

Overbid procedure (if any): _____

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):

Steven J. Schwartz, Esq.
Danning, Gill, Diamond & Kollitz, LLP
1900 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
Telephone: (310) 277-0077
Facsimile: (310) 277-5735

Date: July 26, 2013

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6 Attorneys for David A. Gill, Chapter 7
Trustee

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UNITED STATES BANKRUPTCY COURT

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CENTRAL DISTRICT OF CALIFORNIA

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SAN FERNANDO VALLEY DIVISION

11

In re
12 PALOMBA WEINGARTEN,
13 Debtor.

Case No. 1:04-bk-16437-GM

Chapter 7

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**NOTICE OF HEARING RE ON
TRUSTEE'S MOTION TO SELL
ESTATE'S RIGHT, TITLE AND
INTEREST IN ATLAS HOLDING
GROUP, INC.; AS IS, WHERE IS,
SUBJECT TO ALL LIENS AND
CLAIMS OF INTEREST; AND
SUBJECT TO OVERBID AT THE
TIME OF HEARING**

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Judge: Hon. Geraldine Mund
Date: August 27, 2013
Time: 10:00 a.m.
Ctrm.: 303

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**TO THE HONORABLE GERALDINE MUND, UNITED STATES
22 BANKRUPTCY JUDGE; THE DEBTOR, THE UNITED STATES TRUSTEE,
23 AND ALL INTERESTED PARTIES:**

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PLEASE TAKE NOTICE THAT, on August 27, 2013, at 10:00 a.m., David
25 A. Gill, the Chapter 7 trustee (the "Trustee") for the bankruptcy estate (the "Estate")
26 of Palomba Weingarten (the "Debtor") will and hereby does move the Court (the
27 "Motion") pursuant to sections 105 and 363 of the United States Bankruptcy Code,
28 11 U.S.C. §§ 101-1530, as amended (the "Bankruptcy Code"), Rules 2002 and 6004,

1 Federal Rules of Bankruptcy Procedure (each a "Bankruptcy Rule," and collectively,
2 the "Bankruptcy Rules"), and Local Bankruptcy Rules 6004-1 and 9013-1 for the
3 entry of an order authorizing the Trustee to:

4 (a) sell, convey, assign and transfer all of the Trustee's right, title and
5 interest in California Atlas Holding Group, Inc., n/k/a Atlas Holding Group, Inc., a
6 California corporation (the "Property" or "Atlas") for \$75,000 cash due and payable
7 on by August 20, 2013, to Robert Weingarten or his designee (the "Buyer") or to any
8 person who appears at the hearing and submits a higher acceptable bid, on an as-is,
9 where-is basis, without any warranties or representations, and subject to any and all
10 liens and encumbrances;

11 (b) execute any and all documents that may be necessary to
12 consummate the sale of the Property.

13 The Trustee has a competing bid of \$100,000 from Pointe San Diego
14 Residential Community ("PSDRC"), subject to conditions.

15 This Motion is made on the grounds that the purchase price is fair and
16 reasonable and the sale is in the best interests of the creditors and the estate.

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

18 **Date, time and place of the hearing on the proposed sale**

19 The hearing on the Motion and an auction, to the extent that qualified overbids
20 are received in accordance with the proposed procedures set forth below (the "Sale
21 Hearing"), shall take place on August 27, 2013 at 10:00 a.m., or such other date and
22 time as to be set by the Court (the "Hearing Date") in Courtroom 303 of the above-
23 referenced court, 21041 Burbank Boulevard, Woodland Hills, California 91367.

24 **Name and address of the proposed buyer**

25 Robert Weingarten, 3535 Sweetwater Mesa Road, Malibu, California, or his
26 designee.

27 **Description of the sale and property to be sold**

28 The estate's right, title and interest in Atlas. The Trustee is informed and

1 believes, but makes no representation as such, that among the assets of the estate are
2 a 97.274797% interest in Atlas, which company owned, among other things, interests
3 in various other companies that formerly owned certain land in San Diego that was
4 lost to foreclosure several years ago (the "Pointe San Diego Property"). The Trustee
5 does not believe that Atlas holds any value to the bankruptcy estate, except as might
6 be derived from a sale to one of the litigants in actions in the Superior Court for the
7 County of San Diego entitled Pointe San Diego Residential Community L.P. and
8 Gosnell Builders Corporation of California v. WWI Properties, LLC, et al (Case No.
9 726145), Pointe SDMU L.P. v. Atlas Homes, LLC, et. al. (Case No. GIC 753184)
10 (collectively, the "Pointe I Litigation") and/or Pointe San Diego Residential
11 Community, L.P., et al v. Palomba Weingarten, et al. (Case No. GIC 809277) (the
12 "Pointe II Litigation" and collectively, the "Pointe Litigation"). The Trustee is not a
13 party to the Pointe Litigation and has no interest in the outcome of the Pointe
14 Litigation except to the extent that it might determine the amount of certain un-
15 liquidated unsecured claim(s) against the estate. The Trustee perceives that the
16 Buyer is interested in the purchase of Atlas in order to derive some litigation
17 advantage in the Pointe Litigation but has no knowledge of how the ownership of
18 Atlas might serve that interest.

19 The Trustee has received two competing offers for the purchase of Atlas. One
20 such offer, from the Buyer, is for \$75,000 cash, as is, where is, with no
21 representations or warranties, and subject to all liens and encumbrances. The Trustee
22 also received an offer from Pointe San Diego Residential Community ("PSDRC") to
23 purchase the Property for \$100,000, conditioned upon: (i) the outcome of certain
24 proceedings in the Pointe Litigation set for hearing on July 26, 2013, and (ii)
25 approval of the sale free and clear of any liens or claims of any third party. Despite
26 the additional monetary consideration, the Trustee in his business judgment, has
27 declined to accept the offer from PSDRC, in light of the contingencies attached
28 thereto, and instead has presented the non-contingent offer from the Buyer, subject to

1 any overbid on the same terms and conditions (none) at the hearing.

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

4 As consideration for the sale, the Buyer shall pay the cash sum of \$75,000.00
5 (the "Cash Payment") in good funds by August 20, 2013.

6 Following the entry of an Order approving the sale, the Trustee will execute
7 an assignment instrument in a form reasonably acceptable to the Buyer.

8 The Property is being sold as is, where is, with no representations or
9 warranties, and subject to any and all liens and encumbrances.

10 The Parties waive the application of the 14-day stay of an order authorizing
11 the sale of property other than cash collateral set forth in Federal Rule of Bankruptcy
12 Procedure 6004(h) to the sale of the Property, and the Trustee requests the Court's
13 approval of such waiver.

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

16 The proposed sale is subject to liens and encumbrances. The Trustee is
17 unaware of what liens or encumbrances might exist as to the Property, if any.

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

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

21 1. Any party desiring to submit an overbid must deliver an "Initial
22 Overbid" in conformance with this paragraph to the Trustee's attorneys at the
23 address set forth in the upper left-hand corner of the first page of this Notice, at or
24 before the hearing on the Motion. Any such Initial Overbid must:

25 a. be in the form of a definitive written agreement on substantially
26 the same terms and conditions as those agreed to by the Buyer as set forth
27 herein (except as to purchase price) and shall not be subject to any
28 contingencies other than Court approval;

1 b. be accompanied by a cashier's or certified check payable to
2 "David A. Gill, Chapter 7 Trustee," in an amount of the Purchase Price
3 ("Deposit"), which Deposit shall be returned to the Initial Overbidder within a
4 reasonable period of time following the conclusion of the Sale Hearing unless
5 the Initial Overbidder ultimately submits the successful bid for the Property
6 (the "Successful Bidder"), in which case the Deposit shall be applied toward
7 the Purchase Price and the cash balance (any amount bid in excess of the
8 Purchase Price) shall be provided to the Trustee in the form of a cashier's or
9 certified check payable to the Trustee not less than 24 hours after the hearing
10 on the Motion. The Deposit shall be non-refundable in the event that the
11 Successful Bidder fails to consummate the sale pursuant to the terms hereof;

12 2. If no timely, conforming Initial Overbids are submitted, the Trustee
13 shall request at the Sale Hearing that the Court approve the proposed sale of the
14 Property to the Buyer. In the event that one or more timely, conforming Initial
15 Overbids are submitted ("Qualified Overbidders"), the Trustee shall conduct at the
16 time of the Sale Hearing an auction for the Property (the "Auction"), in which the
17 Buyer and any Qualified Overbidders, may participate. The Auction shall be
18 governed by the following procedures:

19 a. All Qualified Overbidders and the Buyer shall be deemed to have
20 consented to the core jurisdiction of the Court and to have waived any right to
21 a jury trial in connection with any disputes relating to the Auction and/or the
22 sale of the Property;

23 b. Bidding will commence at the amount of the highest bid
24 submitted by a Qualified Overbidder, which must be at least \$80,000;

25 c. After the Initial Overbid, subsequent overbids shall be made in
26 increments of at least \$5,000 in aggregate consideration above the previous bid
27 and the process may be repeated until no overbid is thereafter made at the Sale
28 Hearing;

1 3. At the conclusion of the Auction, the Trustee shall recommend that the
2 Court authorize and approve the sale of the Property to the person or entity that has
3 submitted the highest and best offer for the Property; and

4 4. At the conclusion of the Auction, the Trustee may, with the consent of
5 the affected non-prevailing Qualified Overbidder(s), including the Buyer, that has
6 submitted the next most advantageous bid, as applicable, request that the Court
7 authorize and approve a sale of the Property on a contingent and back-up basis to
8 such consenting non-prevailing Qualified Overbidder at the Auction, without need
9 for further notice and hearing or Court Order.

10 5. There shall be no break-up fee allowed to the Buyer or any bidder at the
11 Auction.

12 6. The Trustee holds sole discretion in accepting and rejecting all overbids.
13 The Trustee will market the Property by posting a notice of its sale on the
14 websites of the United States Bankruptcy Court for the Central District of California
15 and of Danning, Gill, Diamond & Kollitz, LLP and by providing notice to all
16 affected parties and related entities, including, but not limited to, the owner of the
17 Pointe San Diego Property, who acquired said property from the foreclosing lender.

18 **The consideration to be received by the estate, including estimated**
19 **commissions, fees, and other costs of sale.**

20 There shall be no broker commission associated with this sale. The
21 consideration that the Trustee will receive is \$75,000.

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

25 The tax liability to the Estate for the sale of the Property, if any, is presently
26 unknown. It is not anticipated that there will be any tax liability to the Estate
27 generated by the sale of the Property. To the extent that there is any tax liability, it
28 will be paid from the sale proceeds.

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The Motion is based upon this Notice of Hearing, the Motion, the accompanying Memorandum of Points and Authorities, the Declaration of David A. Gill, all pleadings on file with this Court, and any oral and documentary evidence that may be presented at the hearing on the Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy Rules 6004-1(c) and 9013-1(a), each interested party opposing, joining, or responding to the motion must, not later than 14 days before the date of the hearing, file with the Clerk of the Bankruptcy Court and serve upon: (1) Steven J. Schwartz, Danning, Gill, Diamond & Kollitz, LLP, 1900 Avenue of the Stars, 11th Floor, Los Angeles, California 90067-4402; and (2) Office of the United States Trustee, 21051 Warner Center Lane, Suite 115, Woodland Hills, CA 91367 either : (i) a complete written statement of all reasons in opposition thereto or in support of joinder thereof, declarations and copies of all documentary evidence on which the responding party intends to rely, and any responding memorandum of points and authorities; or (ii) a written statement that the motion will not be opposed. A judge's copy of the opposition must be served on the judge in chambers in accordance with LBR 5005-2(d). Pursuant to Local Bankruptcy Rule 9013-1(h), papers not timely filed and served may be deemed by the Court to be consent to the granting or denial of the motion, as the case may be.

1 DATED: July 25, 2013

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

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By: /s/ Steven J. Schwartz

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STEVEN J. SCHWARTZ

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Attorneys for David A. Gill, 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) 7/26/2013, 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:

The Honorable Geraldine Mund
U.S. Bankruptcy Court
21041 Burbank Blvd., Suite 312
Woodland Hills, CA 91367

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 7/26/2013, 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.

The Honorable Geraldine Mund
U.S. Bankruptcy Court
21041 Burbank Blvd., Suite 312
Woodland Hills, CA 91367

Service information continued on attached page

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

Service information continued on attached page

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

7/26/2013 Cheryl Caldwell
Date Printed Name

Cheryl Caldwell
Signature

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 July 26, 2013, 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:

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