**
12 **permitting a bidder to bid at the Auction without submitting a prior Offer.** Any bid that the
13 Trustee deems satisfies such conditions, including one first submitted at the Auction, shall be
14 deemed a "Qualified Bid" and the party submitting such bid shall be deemed a "Qualified Bidder."
15 The Stalking Horse Bidder is hereby determined to be a Qualified Bidder and to have submitted a
16 Qualified Bid.

17 **3. Selection of the Successful Bid**

18 If a Qualified Bidder has or is prepared to make a Qualified Bid at or before the Auction, the
19 Auction shall take place as set forth above. All Qualified Bidders must appear in person at the
20 Auction, or through a duly authorized representative. If multiple Qualifying Bids satisfying all
21 Auction requirements are received, each party shall have the right to continue to improve its bid at
22 the Auction. The Auction will be an "open format" such that all participants are contemporaneously
23 to be made aware of the particulars of any Qualified Bids that are submitted. The initial overbid
24 must be at least \$15,000 in excess of the Consideration offered by the Stalking Horse Bidder.
25 Subsequent bid increments shall be set at \$10,000. The Trustee reserves the right to cancel the
26 Auction and seek to move forward with a private sale to the Stalking Horse Bidder.

27 At the conclusion of the Auction, the successful bid representing the highest and best bid for
28 the Property shall be selected by the Trustee (the "Successful Bid").

1 Promptly following the conclusion of the Auction, the party submitting the successful bid
2 (the "Successful Bidder") shall complete and sign all agreements, contracts, instruments or other
3 documents evidencing and containing the terms and conditions upon which such bid was made. Bid
4 Deposits of the non-Successful Bidder shall be returned, subject to the terms of the APA in the case
5 of the Stalking Horse Bidder. If the Successful Bidder fails to consummate a sale because of a
6 material breach or failure to perform on the part of such Successful Bidder, the Trustee shall be
7 entitled to retain the Bid Deposit made in connection therewith.

8 **4. Bid Protections**

9 Recognizing the Stalking Horse Bidder's expenditure of time, energy and resources, and that
10 the Stalking Horse Bidder has provided a floor for bids with respect to the Property, the Trustee has
11 agreed to provide certain bid protections to the Stalking Horse Bidder.

12 (a) Break-Up Fee

13 The Trustee has agreed to pay the Stalking Horse Bidder a Break-Up Fee in the amount of up
14 to \$7,500 in the event that: (i) the Stalking Horse Bidder is not in default of any of its obligations
15 under the APA, *and* (ii) the Property is thereafter sold to a Successful Bidder other than the Stalking
16 Horse Bidder at the Auction for consideration in excess of the Consideration, notwithstanding the
17 Stalking Horse Bidder's willingness and ability to consummate the purchase of the Property, which
18 payment shall be made to the Stalking Horse Bidder promptly following closing of the Sale of the
19 Property to the Successful Bidder, from the proceeds of such Sale.

20 (b) Overbid Protection

21 Any initial bid submitted by a party or parties other than the Stalking Horse Bidder (the
22 "Initial Overbid") must be in an amount that is sufficient to pay the Break-Up Fee and result in
23 additional consideration to the Estate of at least \$7,500 after payment of the Break-Up Fee. Thus,
24 the Initial Overbid must be in the amount of at least \$165,000. Each subsequent overbid, whether by
25 the Stalking Horse Bidder or another bidder, must be in an amount that is sufficient to result in
26 additional consideration to the Estate (as compared to the immediately preceding bid) of at least
27 \$10,000. The Stalking Horse Bidder shall not be required to include the amount of the Break-Up
28 Fee as part of its bid.

V.

ARGUMENT

A. The Proposed Sale Procedures, Including Provision of the Break-Up Fee, Are Reasonable and Appropriate and Will Facilitate Maximizing the Value of the Property for Sale

In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. The Trustee has obtained a “stalking horse” bid, and seeks authority to conduct the Auction (if applicable) at which the Stalking Horse Bidder’s offer will be subjected to higher and better offers. The Break-Up Fee and the Sale Procedures are reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values and to maximize the value of the Property for the Estate’s benefit.

The Stalking Horse Bidder will be the stalking horse for competitive bids, potentially leading to further competition and the establishment of a baseline against which higher or otherwise better offers can be measured. The Trustee, with the assistance of his professionals and agents, will further solicit proposals for the purchase of the Property prior to the proposed bid deadline, and based on such efforts, the Estate will have reasonably and sufficiently marketed the Property prior to the Sale Hearing. The Trustee has proposed Sale Procedures designed to maximize the purchase price that should be realized from the Sale of the Property. In short, the Trustee submits that good cause exists to approve such procedures and provisions because they are fair and reasonable under the circumstances and will encourage competitive bidding and the highest and best price for the Property. Indeed, courts frequently approve competitive bidding procedures like the proposed Sale Procedures as a means of ensuring that such sales will maximize value for the estate. *See, e.g., Doehring v. Crown Corp. (In re Crown Corp.)*, 679 F.2d 774, 775 (9th Cir. 1982) (district court required specific minimum overbid amounts, deposits, and comparable deal terms to be used by all overbidders); *In re GGW Brands, LLC*, Case No. 13-15130 (Bankr. C.D. Cal. Feb. 24, 2014) (J. Klein) (order approving overbidding and sale/auction procedures); *In re Victor Valley Community Hospital*, Case No. 10-39537 (Bankr. C.D. Cal. Oct. 7, 2010) (J. Bauer) (order approving qualified bidder, overbidding and other sale/auction procedures); *In re Barbecues Galore, Inc.*, Case No. 08-16036-MT (Bankr. C.D. Cal. Sept. 4, 2008) (J. Tighe) (similar).

1 In particular respect to the Break-Up Fee, to compensate the Stalking Horse Bidder for
2 serving as the stalking horse whose bid will be subject to higher and better offers, the Trustee seeks
3 approval of the Break-Up Fee in accordance with the terms of the APA. The Trustee believes that
4 the Break-Up Fee is justified, given the benefits to the Estate of having a stalking horse bidder by
5 virtue of a definitive asset purchase agreement and the risk to the Stalking Horse Bidder that a third-
6 party offer may ultimately be accepted, and that approval of the Break-Up Fee under the terms of the
7 APA are necessary to preserve and enhance the value of the Estate.

8 Bidding incentives encourage a potential purchaser to invest the requisite time, money and
9 effort to negotiate with the estate and perform the necessary due diligence attendant to the
10 acquisition of the estate's assets, despite the inherent risks and uncertainties of the bankruptcy
11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up
12 Fee under the "business judgment rule," which proscribes judicial second-guessing of the actions of
13 a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See,*
14 *e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives
15 may "be legitimately necessary to convince a white knight to enter the bidding by providing some
16 form of compensation for the risks it is undertaking") (internal quotation marks and citation
17 omitted).

18 The APA and the Estate's agreement to pay the Break-Up Fee are the product of good faith,
19 arm's length negotiations between the Trustee and Stalking Horse Bidder. The Break-Up Fee is fair
20 and reasonable in amount, and is reasonably intended to compensate for the risk to the Stalking
21 Horse Bidder of being used as a stalking horse. The Break-Up Fee has already encouraged
22 competitive bidding in that the Stalking Horse Bidder would not have entered into the APA without
23 these provisions, and it will likely promote more competitive bidding and enhance the ultimate
24 purchase price.

25 Furthermore, the Break-Up Fee, which is 5% of the purchase price under the APA, is within
26 the spectrum of reasonable break-up fees approved by bankruptcy courts. *See, e.g., In re GGW*
27 *Brands, LLC*, Case No. 13-15130 (Bankr. C.D. Cal. Feb. 24, 2014) (J. Klein) (order approving
28 approximately 4.94% break-up); *In re Global Motorsport Group, Inc., et al.*, Case No. 08-10192

1 (KJC) (Bankr. D. Del. Feb. 14, 2008) (approving approximately 4% break-up fee); *In re O'Brien*
2 *Envtl. Energy, Inc.*, 181 F.3d 527, 536 (3d Cir. 1999) (approximately 4% break-up fee was
3 reasonable); Kelly K. Frazier, *A Comparison Shopping Guide for 363 Sales*, p. 139 (break-up and
4 topping fees range from 1.5 to 5 percent); *see also Official Committee of Subordinated Bondholders*
5 *v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 657-58 (S.D.N.Y.
6 1992) (establishing three basic factors for determining whether to permit break-up fees in
7 bankruptcy: whether “the relationship of the parties who negotiated the break-up fee [is] tainted by
8 self-dealing or manipulation,” whether the “fee hamper[s], rather than encourage[s], bidding,” and
9 whether “the amount of the fee [is] unreasonable relative to purchase price”), *appeal dismissed*, 3
10 F.3d 49 (2d Cir. 1993).

11 For the reasons set forth above, the Trustee respectfully requests approval of: (a) the
12 proposed overbid protections including the Break-Up Fee; (b) the Sale Procedures for the conduct of
13 overbidding, the Auction and selection of the Successful Bidder; (c) the scheduling of the Sale
14 Hearing and other matters for which scheduling is requested; and (d) the related relief sought hereby
15 as set forth in the Proposed Procedures Order.

16 **B. Request for Waiver of Rule 6004(h) Stay**

17 In order to contact potential bidders as soon as practicable and allow such parties time to
18 commence due diligence prior to the Auction, the Trustee respectfully requests that the order on this
19 Motion be effective immediately, notwithstanding the 14-day stay imposed by Bankruptcy Rule
20 6004(h).

21 As expressed above, the Trustee’s goal is to efficiently and expeditiously administer the
22 Estate’s assets for the benefit of the Estate’s creditors. To preserve the value of the Estate and limit
23 the costs of administering the Property and Case, an expedient conclusion to the Sale process will
24 inure to the benefit of the Estate and its creditors. Waiver of any stay will permit the Auction and
25 proposed Sale to take place as early as possible under the circumstances.

VI.

CONCLUSION

For all the foregoing reasons, the Trustee respectfully requests that the Court enter an order (a) approving the Sale Procedures and other relief set forth in the Proposed Procedures Order; (b) authorizing the Trustee to hold the Auction and close the Sale at the times and place set forth above, and (c) granting such other relief as is fair and equitable.

Dated: August 7, 2014

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Linda F. Cantor
Linda F. Cantor

Attorneys for R. Todd Neilson, Chapter 7
Trustee

DECLARATION OF R. TODD NEILSON

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I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 7 trustee (the “Trustee”) in the above-captioned bankruptcy case (the “Case”). I make this Declaration on facts within my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or as a result of having reviewed the court file in this Case. If called upon, I can and will competently testify to the facts stated herein.

2. I make this Declaration in support of the *Motion for Order: (1) Scheduling Auction and Sale Hearing in Connection With Sale of Debtor’s Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and Related Personal Property of the Estate; (2) Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice of Auction and Sale Hearing; and (5) Granting Related Relief* (the “Motion”). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Debtor is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone.

4. The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of certain pending criminal investigation and other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] (“Stipulation”), which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee’s Application for the Appointment of a Chapter 11 Trustee*, appointing me as Trustee of the Debtor’s estate (the “Estate”) [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 proceeding and I continue to serve as the chapter 7 Trustee [Docket 108].

5. The Debtor’s business is no longer in operation and certain personal property remains in the Estate. While I previously sold Debtor’s tangible personal property, certain intellectual

1 property remains in the Estate consisting of customer lists including over 12,600 customer names,
2 business-related telephone and fax number(s), a domain name, certain customer sales journals, and
3 other related personal property (as more specifically described in the APA, the "Property"). The
4 Property is no longer necessary to the administration of the Estate and must be disposed of with the
5 goal of maximizing any value.

6 6. Shortly after my appointment as Trustee, I and my agents started to receive inquiries
7 from third parties about possibly acquiring some or all of the Property. I immediately set up a
8 procedure which would segregate and administer all inquiries from any interested parties. Given the
9 typical early posture of a bankruptcy trustee engagement and the need for me to get up to speed on
10 and promptly address case issues, I decided that keeping a separate file and doubling back with
11 potential interested parties after more pressing case matters have been addressed would be the best
12 course of action. I have acted as a bankruptcy trustee in various cases for over 30 years, during
13 which period I have sold a large and diverse amount of assets including assets like the Property.
14 Accordingly, I am familiar and experienced with the universe of potential, qualified buyers of assets
15 like the Property, which is relatively small. In total, five parties expressed interest in some or all of
16 the Property. After interested parties executed nondisclosure agreements, I and my agents engaged
17 in discussions regarding potential sales. The Stalking Horse Bidder expressed a more immediate
18 interest in moving forward with a potential transaction, and I entered into extensive discussions with
19 the Stalking Horse Bidder, which resulted in the terms of the parties' APA. Based on my extensive
20 prior experience, as well as discussions with potential interested parties, I believe that the value of
21 the Property will diminish over time and that the best opportunity to maximize value for the Estate is
22 to sell the Property as soon as practicable subject to the overbid procedures requested in the Motion.
23 As chapter 7 trustee, my goal is to maximize value from the disposition of the Debtor's remaining
24 assets and to investigate and, if appropriate, pursue causes of action. A sale of the remaining
25 property of the Debtor in the Trustee's control and possession, including the Property, will serve that
26 goal and benefit the Estate.

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Linda F. Cantor (Bar No. 153762) Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd., Suite 1300 Los Angeles, CA 90067 Tel: 310-277-6910 Fax: 310-201-0760 <input type="checkbox"/> Attorney for: R. Todd Neilson, Chapter 7 Trustee	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: The Tulving Company, Inc. Debtor(s).	CASE NO.: 8:14-bk-11492-ES CHAPTER: 7 ADV. NO.:

**ELECTRONIC FILING DECLARATION
(INDIVIDUAL)**

- Petition, statement of affairs, schedules or lists
 Amendments to the petition, statement of affairs, schedules or lists
 Other: Notice of Motion and Motion for Order: (1) Scheduling Auction and Sale Hearing in Connection With Sale Of Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, And Related Personal Property Of The Estate; (2) Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice Of Auction And Sale Hearing; And (5) Granting Related Relief; Memorandum of Points and Authorities; Declaration of R. Todd Neilson
- Date Filed: _____
 Date Filed: _____
 Date Filed: August 7, 2014

PART I - DECLARATION OF DEBTOR(S) OR OTHER PARTY

I (We), the undersigned Debtor(s) or other party on whose behalf the above-referenced document is being filed (Signing Party), hereby declare under penalty of perjury that: (1) I have read and understand the above-referenced document being filed electronically (Filed Document); (2) the information provided in the Filed Document is true, correct and complete; (3) the "/s/," followed by my name, on the signature line(s) for the Signing Party in the Filed Document serves as my signature and denotes the making of such declarations, requests, statements, verifications and certifications to the same extent and effect as my actual signature on such signature line(s); (4) I have actually signed a true and correct hard copy of the Filed Document in such places and provided the executed hard copy of the Filed Document to my attorney; and (5) I have authorized my attorney to file the electronic version of the Filed Document and this Declaration with the United States Bankruptcy Court for the Central District of California. If the Filed Document is a petition, I further declare under penalty of perjury that I have completed and signed a *Statement of Social Security Number(s)* (Form B21) and provided the executed original to my attorney.



 Signature of Signing Party

 Date

R. Todd Neilson

 Printed Name of Signing Party

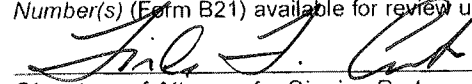
 Signature of Joint Debtor (if applicable)

 Date

 Printed Name of Joint Debtor (if applicable)

PART II - DECLARATION OF ATTORNEY FOR SIGNING PARTY

I, the undersigned Attorney for the Signing Party, hereby declare under penalty of perjury that: (1) the "/s/," followed by my name, on the signature lines for the Attorney for the Signing Party in the Filed Document serves as my signature and denotes the making of such declarations, requests, statements, verifications and certifications to the same extent and effect as my actual signature on such signature lines; (2) the Signing Party signed the *Declaration of Debtor(s) or Other Party* before I electronically submitted the Filed Document for filing with the United States Bankruptcy Court for the Central District of California; (3) I have actually signed a true and correct hard copy of the Filed Document in the locations that are indicated by "/s/," followed by my name, and have obtained the signature(s) of the Signing Party in the locations that are indicated by "/s/," followed by the Signing Party's name, on the true and correct hard copy of the Filed Document; (4) I shall maintain the executed originals of this Declaration, the *Declaration of Debtor(s) or Other Party*, and the Filed Document for a period of five years after the closing of the case in which they are filed; and (5) I shall make the executed originals of this Declaration, the *Declaration of Debtor(s) or Other Party*, and the Filed Document available for review upon request of the Court or other parties. If the Filed Document is a petition, I further declare under penalty of perjury that: (1) the Signing Party completed and signed the *Statement of Social Security Number(s)* (Form B21) before I electronically submitted the Filed Document for filing with the United States Bankruptcy Court for the Central District of California; (2) I shall maintain the executed original of the *Statement of Social Security Number(s)* (Form B21) for a period of five years after the closing of the case in which they are filed; and (3) I shall make the executed original of the *Statement of Social Security Number(s)* (Form B21) available for review upon request of the Court.



 Signature of Attorney for Signing Party

8-7-14

 Date

LINDA F. Cantor

 Printed Name of Attorney for Signing Party

EXHIBIT A

(Proposed Procedures Order)

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1 Linda F. Cantor (CA Bar No. 153762)
Jason S. Pomerantz (CA Bar No. 157216)
2 PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
3 Los Angeles, California 90067
Telephone: 310-277-6910
4 Facsimile: 310-201-0760
E-mail: lcantor@pszjlaw.com

5 Counsel for R. Todd Neilson, Chapter 7 Trustee for The
6 Tulving Company, Inc.

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:

12 THE TULVING COMPANY, INC., a
13 California corporation,

14 Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**ORDER: (1) SCHEDULING AUCTION
AND SALE HEARING IN CONNECTION
WITH SALE OF DEBTOR'S CUSTOMER
LISTS, PHONE NUMBERS, WEB
ADDRESS, CERTAIN CUSTOMER
FILES, AND RELATED PERSONAL
PROPERTY OF THE ESTATE, FREE
AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES; (2) APPROVING
SALE PROCEDURES; (3) APPROVING
BREAK-UP FEE; (4) APPROVING
NOTICE OF AUCTION AND SALE
HEARING; AND (5) GRANTING
RELATED RELIEF**

Procedures Hearing

Date:

Time:

Place: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92701

1 On _____, 2014, this Court held a hearing on the proposed sale, bidding and
2 auction procedures and related matters provided for in this Order (the “Procedures Matters”) as set
3 forth in the *Motion for Order: (1) Scheduling Auction and Sale Hearing in Connection With Sale of*
4 *Debtor’s Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and Related*
5 *Personal Property of the Estate; (2) Approving Sale Procedures; (3) Approving Break-Up Fee; (4)*
6 *Approving Notice of Auction and Sale Hearing; and (5) Granting Related Relief* [Docket No. ____]
7 (the “Motion”)¹ filed by R. Todd Neilson, the duly appointed chapter 7 trustee (the “Trustee”) for
8 The Tulving Company, Inc. (the “Debtor”), in the above-entitled chapter 7 case (the “Case”).
9 Appearances at the hearing on the Procedures Matters (the “Procedures Hearing”) are set forth on
10 the record. This Court has considered the Motion and the Procedures Matters, any responsive
11 pleadings filed in connection with the Motion, the record in the Case, and the representations of
12 counsel at the Procedures Hearing; and the Court having determined that notice of the Motion in
13 respect to the Procedures Matters was adequate and sufficient; and after due deliberation and
14 sufficient cause appearing therefor;

15 **IT IS HEREBY FOUND AND DETERMINED THAT:**

16 A. The Court has jurisdiction over this matter and over the property of the Debtor and
17 Estate pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28
18 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are 11
19 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004, and 9014. Venue of the Case and the
20 Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

21 B. The relief granted herein is in the best interests of the Estate, its creditors, and other
22 parties in interest.

23 C. The notice of the Motion, the Procedures Matters, and the Procedures Hearing given
24 by the Trustee constitutes due and sufficient notice thereof.

25
26
27 _____
28 ¹ Capitalized terms not defined herein have the meaning ascribed to such term in the Motion.

1 D. Any and all objections to the relief requested in the Motion relating to the Procedures
2 Matters that have not been withdrawn, waived or settled as announced to the Court at the Procedures
3 Hearing, or by stipulation filed with the Court, are overruled.

4 E. The Trustee has articulated good and sufficient reasons for the Court to (i) approve
5 the Sale Procedures, (ii) approve the Break-Up Fee as provided in that certain Asset Purchase
6 Agreement (“APA”) attached hereto as **Exhibit 1**, (iii) approve the form and manner of notice of the
7 Motion, the Auction, the Sale Hearing, and (iv) set the date of the Auction (if any) and the Sale
8 Hearing.

9 F. The Break-Up Fee, to the extent payable under the APA, (i) shall be deemed an actual
10 and necessary cost and expense of preserving the Estate, (ii) is of substantial benefit to the Estate,
11 (iii) is reasonable and appropriate, including in light of the size and nature of the Sale and the efforts
12 that have been and will be expended by the Stalking Horse Bidder, (iv) has been negotiated by the
13 parties and their respective advisors at arm’s length and in good faith, and (v) is necessary to ensure
14 that the Stalking Horse Bidder will continue to pursue the proposed Sale. The Break-Up Fee is a
15 material inducement for, and condition of, the Stalking Horse Bidder’s entry into the APA. The
16 Stalking Horse Bidder is unwilling to commit to purchase the Property under the terms of the APA
17 unless the Stalking Horse Bidder is assured of receiving the Break-Up Fee, if the Break-Up Fee
18 becomes due and owing under the APA.

19 G. The Sale Notice (as defined below) is calculated to provide adequate notice
20 concerning the proposed Sale of the Property, and will provide due and adequate notice of the relief
21 sought in the Motion, and is hereby approved.

22 H. The Sale Procedures are reasonable and appropriate and represent a fair and
23 appropriate method for maximizing the realizable value of the Property.

24 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 25 1. The Motion is GRANTED.
26 2. Any objections filed in response to the Motion and the relief granted herein, to the
27 extent not resolved as set forth herein or at the Procedures Hearing, are hereby OVERRULED.
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1 3. The Sale contemplated by the APA is designated as the “Stalking Horse Bid.”

2 4. Upon execution of a confidentiality agreement, any person identified by the Trustee,
3 with the assistance of his advisors, as reasonably likely to be a Qualified Bidder (as defined below)
4 that wishes to conduct due diligence on the Property with respect to a potential overbid may be
5 granted access to all material information that has been or will be provided to the Stalking Horse
6 Bidder. If the Trustee, in his discretion, determines that a Potential Bidder does not constitute a
7 Qualified Bidder (as defined below), then such Potential Bidder’s ability to receive due diligence
8 access or additional non-public information shall terminate.

9 5. Any prospective bidder (each a “Potential Bidder”) that wishes to participate in the
10 bidding process for the Property must, no later than [September 8], 2014 (*i.e.*, three business days
11 prior to the Auction) at 5:00 p.m. (Pacific Time) (the “Bid Deadline”) do all of the following:

12 a. Submit to the Trustee, through his counsel, an irrevocable offer in the form of
13 an executed APA (the “Modified Agreement”) without financing, internal approval or due diligence
14 contingencies, at a price that conforms with the following Paragraph 5.b, and on such other terms
15 that are no less favorable to the Estate than those contained in the APA. The Potential Bidder shall
16 also submit a “blacklined” or otherwise marked copy of the Modified Agreement reflecting the
17 differences between the Modified Agreement and the APA executed by the Stalking Horse Bidder.

18 b. Agree, in such Modified Agreement, to a purchase price that provides for the
19 following (the “Purchase Price”): payment in cash at closing in an initial minimum amount equal to
20 or exceeding the sum of \$165,000 (\$150,000 plus \$15,000).

21 c. Make a good faith cash deposit in the form of a cashier’s check or wire
22 transfer, in an amount equivalent to 10% of the proposed Purchase Price (the “Bid Deposit”), into a
23 segregated account maintained by the Trustee (the “Segregated Account”). The Bid Deposit shall
24 immediately become non-refundable (subject to the next sentence) and credited toward the Purchase
25 Price, if and when the transaction with the Potential Bidder making such Bid Deposit is deemed the
26 Successful Bid or Back-Up Bid at the Auction and approved by the Court at the Sale Hearing. If a
27 Potential Bidder’s bid is not designated as a Qualified Bid (as defined below), or such bid is not
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1 approved as the Successful Bid or the Back-Up Bid at the Sale Hearing, the Bid Deposit of such
2 bidder will be returned to such bidder within three (3) business days after the Sale Hearing.

3 d. Provide written evidence reasonably satisfactory to the Trustee of (i) the
4 identification of the Potential Bidder, its principals, and the representatives thereof who are
5 authorized to appear and act on its behalf for all purposes regarding the contemplated transaction, (ii)
6 the Potential Bidder's corporate or other authority to enter into the contemplated transaction, (iii)
7 identification of all individuals of the Potential Bidder and its advisors that will attend the Auction,
8 and (iv) its financial ability to fully and timely perform all obligations under the Modified
9 Agreement if it is declared to be the Successful Bidder.

10 e. Disclose any connections or agreements with the Debtor, the Trustee, the
11 Stalking Horse Bidder, and any other known Potential Bidder or Qualified Bidder.

12 6. If a Potential Bidder delivers all of the materials described in paragraph 5, above,
13 (including the Bid Deposit) by the Bid Deadline, the Trustee will determine whether the Potential
14 Bidder (i) has demonstrated the financial ability to consummate the purchase of the Property, is
15 reasonably likely to be able to and willing to consummate the contemplated transactions and (iii) has
16 otherwise satisfied all of the requirements described in paragraph 5, above. If the Potential Bidder
17 has satisfied the requirements of this paragraph 6, the Trustee shall designate the Potential Bidder as
18 a "Qualified Bidder" and such bid as a "Qualified Bid." The Stalking Horse Bidder shall be deemed
19 to be a Qualified Bidder and the APA shall be deemed a Qualified Bid.

20 7. If the Trustee receives at least one (1) Qualified Bid from a Qualified Bidder other
21 than the Stalking Horse Bidder prior to the Bid Deadline, then the Trustee shall notify the Stalking
22 Horse Bidder and each other Qualified Bidder that the Trustee intends to conduct an auction (the
23 "Auction") to consider all Qualified Bids, subject to reasonable rules as may be established by the
24 Trustee. The Auction to determine the Successful Bidder for the Purchased Assets shall be held on
25 [September 12], 2014 at 10:00 a.m. (Pacific Time) at the offices of Pachulski, Stang, Ziehl & Jones
26 LLP, 10100 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067. Each bidder
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1 participating at the Auction will be required to confirm that it has not engaged in any collusion with
2 respect to the bidding or the Sale.

3 8. Subject to paragraph 15 below, only the Stalking Horse Bidder and other Qualified
4 Bidders may bid at the Auction. Copies of all Qualified Bids shall be provided to the Stalking Horse
5 Bidder and each other Qualified Bidder prior to the Auction. At the commencement of the Auction,
6 the Trustee shall identify the bid that he has determined to be the highest and best offer and shall
7 permit the Stalking Horse Bidder and other Qualified Bidders to submit higher and better bids. Each
8 subsequent bid must exceed the amount of the preceding bid by not less than \$10,000 and shall not
9 be modified in a manner that causes it no longer to be a Qualified Bid. The Auction will be an "open
10 format" such that all participants are contemporaneously to be made aware of the particulars of any
11 Qualified Bids that are submitted. At the conclusion of the Auction, the Trustee shall determine
12 which bid(s) shall be deemed the Successful Bid and Back-Up Bid (if any). The Trustee shall file a
13 notice announcing the results of the Auction and the identity of the Successful Bidder and the Back-
14 Up Bidder on the Court's docket as soon as practicable after conclusion of the Auction. The Trustee
15 shall request at the Sale Hearing that the Court authorize the Trustee to consummate the Sale of the
16 Property to the Successful Bidder and, should the Successful Bidder fail to close, to the Back-Up
17 Bidder. The Trustee reserves the right to cancel the Auction and seek to move forward with a
18 private sale to the Stalking Horse Bidder. Promptly following the conclusion of the Auction, the
19 Successful Bidder shall complete and sign all agreements, contracts, instruments or other documents
20 evidencing and containing the terms and conditions upon which such bid was made. Bid Deposits of
21 the bidders other than the Successful Bidder and Back-Up Bidder shall be returned, subject to the
22 terms of the APA in the case of the Stalking Horse Bidder.

23 9. If bids have been submitted by more than one Qualified Bidder, the Qualified Bidder
24 that makes the next-highest and best bid to that of the Successful Bidder shall become the back-up
25 bidder (the "Back-Up Bidder") and such Back-Up Bidder's final and highest and best bid (the
26 "Back-Up Bid") shall remain open pending the closing of the Successful Bid (the "Closing Date").
27 If a bid of the Stalking Horse Bidder is the next-highest and best bid to that of the Successful Bidder,
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1 then such bid of the Stalking Horse Bidder shall be the Back-Up Bid, subject to the terms and
2 conditions of the APA relating thereto.

3 10. The Estate shall retain the Bid Deposit(s) made by the Successful Bidder and/or the
4 Back-Up Bidder if either the Successful Bidder and/or the Back-Up Bidder (as applicable) fails to
5 close the Sale within five (5) business days after entry of a Bankruptcy Court order approving the
6 Sale of the Property.

7 10. If the Trustee does not receive at least one Qualified Bid from a Qualified Bidder
8 other than the Stalking Horse Bidder, then no Auction shall be scheduled or conducted, and the
9 Court at the Sale Hearing shall proceed to consider the approval of the Sale of the Property to the
10 Stalking Horse Bidder as set forth in the APA.

11 11. If the Stalking Horse Bidder is not the Successful Bidder, subject to the terms and
12 conditions in the APA, the Trustee shall, pursuant to the APA, pay the Stalking Horse Bidder the
13 Break-Up Fee. The Break-Up Fee, to the extent payable under the APA, shall (i) be paid out of and
14 from the proceeds of the Sale of the Property to the Successful Bidder (or if applicable, the Back-Up
15 Bidder), constitute an administrative expense against the Estate under Bankruptcy Code section
16 503(b), and constitute liquidated damages, without regard to the Stalking Horse Bidder's ultimate
17 damages, and the Stalking Horse Bidder shall not retain any other rights, remedies, claims,
18 counterclaims, and defenses against the Estate in relation to the Sale. For the avoidance of doubt,
19 the Break-Up Fee shall be payable to the Stalking Horse Bidder in the event that: (i) the Stalking
20 Horse Bidder is not in default of any of its obligations under the APA, *and* (ii) the Property is
21 thereafter sold to a Successful Bidder other than the Stalking Horse Bidder at the Auction for
22 consideration in excess of the Consideration, notwithstanding the Stalking Horse Bidder's
23 willingness and ability to consummate the purchase of the Property, which payment shall be made to
24 the Stalking Horse Bidder promptly following closing of the Sale of the Property to the Successful
25 Bidder, from the proceeds of such Sale.

26 12. The Court shall hold a hearing on [September 16], 2014 at __:____.m. (Pacific
27 Time) (the "Sale Hearing") to consider the approval of the Sale as set forth in the Motion and the
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1 *Motion for Order: (1) Approving Asset Purchase Agreement; (2) Approving Sale of Estate's*
2 *Property (Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and*
3 *Related Personal Property) Free and Clear of All Liens, Claims, Encumbrances, and Interests; and*
4 *(3) Granting Related Relief (the "Sale Approval Motion") approve the Successful Bidder and Back-*
5 *Up Bidder, if necessary, and confirm the results of the Auction, if applicable.*

6 13. If the Sale transaction with the Successful Bidder does not close, the Back-Up Bid
7 shall, upon notice by the Trustee to the Back-Up Bidder, be deemed the Successful Bid without
8 further order of the Court, and the Back-Up Bidder shall be required to consummate the Sale
9 transaction in accordance with the applicable asset purchase agreement, and the Back-Up Bidder
10 shall be subject to the terms of this Order as if it were the initial Successful Bidder. If the Stalking
11 Horse Bidder is not the Successful Bidder or Back-Up Bidder, the Stalking Horse Bidder shall have
12 the right, but not the obligation, to keep its bid open pending the closing of a transaction with a
13 Successful Bidder.

14 14. Upon approval by the Court of the Successful Bidder and subject to the terms and
15 conditions of the applicable asset purchase agreement, the Successful Bidder's Bid Deposit shall
16 become non-refundable and deemed forfeited to the Estate if the asset purchase agreement is
17 thereafter terminated as a result of a breach by the Successful Bidder or failure by the Successful
18 Bidder to close the proposed transaction as specified in this Order and/or the applicable asset
19 purchase agreement. The Bid Deposit of the Back-Up Bidder shall remain on deposit in the
20 Segregated Account pending the Closing Date (as defined below), and such deposit shall become
21 non-refundable and deemed forfeited to the Estate if the Back-Up Bidder is declared the Successful
22 Bidder and if the applicable asset purchase agreement is thereafter terminated as a result of a breach
23 by the Back-Up Bidder or failure by the Back-Up Bidder to close the proposed transaction as
24 specified in this Order and/or the applicable asset purchase agreement.

25 15. Notwithstanding any other provision herein, the Trustee, in his sole discretion, shall
26 determine whether an bid for the purchase of the Property has satisfied all the conditions set forth
27 above or if the Trustee believes it is in the best interest of the Estate to waive any or all of the above
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1 conditions, including permitting a bidder to bid at the Auction without submitting a prior Qualified
2 Bid.

3 16. The Trustee may modify the Sale Procedures set forth in this Order at any time prior
4 to or during the Auction if the Trustee determines, following consultation with the Stalking Horse
5 Bidder, in his reasonable judgment, that such modifications are reasonable and will better promote
6 the goals of the Auction process and are in the best interest of the Estate and the creditors thereof.

7 17. Any objections to the Sale and Sale Approval Motion shall be in writing and shall be
8 filed with the Court and served so as to be actually received by (i) the Trustee's counsel, Linda
9 Cantor, Esq., Pachulski, Stang, Ziehl & Jones, LLP, 10100 Santa Monica Blvd., Suite 1300, Los
10 Angeles, CA 90067, fax: 310-201-0760, lcantor@pszjlaw.com, (ii) the Stalking Horse's counsel,
11 Armen Vartian, 1601 N. Sepulveda Blvd. #581, Manhattan Beach, CA 90266, fax: 866-427-3820,
12 armen@vartianlaw.com, and (iii) the Office of the United States Trustee (the "Objection
13 Recipients"), **on or before [September 5], 2014 at 5:00 p.m. (Pacific Time)**, provided, however, in
14 the event that the Successful Bidder at the Auction is a person or entity other than the Stalking Horse
15 Bidder, any supplemental or further objections (a "Supplemental Objection") to the Sale of the
16 Property to the Successful Bidder shall be filed by no later than **[September 15, 2014 at 12:00 p.m.]**
17 **(Pacific Time)** (the "Objection Deadlines"). The Supplemental Objection shall be limited to issues
18 arising from the Successful Bidder being a person or entity other than the Stalking Horse Bidder.
19 The Trustee's reply and any other response to the objections shall be filed and served on no later
20 than [September 12], 2014, at 5:00 p.m. (Pacific Time); provided that the Trustee may reply to the
21 issues raised in a Supplemental Objection by a reply filed and served on no later than the
22 commencement of the Sale Hearing.

23 18. Notice of (a) the Motion, (b) the Sale Procedures, (c) the Auction, (d) the Objection
24 Deadlines, and (e) the Sale Hearing shall be provided within three (3) business days after entry of
25 this Order, by the Trustee via ECF notification, U.S. mail, facsimile and/or email, upon the Service
26 Parties (defined below), substantially in the form attached hereto as **Exhibit 2** (the "Sale Notice"),
27 and such notice shall be good and sufficient, and no other or further notice shall be required, under
28

1 the circumstances. Subject to any applicable provisions of the Court's August 6, 2014 Order
2 Limiting Scope of Notice [Docket No. 157], the "Service Parties" are (i) any parties known by the
3 Trustee to have expressed an interest to him in a transaction with respect to the Property; (ii) any
4 other parties that the Trustee and his advisors believe may potentially have an interest in acquiring
5 the Property; (iii) any entities known by the Trustee to have asserted any lien or interest in the
6 Property; (iv) the United States Trustee; and (vii) all parties who have requested special notice in the
7 Case.

8 19. Notwithstanding any applicability of Bankruptcy Rule 6004(h) and/or any other
9 Bankruptcy Rule, the terms and conditions of this Order shall be immediately effective and
10 enforceable upon entry hereof.

11 20. This Court shall retain jurisdiction to enforce and interpret the provisions of this
12 Order.

13
14 Dated: _____

U.S. BANKRUPTCY JUDGE

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EXHIBIT 1

(Asset Purchase Agreement with Stalking Horse Bidder)

[document attached as Exhibit B to Motion]

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Exhibit 2
(Sale Notice)

1 Linda F. Cantor (CA Bar No. 153762)
Jason S. Pomerantz (CA Bar No. 157216)
2 PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
3 Los Angeles, California 90067
Telephone: 310-277-6910
4 Facsimile: 310-201-0760
E-mail: lcantor@pszjlaw.com
5

6 Counsel for R. Todd Neilson, Chapter 7 Trustee for The
Tulving Company, Inc.

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:

12 THE TULVING COMPANY, INC., a
California corporation,

13
14 Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**NOTICE OF AUCTION AND SALE
HEARING IN CONNECTION WITH
SALE OF DEBTOR'S CUSTOMER LISTS,
PHONE NUMBERS, WEB ADDRESS,
CERTAIN CUSTOMER FILES, AND
RELATED PERSONAL PROPERTY OF
THE ESTATE FREE AND CLEAR OF
ALL LIENS, CLAIMS, ENCUMBRANCES
AND INTERESTS**

Auction (if held):

Date: _____, 2014

Time: 10:00 a.m.

Place: Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd. 13th Floor
Los Angeles, California 90067

Bid Deadline:

_____, 2014 at 5:00 p.m. (Pacific)

Sale Approval Hearing:

Date: _____, 2014

Time: ____:____.m.

Place: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92701

1 **PLEASE TAKE NOTICE** that on _____, 2014, R. Todd Neilson, Chapter 7 Trustee
2 (the "Trustee") for The Tulving Company, Inc. (the "Debtor"), filed the *Motion for Order: (1)*
3 *Scheduling Auction and Sale Hearing in Connection with Sale of Debtor's Customer Lists, Phone*
4 *Numbers, Web Address, Certain Customer Files, and Related Personal Property of the Estate; (2)*
5 *Approving Sale Procedures; (3) Approving Asset Purchase Agreement; (4) Approving Break-Up*
6 *Fee; (5) Approving Notice of Auction and Sale Hearing; and (6) Approving Sale of Estate's*
7 *Property Free and Clear of All Liens, Claims, Encumbrances, and Interests [Docket No. ____] (the*
8 *"Procedures Motion"), and the Motion for Order: (1) Approving Asset Purchase Agreement; (2)*
9 *Approving Sale of Estate's Property (Debtor's Customer Lists, Phone Numbers, Web Address,*
10 *Certain Customer Files, and Related Personal Property) Free and Clear of All Liens, Claims,*
11 *Encumbrances, and Interests; and (3) Granting Related Relief (the "Sale Approval Motion").¹*
12 After a hearing, on _____, 2014, the United States Bankruptcy Court for the Central
District of California, Santa Ana Division (the "Bankruptcy Court") entered the *Order: (1)*
13 *Scheduling Auction and Sale Hearing in Connection With Sale of Debtor's Customer Lists, Phone*
14 *Numbers, Web Address, Certain Customer Files, and Related Personal Property of the Estate,*
15 *Free and Clear of Liens, Claims and Encumbrances; (2) Approving Sale Procedures; (3)*
16 *Approving Break-Up Fee; (4) Approving Notice of Auction and Sale Hearing; and (5) Granting*
17 *Related Relief [Docket No. ____] (the "Procedures Order"), which order approved certain*
18 *procedures related matters as set forth in the Procedures Motion. A copy of the Procedures Order*
19 *is attached hereto.*

20 **PLEASE TAKE FURTHER NOTICE** that, as set forth in the Procedures Order, the offer
21 of Greatcollections.com LLC d/b/a Great Collections (the "Stalking Horse Bidder"), in the amount
22 of \$150,000 cash, has been selected by the Trustee as the "Stalking Horse Bid" for the purchase of
23 certain intellectual property consisting of customer lists including over 12,600 customer names,
24 customer lists, business-related telephone and fax number(s), a domain name, certain customer
sales journals, and other related personal property (as more specifically described in the APA, the
25 "Property"). In order to solicit the highest and best offer for the Property, the Trustee has served or
26 will serve a copy of the Procedures Motion and Sale Approval Motion on potential bidders for the
Property, and will conduct an Auction (if applicable) in accordance with the Sale Procedures and
27 the Procedures Order. If the Trustee receives at least one Qualified Bid from a Qualified Bidder
28 other than the Stalking Horse Bidder prior to the Bid Deadline, then the Trustee shall conduct an
auction (the "Auction") to consider all Qualified Bids.

29 **PLEASE TAKE FURTHER NOTICE** that any person or entity interested in submitting a
Qualified Bid on the Property, other than the Stalking Horse Bid, must deliver a bid, in accordance
with the Procedures Order, to Trustee's counsel, Pachulski Stang Ziehl & Jones LLP, 10100 Santa
Monica Blvd., Suite 1300, Los Angeles, CA 90067-1225, Attn: Linda F. Cantor, Esq., fax (310)
201-0760, e-mail: lcantor@pszjlaw.com, such that the bid is actually received no later than
_____, 2014, at 5:00 p.m. (Pacific time). Any party desiring additional, relevant
information should contact the Trustee's counsel.

30 **PLEASE TAKE FURTHER NOTICE** that the Trustee will conduct an Auction (if
31 applicable) of the Property at 10:00 a.m. (Pacific Time) on _____, 2014, at the offices of
32 _____

33 ¹ Capitalized terms not defined herein have the meaning ascribed to such term in the Procedures Motion, the
34 Procedures Order or the Sale Approval Motion, as applicable.

1 Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles,
2 California 90067, or at such other location and date/time as may be later announced by the Trustee.
3 Only parties that have timely submitted Qualified Bids (and who have been informed by the
4 Trustee of such status) will be permitted to participate in and/or make any statements on the record
at the Auction. All Qualified Bidders must appear in person at the Auction, or through a duly
authorized representative.

5 **PLEASE TAKE FURTHER NOTICE** that the hearing to consider approval of the Sale of
6 the Property to the Stalking Horse Bidder or other Successful Bidder at the Auction, as applicable,
7 free and clear of all liens, claims, and encumbrances pursuant to Bankruptcy Code section 363, will
8 be held before the Honorable Erithe Smith, United States Bankruptcy Judge, 411 West Fourth Street,
9 Courtroom 5A, Santa Ana, CA 92701, on _____, 2014 at __:____.m. (**Pacific
10 time**), or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned
11 from time to time without further notice to creditors or parties in interest other than by
12 announcement of the adjournment in open court on the date scheduled for the Sale Hearing.
13 Objections, if any, to the Sale and the Sale Approval Motion, must: (a) be in writing; (b) comply
14 with the Bankruptcy Rules and Local Rules; and (c) be filed with the clerk of the Bankruptcy Court
15 and served upon (i) the Trustee's counsel, Linda Cantor, Esq., Pachulski, Stang, Ziehl & Jones LLP,
16 Suite 1300, Los Angeles, CA 90067, fax: 310-201-0760, lcantor@pszjlaw.com, (ii) the Stalking
17 Horse Bidder's counsel, Armen Vartian, 1601 N. Sepulveda Blvd. #581, Manhattan Beach, CA
90266, fax: 866-427-3820, armen@vartianlaw.com, and (iii) the Office of the United States Trustee,
so as to be received no later than _____, 2014 at 5:00 p.m. (**Pacific time**); provided, however,
that to the extent the Successful Bidder at the Auction is an entity other than the Stalking Horse
Bidder, any supplemental or further objections to the sale to the Successful Bidder shall be filed and
served so as to be received no later than _____, 2014 at __:____.m. (**Pacific time**).
UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS
NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE
BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER
HEARING AND NOTICE.

18 **PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and
19 conditions of the Procedures Motion, the Procedures Order and the Sale Procedures which shall
20 control in the event of any conflict, and the Trustee strongly encourages parties in interest to review
such documents in their entirety, which are available upon written request from undersigned counsel.

21 Dated: _____, 2014

PACHULSKI STANG ZIEHL & JONES LLP

22 By: /s/ Linda F. Cantor
23 Linda F. Cantor (SBN 153872)

24 Attorneys for R. Todd Neilson, Chapter 7 Trustee
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EXHIBIT B

(Asset Purchase Agreement with Stalking Horse Bidder)

ASSET PURCHASE AGREEMENT

^{August}
1st This Asset Purchase Agreement (the "**Agreement**") is made and entered into as of this day of ~~July~~, 2014 by and between R. Todd Neilson, solely in his capacity as chapter 7 trustee ("**Trustee**") for the estate of The Tulving Company, Inc., a California corporation ("**Debtor**") and Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections ("**Purchaser**").

Seller confirms and acknowledges that:

A. On March 10, 2014, Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "**Bankruptcy Court**") bearing case number 14-11492 (the "**Case**"); and

B. On March 21, 2014, the Trustee was appointed as chapter 11 trustee of the Debtor's estate (the "**Estate**"), and on May 29, 2014, an order was entered by the Bankruptcy Court converting the Case to a chapter 7, and Notice of Appointment of the Trustee as the chapter 7 Trustee was filed on June 10, 2014; and

C. The Trustee, as representative of the Debtor's Estate (hereinafter, "**Seller**") desires to sell, transfer and assign to Buyer, and Buyer desires to acquire from Seller, pursuant to Section 363 of the Bankruptcy Code, the Property (as defined below in Section 1).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree that:

1. Sale of Property. Seller hereby sells, transfers, assigns, conveys and delivers to Buyer, all of Seller's right, title and interest in and to (i) the Debtor's customer lists that are in the Trustee's possession and more specifically described on Exhibit "A" hereto (the "**Customer Lists**"), (ii) certain customer sales journals in electronic format (QuickBooks) that are in the Trustee's possession and more specifically described on Exhibit "A" hereto (the "**Electronic Customer Files**"), (iii) the domain name more specifically identified on Exhibit "A" hereto (the "**Domain Name**") and any goodwill that may be symbolized thereby and any rights to sue for past infringement and to receive recoveries therefor, (iv) the business-related phone numbers more specifically identified on Exhibit "A" hereto (the "**Business Numbers**"), and (v) any rights relating to the foregoing items (i) through (iv) (together with preceding items (i) through (iv), the "**Property**"). The Customer Lists and Electronic Customer Files are in electronic format and shall be transferred to Buyer in such format.

2. Purchase Price. In consideration of the transfer of the Property to Buyer, Buyer has delivered a deposit ("**Buyer's Deposit**") to the Seller in the amount of Fifteen Thousand Dollars (\$15,000) to be applied against the purchase price of One Hundred Fifty Thousand Dollars (\$150,000) ("**Purchase Price**"), and upon close of sale, Buyer shall pay to Seller the remaining sum of One Hundred Thirty Five Thousand Dollars (\$135,000) in cash (the "**Cash Payment**").

3. Overbid. The sale of the Property to Buyer shall be subject to overbid at an auction, for which Seller shall seek an approval order from the Bankruptcy Court ("**Bid Procedures Order**") providing for the allowance of bid procedures, a break-up fee (payable by Seller solely from the proceeds of the sale of the Property to a Successful Bidder other than the Buyer), initial and subsequent minimum overbids, the selection of a winning bid ("**Successful Bid**") and a back-up bid, and providing that if no qualified competing bid is received, Buyer's bid shall be determined to be the Successful Bid for the purchase of the Property.

4. Bid Procedures Order. Seller shall request that the Bid Procedures Order include the following provisions: (a) the initial overbid for the Property must be at least \$15,000 in excess of the Purchase Price, (b) subsequent bid increments shall be set at \$10,000, (c) the return of Buyer's Deposit and payment of a break-up fee to Buyer in the amount of \$7,500 in the event that (i) Buyer is not in default under this Agreement, and (ii) the Property is thereafter sold to an alternate purchaser submitting the Successful Bid ("**Successful Bidder**") at the auction ("**Auction**") notwithstanding Buyer's willingness and ability to consummate the purchase of the Property, (d) the Estate shall retain the deposit(s) made by the Successful Bidder and/or the back-up bidder if either the Successful Bidder and/or the back-up bidder fails to close the sale within five (5) business days after entry of a Bankruptcy Court order approving the sale of the Property.

5. Back-Up Bidder Status. If an alternate sale transaction with a Successful Bidder other than Buyer is selected by Seller and approved by the Bankruptcy Court, this Agreement shall not automatically terminate, or if Buyer submitted another higher or otherwise better bid at the Auction that is accepted by Seller as the highest or otherwise best bid but is not ultimately the Successful Bid ("**Superseding Agreement**"), such Superseding Agreement between Seller and Buyer shall not terminate, and this Agreement or the Superseding Agreement, as the case may be, shall constitute a "back-up bid" which shall remain open for acceptance by Seller up to and including the earliest of: (i) the fourteenth (14th) day after the entry of the order of the Bankruptcy Court approving the alternate sale transaction, (ii) the date of the closing of the alternate sale transaction, or (iii) the date of the termination of the Agreement (or Superseding Agreement, if applicable) pursuant to Section 8 (the period in preceding clauses (i), (ii), or (iii), as applicable, the "**Back-Up Period**"). Buyer's designation as "back-up bidder" shall not modify any terms of this Agreement or the Superseding Agreement, as the case may be, subject to this Section 5. Upon the lapse of the Back-Up Period, if Seller does not elect to proceed with closing the transaction pursuant to this Agreement or the Superseding Agreement (as applicable), the Buyer's Deposit shall be promptly returned to Buyer.

6. Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher and better competing bids (each a "**Competing Bid**"). From the date hereon and until the completion of the auction or as otherwise directed by the Bankruptcy Court, Seller is permitted to cause his representatives to initiate contact with, solicit or encourage the submission of any inquiries, proposals or offers by any person, in addition to Buyer, in connection with any sale or other disposition of the Property, provided that such person enters into a non-disclosure agreement in favor of Seller and perform any other acts which are required under the Bankruptcy Code, including supplying information relating to the Property to prospective buyers.

7. Representations and Warranties.



(i) Seller. Seller represents and warrants to Buyer that: (a) to Seller's knowledge, the Estate has good and marketable title to the Property, free and clear of any and all covenants, conditions, restrictions, liens, charges, encumbrances, options and adverse claims or rights whatsoever; (b) Subject to the approval of the Bankruptcy Court, Seller has the full right, power and authority to enter into this Agreement and to transfer, convey and sell the Property to Buyer; (c) to Seller's knowledge, the Customer Lists, Electronic Customer Files, Domain Name and Business Numbers comprise the complete customer lists, electronic customer sales journals, domain names and business numbers, respectively, that were possessed by the Debtor and, in respect to the Customer Lists and Electronic Customer Files, that were seized by the Secret Service and the Department of Justice and turned over to the Trustee; and (d) Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer or otherwise dispose of any portion or portions of the Property (other than this Agreement). Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in this Section 7 hereof. Buyer acknowledges and agrees that, except for the representations and warranties contained herein, the Property is being transferred, as to condition, on an "AS IS" basis and "WITH ALL FAULTS." Without in any way limiting the foregoing, Seller hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property.

(ii) Buyer. Buyer represents and warrants to Seller that: (a) Buyer has all requisite corporate power and authority to enter into the Agreement and to carry out its obligations hereunder; (b) On the date of this Agreement and the date of closing of the transactions contemplated under this Agreement, Buyer has and will have sufficient funds available to consummate such transactions; (c) there are no legal or other proceedings pending or, to the Buyer's knowledge, threatened in writing against Buyer, which, if adversely determined, would reasonably be expected to prohibit the consummation of the transactions contemplated by this Agreement or materially delay or impair the ability of Buyer to perform its obligations under this Agreement; and (d) Buyer has conducted its own independent review and analysis of the Property, and in entering into this Agreement, Buyer has relied solely upon such investigation and analysis, and Buyer acknowledges that neither Seller, the Trustee, the Debtor nor any of their respective agents make or have made any representation or warranty, either express or implied, relating to the Property, except for the representations and warranties contained in this Agreement (which are subject to the limitations and restrictions contained herein).

5. Termination. This Agreement may be terminated at any time before closing (i) by mutual written consent of Seller and Buyer; (ii) automatically and without any action or notice by Seller or Buyer, immediately upon Seller's bankruptcy case being dismissed or consummation of an alternate sale of the Property to a party other than Buyer; (iii) by Seller, if Seller is not in material breach of the Agreement and there has been a material violation or breach by Buyer of any representation, warranty, or covenant contained in the Agreement that has not been waived by Seller, and Buyer has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Seller; and (iv) by Buyer, if Buyer is not in material breach of the Agreement and there has been a material violation or breach by Seller of any representation, warranty, or covenant contained in the Agreement that has not been waived by Buyer, and Seller has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Buyer.

6. Counterparts. This Agreement may be executed in any number of counterparts, and by the parties hereto on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument. Each counterpart may be delivered by facsimile transmission or portable data format (PDF), which transmission shall be deemed delivery of an originally executed document.

7. Successors and Assigns. This Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the Seller and Buyer.

8. Assignment. Neither this Agreement nor any rights and obligations hereunder may be transferred or assigned without the other party's prior written consent.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California, and, to the extent applicable, the Bankruptcy Code.

10. No Survival of Representations and Warranties. Seller and Buyer hereto agree that the covenants contained in this Agreement to be performed at or after the consummation of a sale shall survive, and Seller and Buyer shall be liable to the other after the date hereof for any breach thereof, but that no other representations and warranties shall survive.

11. Preservation of Records. Seller (or any subsequently appointed bankruptcy estate representative) and Buyer agree that each of them shall preserve and keep the records held by it or their respective affiliates relating to the Property prior to the date hereof until the earlier of (i) one (1) year from the date hereof or (ii) the date of entry of an order of the Bankruptcy Court closing or dismissing the Case, and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any estate claims or causes of action, any insurance claims by, legal proceedings or tax audits against or governmental investigations of Seller or Buyer or any of their affiliates or in order to enable Seller or Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller, on the one hand, or Buyer, on the other hand, wish to destroy such records after that time, such party shall first give ninety (90) days' prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within that ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

12. Bankruptcy Court Approval. Notwithstanding payment of the Buyer's Deposit or any other cash payment by Buyer, the sale, transfer, assignment, conveyance and delivery of the Property by Seller to Buyer and the Seller's obligations hereunder are subject to the approval of the Bankruptcy Court. In the event that the Bankruptcy Court does not approve this Agreement, Seller will return the Buyer's Deposit and any cash payment to Buyer.

13. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission)

or electronic mail (and no notice of failure of delivery was received within a reasonable time after such message was sent) or (iii) one business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses, facsimile numbers and e-mail addresses (or to such other address, facsimile number or e-mail address as a party hereto may have specified by notice given to the other party hereto pursuant to this provision):

If to Seller, to:

R. Todd Neilson, chapter 7 Trustee
c/o Berkeley Research Group, LLC
2049 Century Park East, Suite 2525
Los Angeles, California 90067
Telecopier: (310) 299-4750
E-mail: TNeilson@brg-expert.com

With a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 11th Floor
Loa Angeles, CA 90067-4100
Attention: Linda F. Cantor
Telecopier: (310) 201-0760
E-mail: lcantor@pszjlaw.com

If to Buyer, to:

Great Collections
2030 Main Street, Suite 620
Irvine, CA 92614
Attn: Ian Russell
E-mail: ian@greatcollections.com

With a copy (which shall not constitute notice) to:

Armen R. Vartian
1601 N.Sepulveda Blvd. #581
Manhattan Beach, CA 90266
Telecopier: (866) 427-3820
E-mail: armen@vartianlaw.com

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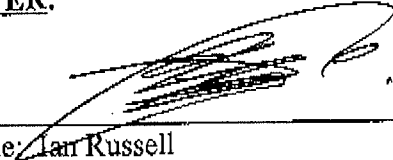
IN WITNESS WHEREOF, Seller and Buyer have executed this Assignment as
of the date first written above.

SELLER:

**R. Todd Neilson, solely in his capacity as
chapter 7 Trustee of the Estate of The
Tulving Company, Inc.**

By: _____
Name: R. Todd Neilson, chapter 7 Trustee

BUYER:

By:  _____
Name: Ian Russell
Its: Managing Member

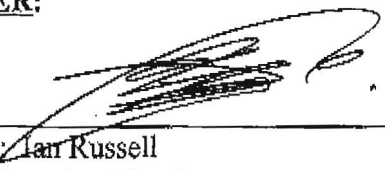
IN WITNESS WHEREOF, Seller and Buyer have executed this Assignment as
of the date first written above.

SELLER:

**R. Todd Neilson, solely in his capacity as
chapter 7 Trustee of the Estate of The
Tulving Company, Inc.**

By: 
Name: R. Todd Neilson, chapter 7 Trustee

BUYER:

By: 
Name: Ian Russell
Its: Managing Member

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 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document **NOTICE OF MOTION AND MOTION FOR ORDER: (1) SCHEDULING AUCTION AND SALE HEARING IN CONNECTION WITH SALE OF DEBTOR'S CUSTOMER LISTS, PHONE NUMBERS, WEB ADDRESS, CERTAIN CUSTOMER FILES, AND RELATED PERSONAL PROPERTY OF THE ESTATE; (2) APPROVING SALE PROCEDURES; (3) APPROVING BREAK-UP FEE; (4) APPROVING NOTICE OF AUCTION AND SALE HEARING; AND (5) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF R. TODD NEILSON** 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 August 7, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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 August 7, 2014, 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.

Potential bidders served by email as described in the Motion

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court - Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

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.

August 7, 2014

Janice G. Washington

/s/ Janice G. Washington

Date

Printed Name

Signature

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW

1 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

2 **8:14-bk-11492-ES Notice will be electronically mailed to:**

3 Andrew S Bisom on behalf of Debtor The Tulving Company Inc
4 abisom@bisomlaw.com

5 Candice Bryner on behalf of Interested Party Candice Bryner
6 candice@brynerlaw.com

7 Philip Burkhardt on behalf of Other Professional Karen Duddleston
8 phil@burkhardtandlarson.com, stacey@burkhardtandlarson.com

9 Stephen L Burton on behalf of Attorney Stephen L. Burton
10 steveburtonlaw@aol.com

11 Linda F Cantor, ESQ on behalf of Other Professional Pachulski Stang Ziehl & Jones LLP
12 lcantor@pszjlaw.com, lcantor@pszjlaw.com

13 Linda F Cantor, ESQ on behalf of Trustee R. Todd Neilson (TR)
14 lcantor@pszjlaw.com, lcantor@pszjlaw.com

15 David L Gibbs on behalf of Creditor Kenneth W Stach
16 david.gibbs@gibbslaw.com, ecf@gibbslaw.com

17 Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
18 nancy.goldenberg@usdoj.gov

19 Lawrence J Hilton on behalf of Creditor Jeffrey Roth
20 lhilton@oneil-llp.com, ssimmons@oneil-llp.com;kdonahue@oneil-llp.com

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Nanette D Sanders on behalf of Creditor Levon Gugasian
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United States Trustee (SA)
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1 **3. SERVED BY FEDERAL EXPRESS OR VIA EXPRESS MAIL IN ACCORDANCE WITH**
2 **STREET ADDRESS OR POST OFFICE BOX AVAILABILITY**

3 ***Counsel Buyer***

4 Armen R. Vartian
5 1601 N. Sepuleda Boulevard, #581
6 Manhattan Beach, CA 90266

7 ***Laurence P Nokes on behalf of Interested***

8 ***Party John Frankel***

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10 410 Broadway St Ste 200
11 Laguna Beach, CA 92651

12 ***Accountants for Landlord***

13 Brent Murdoch
14 Murdoch & Morris, LLP
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16 Irvine, CA 92618

17 ***Interested Party***

18 Frye & Hsieh
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28