

☐ Individual appearing without attorney
☒ Attorney for: Richard J. Laski, Chapter 7 Trustee

FOR COURT USE ONLY

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

NOTICE OF SALE OF ESTATE PROPERTY

Debtor(s).

Location: Courtroom 1475, Roybal Federal Building, 255 E. Temple Street, Los Angeles, CA 90012

☐ Private

Last date to file objections: 02/25/2015

1530 W. Covina Parkway, West Covina, California 91790 (APN 8474-002-016)

See Attached

Proposed sale price: \$ 15,950,000.00

Overbid procedure (*if any*): See Attached

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

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

David M. Guess
Klee, Tuchin, Bogdanoff & Stern LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067
Phone: (310) 407-4000
Fax: (310) 407-9090
Email: dguess@ktbslaw.com

Date: 02/18/2015

BID PROCEDURES

Richard J. Laski (the "**Trustee**"), the duly-appointed, qualified and acting chapter 7 trustee of the bankruptcy estate of Michael Joel Kamen, by motion dated February 18, 2015 (the "**Motion**"), sought, among other things, approval of the process and procedures set forth herein through which the Trustee will cause 1530 West Covina Parkway L.P. ("**West Covina LP**") to sell that certain real estate located at 1530 W. Covina Parkway, West Covina, California 91790 (APN 8474-002-016) (the "**Property**").

As detailed in the Motion, the Trustee has caused West Covina LP to enter into that certain Purchase and Sale Agreement and Joint Escrow Instructions (the "**PSA**") with Gatehouse Partners, LLC or its permitted designee ("**Purchaser**"). The PSA is attached as Exhibit 1 to the Motion (a word version is available on request). Pursuant to the PSA, Purchaser has agreed to purchase the Property for \$15,800,000, subject to overbid at a Court-supervised auction for the Property (the "**Auction**") that is scheduled to take place on April 1, 2015 at 10:00 a.m.

In order to participate in the Auction, a person interested in submitting a bid for the Property (a "**Potential Bidder**") must comply with the Bid Procedures set forth herein.

Bid Deadline

A Potential Bidder that desires to make a bid shall deliver by mail, hand delivery or facsimile a written copy of its bid, such that the bid is received by the Trustee's counsel not later than **5:00 p.m. (Pacific time) on March 27, 2015** (the "**Bid Deadline**") (which deadline may be extended by the Trustee, in his sole discretion), addressed as follows: Richard J. Laski, Chapter 7 Trustee, c/o Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, 39th Floor, Los Angeles, California 90067 (fax: 310-407-9090). Only bids that have been received prior to the Bid Deadline (as may be extended by the Trustee) will be considered by the Trustee.

Participation Requirements

To participate in the Auction, a Potential Bidder must first deliver to the Trustee the following (the "**Participation Requirements**") prior to the Bid Deadline:

1. **Deposit**. A good faith deposit in the amount of \$375,000 (the "**Bid Deposit**"), with such payment to be made to "Richard J. Laski, Chapter 7 Trustee of the Estate of Michael J. Kamen" in cash or cash equivalent (*i.e.*, either by a wire transfer or a cashier's check), which Bid Deposit will be non-refundable if the Potential Bidder is the Successful Bidder (as defined below), subject only to entry of an unstayed Bankruptcy Court order approving the sale of the Property to it;
2. **Proof of Ability to Perform**. Evidence in a form satisfactory to the Trustee that the Potential Bidder has the financial wherewithal and willingness to consummate its purchase of the Property expeditiously and without any financing or other contingency not set forth in the PSA attached to the Motion.

Such information should include:

- (a) the Potential Bidder's current financial statements;
 - (b) contact names and numbers for verification of financing sources;
 - (c) evidence of the Potential Bidder's internal resources and proof of any commitments that are needed to close the contemplated transaction;
 - (d) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Trustee demonstrating that such Potential Bidder has the ability to close the contemplated transaction; and
 - (e) other such documentation as the Trustee may reasonably request.
3. Written Bid. A written bid that satisfies the Bid Requirements (as defined below). Among other things, the Bid Requirements require submission of a "marked up" purchase and sale agreement substantially in the same form as the PSA attached to the Motion, with a purchase price of not less than \$15,950,000, with no contingencies, representations, warranties or changes in timing beyond those set forth in the PSA attached to the Motion, other than (i) that the Potential Bidder is determined by the Bankruptcy Court to be the highest and best bidder, and (ii) approval of the sale by the Bankruptcy Court by an unstayed order.

Bid Requirements

To be eligible to participate in the Auction, each bid must be determined by the Trustee in his sole discretion to satisfy each of the following conditions (the "**Bid Requirements**"):

- 1. Deposit. Each bid must be accompanied by a Bid Deposit, as described above, which entire deposit will be non-refundable to the Potential Bidder if the Potential Bidder submits the winning bid for the Property at the Auction, subject only to entry of an unstayed Bankruptcy Court order approving the sale of the Property to it.
- 2. Minimum Bid. The bid must set forth a purchase price for the Property that equals or exceeds \$15,950,000 and is in the form of cash or cash equivalent.
- 3. Irrevocable. A bid must be irrevocable until at least the date of the Auction.
- 4. Same or Better Terms. The bid must be on terms that, in the Trustee's business judgment, are substantially the same or better than the terms of the PSA attached to the Motion. A bid must include an executed purchase and sale agreement pursuant to which the Potential Bidder proposes to effectuate the contemplated transaction. A bid shall include a copy of the purchase and sale agreement marked against the PSA attached to the Motion to show all changes made by the Potential Bidder (including those related to the purchase price). The bid must include a commitment to close on the sale of the Property by no later than the closing date set forth in the PSA attached to the Motion.

5. No Contingencies. The bid must be subject to no contingencies, representations, warranties or changes in timing beyond those set forth in the PSA, other than (i) that the Potential Bidder is determined by the Bankruptcy Court to be the highest and best bidder, and (ii) approval of the sale by the Bankruptcy Court by an unstayed order.

6. No Fees Payable to Qualified Bidder. The making of a bid will not entitle the Qualified Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment. Moreover, by submitting a bid, a bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid or these bid procedures.

Designation as Qualified Bidder

A "**Qualified Bidder**" is a Potential Bidder that, as determined by the Trustee in his sole discretion, has satisfied the Participation Requirements and the Bid Requirements. Upon receipt of the funds and documents set forth in the Participation Requirements, the Trustee shall notify each Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

In the event that any Potential Bidder is determined by the Trustee not to be a Qualified Bidder, the Potential Bidder shall be refunded its Bid Deposit by the date of the Auction.

No Potential Bidder shall have standing to challenge another Potential Bidder's compliance with the Participation Requirements. For the avoidance of doubt, Purchaser is a Qualified Bidder and is deemed to satisfy all Participation Requirements.

Auction

If the Trustee receives at least one bid from a Qualified Bidder other than Purchaser prior to the Bid Deadline, the Trustee will promptly (i) notify all Qualified Bidders of the highest and best bid submitted by a Qualified Bidder (the "**Baseline Bid**"), and (ii) provide copies of all submitted bids by all Qualified Bidders to all Qualified Bidders; provided, however, that the Trustee shall not share with other Qualified Bidders any evidence of proof of ability to perform or any documents (other than the bid) that are designated confidential. If the Trustee does not receive at least one bid from a Qualified Bidder other than Purchaser, then the Auction will not be held, and the Trustee will proceed to seek approval of the sale of the Property to Purchaser pursuant to the terms and conditions of the PSA on April 1, 2015 at 10:00 a.m.

If there is an Auction, it shall be conducted according to the following procedures:

1. Only Purchaser and other Qualified Bidders may bid at the Auction, and they are each required to appear in person at the Auction, or through a duly-authorized representative with full authority to submit bids and bind the Qualified Bidder;
2. Bidding shall begin at the Baseline Bid;
3. Successive bids shall be made in bidding increments of not less than \$50,000;

4. Bidding shall continue until there is only one offer that the Trustee determines in his sole discretion is the highest and best bid (the "**Successful Bid**," made by the "**Successful Bidder**");
5. All Bid Deposits, other than those of the Successful Bidder, shall be returned within three (3) business days of the Auction; and
6. The Successful Bid shall be subject to Bankruptcy Court approval.

EACH BIDDER SHALL BE DEEMED TO ACKNOWLEDGE AND REPRESENT THAT IT HAS HAD AN OPPORTUNITY TO CONDUCT ANY AND ALL DUE DILIGENCE PRIOR TO MAKING ITS BID, AND THAT IT HAS RELIED SOLELY UPON ITS OWN INDEPENDENT REVIEW, INVESTIGATION AND/OR INSPECTION OF ANY DOCUMENT(S) IN MAKING ITS BID, AND THAT IT DID NOT RELY UPON OR RECEIVE ANY WRITTEN OR ORAL STATEMENTS, REPRESENTATION, PROMISES, WARRANTIES, OR GUARANTEES WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR BY OPERATION OF LAW, OF THE COMPLETENESS OF ANY INFORMATION PROVIDED. BY PARTICIPATING IN THE AUCTION, EACH BIDDER ACKNOWLEDGES AND AGREES TO BE BOUND BY EACH AND EVERY TERM AND CONDITION SET FORTH IN THESE BID PROCEDURES.

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:
1999 Avenue of the Stars, 39th 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)* 02/18/2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attached service list.

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* 02/18/2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

See attached service list.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL *(state method for each person or entity served)*: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* 02/18/2015, 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.

To be served by personal delivery: The Honorable Sheri Bluebond
U.S. Bankruptcy Court, Roybal Federal Building, Bin outside of Suite 1482
255 E. Temple Street, Los Angeles, CA 90012-3332

☐ 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.

02/18/2015
Date

Kathryn T. Zwicker
Printed Name

/s/ Kathryn T. Zwicker
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

To be served by the Court via Notice of Electronic Filing (NEF):
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Simon Aron on behalf of Defendant The Bearbiz Irrevocable Trust
u/t/d January 1, 2011
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Simon Aron on behalf of Defendant Theodore Fox
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Simon Aron on behalf of Defendant c/o Gary M. Gitlin Ultimate
Action, LLC
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Trust u/t/d May 14, 1992
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Ashleigh A Danker on behalf of Interested Party Courtesy NEF
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Ashleigh A Danker on behalf of Interested Party Official Committee
of Creditors Holding Unsecured Claims Against the Bankruptcy
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Association, as Trustee, as successor-in-interest to Bank of America,
N.A., as Trustee, as successor to Wells Fargo Bank, N.A., as Trustee,
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[7/11] trustee of the estate of MICHAEL JOEL KAMEN
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David Guess on behalf of Plaintiff Schwartz Family Trust
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David Guess on behalf of Plaintiff Patricia K Schwartz
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James KT Hunter on behalf of Plaintiff 1530 West Covina Parkway,
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James KT Hunter on behalf of Plaintiff 201 North Brand, LLC
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James KT Hunter on behalf of Plaintiff 357 South Broadway, LLC
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James KT Hunter on behalf of Plaintiff 501 Grant Street Partners,
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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James KT Hunter on behalf of Plaintiff Larchmere Partners, LLC
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James KT Hunter on behalf of Plaintiff Soledad Commons, LLC
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Elan Financial Services	Bankruptcy Department	P.O. Box 5229		Cincinnati	OH	45201
Employment Development Dept	Bankruptcy Group MIC 92E	PO Box 826880		Sacramento	CA	94280
FIA Card Services, N.A.		P.O. Box 15102		Wilmington	DE	19886
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Ultimate Action LLC & TF Properties #2 LLC	c/o Wolf Rifkin Shapiro Schulman & Rabkin, LLP	Simon Aron & Mark J. Rosenbaum	11400 West Olympic Blvd., 9th Floor	Los Angeles	CA	90064
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24 Hour Fitness USA, Inc.	attn: Legal Department	5020 Franklin Drive		Pleasanton	CA	94588
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