

Overbid procedure (if any): See the attached Notice of Hearing.

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

February 3, 2016, 10:00 a.m.

Courtroom "1475"

United States Bankruptcy Court

255 E. Temple Street

Los Angeles, CA 90012

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

Steven J. Schwartz

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1900 Avenue of the Stars, 11th Floor

Los Angeles, CA 90067

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Date: 1/11/2016

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Chapter 7 Trustee
7

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

11 In re
12 FLOWER INVESTMENT GROUP, LLC,
13
14 Debtor.

Case No. 2:11-bk-55858-BB
Chapter 7

**NOTICE OF HEARING RE: TRUSTEE'S
MOTION FOR ENTRY OF ORDER: [1]
AUTHORIZING SALE OF REAL
PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES AND
INTERESTS; [2] AUTHORIZING
PAYMENTS OF UNDISPUTED LIENS
AND COSTS OF SALE FROM NET SALE
PROCEEDS; AND [3] FINDING THAT
PURCHASER IS GOOD FAITH
PURCHASER UNDER 11 U.S.C. § 363(m)**

Hearing/Proposed Auction:

Date: February 3, 2016
Time: 10:00 a.m.
Place: Courtroom "1475"
255 E. Temple St.
Los Angeles, CA 90012

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1 **TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE DEBTOR AND ITS COUNSEL, THE OFFICE OF THE UNITED STATES**
3 **TRUSTEE, ALL CREDITORS AND INTERESTED PARTIES:**

4 **PLEASE TAKE NOTICE** that on February 3, 2016 at 10:00 a.m., or soon thereafter as the
5 matter may be heard, in Courtroom “1475” of the United States Bankruptcy Court, 255 E. Temple
6 Street, Los Angeles, California, Brad D. Krasnoff, the Chapter 7 trustee (the “Trustee”) for the
7 estate of Flower Investment Group, LLC (the “Debtor”), will and hereby does move (the “Motion”)
8 pursuant to sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”),
9 Rules 2002, 6004, 6005 and 9014 of the Federal Rules of Bankruptcy Procedure (each a
10 “Bankruptcy Rule,” and collectively, the “Bankruptcy Rules”), and Local Bankruptcy Rules
11 (“LBR”) 6004-1 and 9013-1 that the Court enter an order:

12 (1) authorizing the Trustee to:

13 (a) sell all of his rights, title and interests in real property commonly described
14 as 1000 N. Norma Street, Ridgecrest, California (the “Property”) for the purchase price of
15 \$350,000, on an as-is basis, without any warranties or representations, free and clear of liens and
16 interests, with such liens and interests to attach to the net sale proceeds, to Robert W. Diel and/or
17 assignee (“Buyer”), or to any person who appears at the hearing and submits a higher acceptable
18 bid;

19 (b) execute any and all documents that may be necessary to consummate the sale
20 of the Property; and

21 (c) pay out of the sales proceeds and through the escrow undisputed liens and
22 the costs of sale, including, without limitation, real estate brokerage commissions, unpaid Property
23 taxes, and miscellaneous escrow fees and closing costs; and

24 (2) finding that the Buyer, or any person who appears at the hearing and submits a
25 higher acceptable bid and becomes the purchaser, is a good faith purchaser under 11 U.S.C. §
26 363(m).

27 This Motion is made on the grounds that: (1) the Property may be sold free and clear of
28 liens because the liens affecting the Property are for delinquent taxes (the penalty portion of which

1 liens can be avoided pursuant to Sections 724(a) and 726(a)(4) of the Bankruptcy Code) (the “Tax
2 Liens”) and a deed of trust in the original principal sum of \$36,000 in favor of Andrew Kamin and
3 Alicia Kamin, Husband and Wife as Joint Tenants (the “DOT”), the undisputed portions of which
4 shall be paid through escrow and the disputed portions of which shall attach to the net sale
5 proceeds with the same force, validity and effect; (2) the purchase price is fair and reasonable and
6 the sale is in the best interests of the creditors and the estate; (3) the payments of undisputed liens
7 and the costs of sale are necessary to effect the sale of the Property; and (4) the Buyer, or any other
8 person who appears at the hearing and submits a higher acceptable bid and becomes the purchaser,
9 is a good faith purchaser under 11 U.S.C. § 363(m).

10 The following disclosures are made pursuant to LBR 6004-1(c)(3):

11 Date, time and place of the hearing on the proposed sale

12 The hearing on the Motion and an auction, to the extent that qualified overbids are received
13 in accordance with the proposed procedures set forth below (the “Sale Hearing”), shall take place
14 on February 3, 2016 at 10:00 a.m. (the “Hearing Date”) in Courtroom “1475” of the above-
15 referenced court, 255 East Temple Street, Los Angeles, California 90012.

16 Name and address of the proposed buyer

17 Robert W. Diel and/or Assignee (“Buyer”), c/o Dru Hawkins, Coldwell Banker Best Realty,
18 710 N. China Lake Blvd., Ridgecrest, CA. 93555, (760) 375-3855 ext. 277,
19 druandmichelle@bestrealty.net, and Bill Friedman, Coldwell Banker, 8840 S. Sepulveda Blvd.
20 Los Angeles, CA 90045, (213) 200-2500, billfried@earthlink.net.¹

21 A description of the property to be sold

22 All of the Trustee’s rights, title and interest in real property commonly described as 1000 N.
23 Norma Street, Ridgecrest, California (the “Property”). A legal description of the Property is
24 attached as Exhibit “A” to the Purchase and Sale Agreement (the “Agreement”) which is attached

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27 ¹ The Trustee and the Buyer are each represented by the same brokers.

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1 to the Declaration of Brad D. Krasnoff (the "Trustee's Declaration"), marked as Exhibit "1" and
2 incorporated herein by this reference.

3 Terms and conditions of the proposed sale, including the price and all contingencies.

4 The sale price will be \$350,000. The terms and conditions of the sale are set forth in the
5 Agreement attached as Exhibit "1" to the Trustee's Declaration. The sale is "as is" and "where is"
6 with no representations or warranties. All contingencies other than Court approval and delivery of
7 title have been waived.

8 Whether the proposed sale is free and clear of liens, claims or interests, or subject to them,
9 and a description of all such liens, claims or interests.

10 The proposed sale is free and clear of any and all liens, claims and interests. Any
11 undisputed real property tax liens shall be paid through the escrow, with disputed sums, if any, to
12 attach to the sale proceeds with the same force, validity and effect. Other than real property tax
13 liens, the only lien affecting the Property is the deed of trust in the original principal sum of
14 \$36,000 in favor of Andrew Kamin and Alicia Kamin, Husband and Wife as Joint Tenants (the
15 "Kamin DOT"). The Trustee intends to pay the Kamin DOT in full through escrow, unless the
16 payoff demand reveals unexpected usury interest, fees or penalties, upon which the Trustee shall
17 give additional notice of his intention to sell free and clear of any disputed sums.

18 The Trustee also intends to sell free and clear of the following disputed claims and/or
19 interests:

20 (a) Appearing on the Preliminary Title Report, a copy of which is attached to the
21 Trustee's Declaration, marked as Exhibit "2" and incorporated herein by this reference, is a deed of
22 trust to secure an original indebtedness of \$400,000 recorded August 13, 2004 in the Kern County
23 Recorder's Office as Instrument No. 04-195963, in which the Trustor is "Michael D. Goldfinger
24 and Shannon Goldfinger, Husband and Wife as Joint Tenants," (the "Goldfingers") and the
25 Beneficiary is "Flower Investment Group, LLC." This Deed of Trust is in favor of the Debtor and
26 merged into title by virtue of the Quitclaim Deed recorded August 18, 2009 in the Kern County
27 Recorder's Office as Instrument No. 0209121098, in which the Grantors are the Goldfingers and
28 the Grantee is the Debtor.

1 (b) Appearing on the Preliminary Title Report is a certain Declaration and Agreement
2 Establishing Protective Covenants, Conditions and Restrictions and Grants of Easements, recorded
3 on or about April 30, 1992 as Document No. 39799 (“CC&R”). Sixth And Union, LLC (“Sixth
4 And Union”) purports to be the Maintenance Director under the CC&R. They purport to charge
5 proportionate dues for Common Area Maintenance (CAM) averaging approximately \$2,600 per
6 month (the “Average Monthly Dues”). Sixth And Union’s counsel contacted the Trustee on or
7 about May 12, 2015, alleging that it is owed by the Debtor in excess of \$300,000 (the “Pre-Sale
8 CAM Charges”) on account of over ten years of unpaid CAM charges (approximately \$150,000 of
9 which allegedly accrued post-petition). Counsel further alleges that Sixth And Union never
10 received notice and had no knowledge of the Debtor’s bankruptcy case or the contents of its plan of
11 reorganization. The Debtor’s Bankruptcy Schedules reflect that Sixth And Union was not listed as
12 a creditor or on the mailing matrix of the Debtor.

13 Despite repeated requests from the Trustee, Sixth and Union has yet to provide the Trustee
14 with any proof of amounts owed, in the form of invoices or otherwise, other than unsupported
15 computations of CAM charges for 2011 through 2013, reflecting the Average Monthly Dues, and
16 the recorded CC&R. Sixth and Union has still yet to file a proof of claim or request for payment of
17 administrative expense in the bankruptcy case.

18 In addition to lack of proof, the Trustee disputes the Pre-Sale CAM Charges, which
19 allegedly date back over ten years, on statute of limitations grounds. See, Cal. Code of Civil
20 Procedure § 337 (statute of limitations is 4 years on a written contract); Cutujian v. Benedict Hills
21 Estates Assn., 41 Cal. App. 4th 1379 (1996) (Statute of limitations for an action by party who has
22 been damaged by violation of the conditions, covenants, and restrictions (CC&R’s) in the
23 declaration governing common interest development is that for action arising from written
24 instrument, or four years). The Trustee discloses the CC&R as it appears on the Preliminary Title
25 Report and the assertions made by Sixth and Union as set forth herein, but makes no
26 representations or warranties to the Buyer as to, *inter alia*, the rights granted to Sixth And Union
27 and/or the other owners under the CC&R, the accuracy of those charges, the validity of the CC&R
28 itself and/or the obligations of the Buyer or any future owner(s) of the Property arising therefrom.

1 Accordingly, the Trustee will sell free and clear of any alleged Pre-Sale CAM Charges but subject
2 to any future CAM charges and/or rights or obligations under the CC&R.

3 Whether the proposed sale is subject to higher and better bids.

4 The proposed sale is subject to overbids. The Trustee recommends that the Court adopt the
5 following procedures:

6 (a) Any party desiring to submit an overbid must deliver an "Initial Overbid" in
7 conformance with this paragraph to the Trustee's attorneys at the address set forth in the upper left-
8 hand corner of the first page of this Notice, by no later than two business days prior to the Hearing
9 Date. Any such Initial Overbid must:

10 (i) be in the form of the attached definitive written agreement on substantially
11 the same terms and conditions as those in the PSA (except as to purchase price) and shall not be
12 subject to any contingencies other than Court approval and conveyance of title free and clear of
13 liens and claims;

14 (ii) provide for aggregate cash consideration of at least \$360,000;

15 (iii) be accompanied by a cashier's or certified check in an amount of at least
16 \$50,000 ("Deposit"), which Deposit shall be returned to the Initial Overbidder within a reasonable
17 period of time following the conclusion of the Sale Hearing unless the Initial Overbidder ultimately
18 submits the successful bid for the Property (the "Successful Bidder"), in which case the Deposit
19 and cash balance to be provided as further described below will be applied against the purchase
20 price and shall be non-refundable in the event that the Successful Bidder fails to consummate the
21 sale pursuant to the terms of the written agreement;

22 (iv) be accompanied by evidence of readily available funds equal to the balance
23 of the purchase price; and

24 (v) be accompanied by admissible evidence in the form of affidavits or
25 declarations establishing the Initial Overbidder's good faith, within the meaning of section 363(m)
26 of the Bankruptcy Code.

27 (b) No creditor holding disputed liens, claims and/or interests in the Property shall be
28 entitled to credit bid its interest in the Property.

1 (c) If no timely, conforming Initial Overbids are submitted, the Trustee shall request at
2 the Sale Hearing that the Court approve the proposed sale of the Property to the Buyer. In the
3 event that one or more timely, conforming Initial Overbids are submitted (“Qualified
4 Overbidders”), the Trustee shall conduct at the time of the Sale Hearing an auction for the Property
5 (the “Auction”), in which the Buyer and any Qualified Overbidders, may participate. The Auction
6 shall be governed by the following procedures:

7 (i) All Qualified Overbidders and the Buyer shall be deemed to have consented
8 to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with
9 any disputes relating to the Auction and/or the sale of the Property;

10 (ii) Bidding will commence at the amount of the highest bid submitted by a
11 Qualified Overbidder, which must be at least \$360,000;

12 (iii) After the Initial Overbid, subsequent overbids shall be made in increments of
13 at least \$1,000 in aggregate consideration above the previous bid and the process may be repeated
14 until no overbid is thereafter made at the Sale Hearing;

15 (iv) At the conclusion of the Auction, the Trustee shall recommend that the Court
16 authorize and approve the sale of the Property to the person or entity that has submitted the highest
17 and best offer for the Property; and

18 (v) At the conclusion of the Auction, the Trustee may, in his discretion, and with
19 the consent of the affected non-prevailing Qualified Overbidder(s), including the Buyer, that has
20 submitted the next most advantageous bid, as applicable, request that the Court authorize and
21 approve a sale of the Property on a contingent and back-up basis to such consenting non-prevailing
22 Qualified Overbidder at the Auction, without need for further notice and hearing or Court Order.

23 (d) There shall be no break-up fee allowed to the Buyer or any bidder at the Auction.

24 (e) The Trustee holds sole discretion in accepting and rejecting all overbids.

25 The consideration to be received by the estate, including estimated commissions, fees, and
26 other costs of sale.

27 The gross sales price for the Property will be \$350,000 (unless the property is sold by
28 overbid at the Auction). A broker commission shall be paid equal to 6% percent in total (for the

1 Buyers' and Sellers' Brokers) of the Purchase Price, to be split evenly between the Trustee's and
2 the Buyers' brokers, Dru Hawkins, Coldwell Banker Best Realty (3%) and Bill Friedman, Coldwell
3 Banker (3%) (together, the "Trustee's Brokers") or 3% in the aggregate to the Trustee's Brokers
4 and 3% to such other broker for any other Successful Bidder.

5 A description of the estimated or possible tax consequences to the estate, if known, and how
6 any tax liability generated by the sale of the property will be paid.

7 Real estate taxes for periods prior to the sale closing will be paid through the escrow.
8 Capital gain taxes, if any, will be paid out of the sale proceeds. It is presently estimated that the
9 estate will incur approximately \$7,700 in tax liability arising from the sale, consisting of annual
10 LLC tax (\$800), LLC sale fee (approx. \$900) and Cancellation of Debt income (approx. \$6,000).
11 Because the Debtor is an LLC treated as a partnership, there is no income tax that the partnership
12 has to pay as a result of the sale. In any event, the Trustee believes that the net sale proceeds,
13 exclusive of taxes, will exceed any tax liability.

14 The Motion is based upon this Notice of Motion, the Motion, the accompanying
15 Memorandum of Points and Authorities and Declarations of Brad D. Krasnoff and Dru Hawkins,
16 all pleadings on file with this Court, and any oral and documentary evidence that may be presented
17 at the hearing on the Motion.

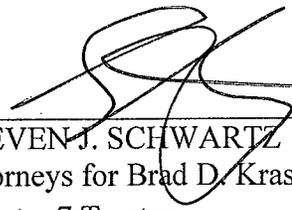
18 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rules 6004-1(c)
19 and 9013-1(a), each interested party opposing, joining, or responding to the motion must, not later
20 than 14 days before the date of the hearing, file with the Clerk of the Bankruptcy Court and serve
21 upon: (1) Steven J. Schwartz, Danning, Gill, Diamond & Kollitz, LLP, 1900 Avenue of the Stars,
22 11th Floor, Los Angeles, California 90067-4402; and (2) Office of the United States Trustee, 915
23 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017 either: (i) a complete written
24 statement of all reasons in opposition thereto or in support of joinder thereof, declarations and
25 copies of all documentary evidence on which the responding party intends to rely, and any
26 responding memorandum of points and authorities; or (ii) a written statement that the motion will
27 not be opposed. A judge's copy of the opposition must be served on the judge in chambers in
28 accordance with LBR 5005-2(d). A copy of the Motion can be obtained by contacting counsel for

1 the Trustee at the address and phone number listed in the upper left-hand corner of the first page of
2 this Notice.

3 Pursuant to Local Bankruptcy Rule 9013-1(h), papers not timely filed and served may be
4 deemed by the Court to be consent to the granting or denial of the Motion, as the case may be.

5
6 DATED: January 11, 2016

DANNING, GILL, DIAMOND & KOLLITZ, LLP

7
8 By: 

9 STEVEN J. SCHWARTZ
10 Attorneys for Brad D. Krasnoff,
11 Chapter 7 Trustee
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067

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

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 1/11/2016, 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 (date) _____, 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 (date) 1/11/2016, 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.

Personal Delivery (ALSSI) to be delivered by January 12, 2016

The Honorable Sheri Bluebond
U.S. Bankruptcy Court, 255 E. Temple Street, Bin outside of Suite 1482
Los Angeles, CA 90012

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.

1/11/2016
Date

Cheryl Caldwell
Printed Name

/s/ Cheryl Caldwell
Signature

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Robert S Altagen on behalf of Attorney Robert S. Altagen
rsaink@earthlink.net

Robert S Altagen on behalf of Debtor Flower Investment Group, LLC
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