

1 Jacob L. Houmand, Esq. (NV Bar No. 12781)
2 Email: jhoumand@nelsonhoumand.com
3 NELSON & HOUMAND, P.C.
3900 Paradise Road; Suite U
4 Las Vegas, Nevada 89169-0903
Telephone: 702/720-3370
Facsimile: 702/720-3371

Electronically Filed On: March 6, 2015

5 *[Proposed] Counsel for Victoria L. Nelson, Chapter 7 Trustee*

6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 AMERI-DREAM REALTY, LLC,
12 Debtor.

Case No. BK-S-15-10110-LED
Chapter 7

**MOTION TO EXTEND DEADLINE TO
ASSUME OR REJECT EXECUTORY
CONTRACTS PURSUANT TO 11 U.S.C. §
365(d)(1)**

Date of Hearing: *OST Pending*
Time of Hearing: *OST Pending*
Place: Courtroom No. 3, Third Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Laurel E. Davis

13
14
15
16
17
18
19
20 Victoria L. Nelson, the appointed Chapter 7 Trustee in the above-captioned bankruptcy
21 case (the "Trustee"), by and through her proposed counsel of record Jacob L. Houmand, Esq. of
22 the law firm of Nelson & Houmand, P.C., hereby files this Motion to Extend Deadline to Assume
23 or Reject Executory Contracts Pursuant to 11 U.S.C. § 365(d)(1) (the "Motion").¹

24
25
26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 Federal Rules of Civil Procedure will be referred to as "FRCP" and the Federal Rules of
Bankruptcy Procedure will be referred to as "FRBP." The Local Rules of Practice for the United
States Bankruptcy Court for the District of Nevada shall be referred to as the "Local Rules".

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U
Las Vegas, Nevada 89169
Telephone: (702) 720-3370
Facsimile: (702) 720-3371

1 The Motion is based on the following Memorandum of Points and Authorities and the
2 Declaration of Victoria L. Nelson In Support of the Motion to Extend Deadline to Assume or
3 Reject Executory Contract Pursuant to 11 U.S.C. § 365(d)(1) (the “Nelson Declaration”), which is
4 filed separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Motion
5 is also based on the pleadings and papers on file herein, and any argument that may be entertained
6 at the hearing on the Motion.²

7 Dated this 6th day of March, 2015.

8 **NELSON & HOUMAND, P.C.**

9
10 */s/ Jacob L. Houmand*

11 Jacob L. Houmand, Esq. (NV Bar No. 12781)
12 3900 Paradise Road; Suite U
13 Las Vegas, Nevada 89169-0903
14 Telephone: 702/720-3370
15 Facsimile: 702/720-3371

16
17 *[Proposed] Counsel for Victoria L. Nelson,*
18 *Chapter 7 Trustee*

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U
Las Vegas, Nevada 89169
Telephone: (702) 720-3370
Facsimile: (702) 720-3371

19
20
21
22
23
24
25
26
27 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
28 referenced bankruptcy case, including adversary proceedings, pursuant to Rule of Evidence 201,
incorporated by reference by FRBP 9017.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Ameri-Dream Realty, LLC (the “Debtor”) is a real estate brokerage firm that represented
 4 clients in the purchase and sale of real property throughout Las Vegas, Nevada. The Debtor also
 5 had a property management division that managed over a thousand real properties located
 6 throughout the valley in Las Vegas, Nevada. As part of its property management division, the
 7 Debtor has executed real property management agreements (collectively, the “Property
 8 Management Agreements”) with landowners whereby the Debtor agreed to perform the following
 9 services: (a) the monthly collection of rents from tenants, (b) payment of Homeowner Association
 10 (“HOA”) fees, (c) the general repair and maintenance of the properties at issue, and (d) the
 11 segregation of security deposits (the “Security Deposits”) pursuant to Nevada Revised Statute
 12 (“N.R.S.”) Chapter 645. Despite the fact that the Debtor was required to maintain the Security
 13 Deposits in a segregated trust account for the benefit of the various landowners and tenants, the
 14 Trustee is informed and believes that the spouse of the Debtor’s principal embezzled
 15 approximately One Million Two Hundred Thousand Dollars (\$1,200,000) of the Security
 16 Deposits. As a result, there is currently an insufficient balance in the Security Deposit trust
 17 account to cover the full amount of the Security Deposits that are required to be segregated
 18 pursuant to the Property Management Agreements.

19 Prior to the Debtor’s bankruptcy filing, the Debtor submitted a claim through its Errors
 20 and Omissions Insurance Policy held through Pearl Insurance (the “Policy”). The Trustee has
 21 been informed that Pearl Insurance has attempted to cancel the Policy post-petition. The Trustee
 22 is currently investigating the cancellation of the Policy and seeks to extend the deadline to assume
 23 or reject the executory contracts inasmuch as the sixty (60) days to assume expires on March 10,
 24 2015.

25 **II. JURISDICTION AND VENUE**

26 The Court has jurisdiction over the bankruptcy case and the subject matter of this Motion
 27 pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. §
 28 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the

1 parties the Court cannot enter final orders or judgment regarding the Motion consistent with
2 Article III of the United States Constitution, the Trustee consents to entry of final orders and
3 judgment by this Court. Venue before this Court is appropriate under 28 U.S.C. §§ 1408 and
4 1409.

5 The statutory predicates for the relief requested in the Motion herein are Section 365,
6 FRBP 6006, and Local Rule 6006.

7 **III. STATEMENT OF FACTS**

8 1. On January 9, 2015, the Debtor filed a voluntary bankruptcy pursuant to Chapter 7
9 of Title 11 of the United States Code [ECF No. 1].³ See Nelson Declaration.

10 2. On January 9, 2015, Victoria L. Nelson was appointed as the Chapter 7 Trustee in
11 the Debtor’s bankruptcy case [ECF No. 4]. See Nelson Declaration.

12 3. The Debtor is a real estate brokerage firm that represented clients in the purchase
13 and sale of real property throughout Las Vegas, Nevada. See Nelson Declaration.

14 4. The Debtor also had a property management division that managed over a
15 thousand rental properties for various landowners and tenants throughout Las Vegas, Nevada. As
16 part of its property management division, the Debtor has executed the Property Management
17 Agreements with landowners whereby the Debtor agreed to perform the following services: (a)
18 the monthly collection of rents from tenants, (b) payment of Homeowner Association (“HOA”)
19 fees, (c) the general repair and maintenance of the properties at issue, and (d) the segregation of
20 security deposits (the “Security Deposits”) pursuant to Nevada Revised Statute (“N.R.S.”)
21 Chapter 645. See Nelson Declaration.

22 5. Despite the fact that the Debtor was required to maintain the Security Deposits in a
23 segregated trust account for the benefit of the various landowners and tenants, the Trustee is
24 informed and believes that the spouse of the Debtor’s principal, John Brown, embezzled
25 approximately One Million Two Hundred Thousand Dollars (\$1,200,000) of the Security
26 _____

27 ³ All references to “ECF No.” are to the numbers assigned to the documents filed in the case as
28 they appear on the docket maintained by the clerk of the court.

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U
Las Vegas, Nevada 89169
Telephone: (702) 720-3370
Facsimile: (702) 720-3371

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U
Las Vegas, Nevada 89169
Telephone: (702) 720-3370
Facsimile: (702) 720-3371

1 Deposits. As a result, there is currently an insufficient balance in the Security Deposit trust
2 account to cover the full amount of the Security Deposits that are required to be segregated
3 pursuant to the Property Management Agreements. *See* Nelson Declaration.

4 6. Prior to the Debtor’s bankruptcy filing, the Debtor submitted a claim through the
5 Policy. *See* Nelson Declaration.

6 7. The Trustee has been informed that post-petition Pearl Insurance has attempted to
7 cancel the Policy for lack of payment. *See* Nelson Declaration.

8 8. The Trustee has been informed that prior to the cancellation of the Policy, John
9 Brown, the principal of the Debtor, notified Pearl Insurance that the Debtor filed a Chapter 7
10 bankruptcy petition. *See* Nelson Declaration.

11 9. The Trustee was never informed that the Policy was to be cancelled for lack of
12 payment. *See* Nelson Declaration.

13 10. The Trustee is currently investigating the cancellation of the policy and seeks to
14 extend the deadline to assume or reject the Policy by sixty (60) days. *See* Nelson Declaration.

15 **IV. LEGAL ARGUMENT**

16 Section 365(a) provides a Chapter 7 Trustee with the authority to assume or reject
17 executory contracts:

18 Except as provided in Sections 765 and 766 of this title and in
19 subsections (b), (c), and (d) of this section, the trustee, subject to the
20 court’s approval may assume or reject any executory contract or
unexpired lease of the debtor.

21 11 U.S.C. § 365(a).

22 If a Chapter 7 Trustee does not assume or reject an executory contract or unexpired lease
23 within sixty (60) days of the bankruptcy filing, the contract or lease is deemed rejected. *See* 11
24 U.S.C. § 365(d)(1). A court can extend the sixty (60) day period to assume or reject an executory
25 contract for “cause”. *Id.* Although “cause” is not defined in the Bankruptcy Code, courts have
26 considered the following factors: (1) whether the lease or contract is the debtor’s primary asset;
27 (2) whether the debtor is current on its post-petition rental or other contractual payments; (3)
28 whether the case is exceptionally complex or involves numerous contracts or leases; and (4)

1 whether the non-debtor parties to the contracts will suffer undue prejudice as a result of the
 2 extension. *In re Wedtech Corp.*, 72 B.R. 464, 471-472 (BC SD NY 1987); *In re Muir Training*
 3 *Technologies, Inc.*, 120 B.R. 154, 158-159 (BC SD CA 1990). A motion for extension of time
 4 must be made within the sixty (60) day period. *In re Southwest Aircraft Services, Inc.*, 831 F.2d
 5 848 (9th Cir. 1987); *see also In re Bon Ton Restaurant and Pastry Shop, Inc.*, 52 B.R. 850
 6 (Bankr. N.D. Ill. 1985).

7 Furthermore, “when a statute gives a court discretion to extend the time in which a party is
 8 required to act, the court has authority to grant such an extension without affording other parties
 9 notice or a hearing.” *Chapman Inv. Assocs. v. American Healthcare Mgmt., Inc.*, (*In re American*
 10 *Healthcare Mgmt., Inc.*), 900 F.2d 827, 832 (5th Cir. 1990). Also, ““an order extending the time
 11 for a debtor to assume or reject a lease merely preserves the status quo, and . . . is entered in the
 12 routine administration of the court.”” *Id.* (quoting *Willamette Waterfront, Ltd. v. Victoria Station,*
 13 *Inc. (In re Victoria Station Inc.)*, 875 F.2d 1380, 1386 (9th Cir. 1989).⁴

14 Here, there are sufficient grounds to justify a brief extension of the deadline to assume or
 15 reject the Policy. The claim against the Policy is a significant asset of the Debtor’s bankruptcy
 16 estate given the alleged embezzlement of approximately One Million Two Hundred Thousand
 17 Dollars (\$1,200,000) by the spouse of the Debtor’s principal. The Debtor’s case is also complex
 18 in that it has involved a significant number of executory contracts in the form of the Property
 19 Management Agreements and several thousand creditors. The Trustee has been diligent in her
 20 efforts in administering the Debtor’s bankruptcy estate and is requesting a sixty (60) day
 21 extension of time to assume or reject the bankruptcy estate’s remaining executory contracts to
 22 preserve any claims that can be pursued for creditors. Pearl Insurance will also not be prejudiced
 23 because a sixty (60) day extension is not a significant amount of time considering that the
 24 Debtor’s bankruptcy case has only been pending since January 9, 2015. Moreover, the Debtor

25
 26 ⁴ The *American Healthcare Mgmt.* and *Victoria Station* cases dealt specifically with leases for
 27 non-residential real estate and the time period of 11 U.S.C. § 365(d)(4), which was amended in
 28 2005. However, as the relief requested herein is to enlarge the period of 11 U.S.C. § 365(d)(1),
 the principles set forth by those cases as to the administrative nature of such enlargements of time
 under Section 365(d) are still applicable.

1 and its counsel have been in communication with Pearl Insurance since 2014 regarding the
2 alleged embezzlement of the spouse of the Debtor’s principal. Finally, the Trustee is required to
3 file a motion seeking to assume the Policy pursuant to Section 365. Accordingly, there is cause to
4 extend the deadline to assume or reject the bankruptcy estate’s remaining executory contracts
5 pursuant to Section 365(d)(1).

6 **V. CONCLUSION**

7 For the foregoing reasons, the Trustee respectfully requests that the Court enter an Order
8 extending the deadline to assume or reject the Policy by sixty (60) days pursuant to Section
9 365(d)(1) and for such other and further relief as is just and proper.

10 Dated this 6th day of March, 2015.

11 **NELSON & HOUMAND, P.C.**

12 */s/ Jacob L. Houmand*
13 _____
14 Jacob L. Houmand, Esq. (NV Bar No. 12781)
15 3900 Paradise Road; Suite U
16 Las Vegas, Nevada 89169-0903
17 Telephone: 702/720-3370
18 Facsimile: 702/720-3371

19 *[Proposed] Counsel for Victoria L. Nelson,*
20 *Chapter 7 Trustee*

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U
Las Vegas, Nevada 89169
Telephone: (702) 720-3370
Facsimile: (702) 720-3371