

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: August 23, 2013

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7 Attorneys for David A. Gill, Chapter 7
Trustee

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SAN FERNANDO VALLEY DIVISION**

11 In re
12 PALOMBA WEINGARTEN,
13 Debtor.

Case No. 1:04-bk-16437-GM
Chapter 7

**NOTICE OF NEW HEARING
DATE 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**

Former Hearing Date/Time:

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

New Hearing Date/Time:

Judge: Hon. Geraldine Mund
Date: **September 17, 2013**
Time: **10:00 a.m.**
Ctrm.: 303

26 **TO THE HONORABLE GERALDINE MUND, UNITED STATES**
27 **BANKRUPTCY JUDGE; THE DEBTOR, THE UNITED STATES TRUSTEE,**
28 **AND ALL INTERESTED PARTIES:**

1 **PLEASE TAKE NOTICE THAT, on September 17, 2013 at 10:00 a.m.,**
2 David A. Gill, the Chapter 7 trustee (the "Trustee") for the bankruptcy estate (the
3 "Estate") of Palomba Weingarten (the "Debtor") will and hereby does move the
4 Court (the "Motion") pursuant to sections 105 and 363 of the United States
5 Bankruptcy Code, 11 U.S.C. §§ 101-1530, as amended (the "Bankruptcy Code"),
6 Rules 2002 and 6004, Federal Rules of Bankruptcy Procedure (each a "Bankruptcy
7 Rule," and collectively, the "Bankruptcy Rules"), and Local Bankruptcy Rules 6004-
8 1 and 9013-1 for the entry of an order authorizing the Trustee to:

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

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

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

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

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

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

24 The hearing on the Motion and an auction, to the extent that qualified overbids
25 are received in accordance with the proposed procedures set forth below (the "Sale
26 Hearing"), shall take place on September 17, 2013 at 10:00 a.m. (the "Hearing
27 Date") in Courtroom 303 of the above-referenced court, 21041 Burbank Boulevard,
28 Woodland Hills, California 91367. The hearing on the Motion was previously

1 scheduled for August 27, 2013 at 10:00 a.m. and has been re-set for September 17,
2 2013 at 10:00 a.m. at the specific request of Richard Wynne, counsel for the Buyer,
3 in order to accommodate Mr. Wynne's vacation schedule.

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

5 Robert Weingarten, 3535 Sweetwater Mesa Road, Malibu, California, or his
6 designee.

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

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

27 The Trustee has received two competing offers for the purchase of Atlas. One
28 such offer, from the Buyer, is for \$75,000 cash, as is, where is, with no

1 representations or warranties, and subject to all liens and encumbrances. The Trustee
2 also received an offer from Pointe San Diego Residential Community ("PSDRC") to
3 purchase the Property for \$100,000, conditioned upon: (i) the outcome of certain
4 proceedings in the Pointe Litigation set for hearing on July 26, 2013, and (ii)
5 approval of the sale free and clear of any liens or claims of any third party. Despite
6 the additional monetary consideration, the Trustee in his business judgment, has
7 declined to accept the offer from PSDRC, in light of the contingencies attached
8 thereto, and instead has presented the non-contingent offer from the Buyer, subject to
9 any overbid on the same terms and conditions (none) at the hearing.

10 **Terms and conditions of the proposed sale, including the price and all**
11 **contingencies.**

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

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

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

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

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

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

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

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

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

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

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

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

27 a. All Qualified Overbidders and the Buyer shall be deemed to have
28 consented to the core jurisdiction of the Court and to have waived any right to

1 a jury trial in connection with any disputes relating to the Auction and/or the
2 sale of the Property;

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

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

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

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

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

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

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

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

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

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

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

14 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy
15 Rules 6004-1(c) and 9013-1(a), each interested party opposing, joining, or
16 responding to the motion must, not later than 14 days before the date of the hearing,
17 file with the Clerk of the Bankruptcy Court and serve upon: (1) Steven J. Schwartz,
18 Danning, Gill, Diamond & Kollitz, LLP, 1900 Avenue of the Stars, 11th Floor, Los
19 Angeles, California 90067-4402; and (2) Office of the United States Trustee, 21051
20 Warner Center Lane, Suite 115, Woodland Hills, CA 91367 either : (i) a complete
21 written statement of all reasons in opposition thereto or in support of joinder thereof,
22 declarations and copies of all documentary evidence on which the responding party
23 intends to rely, and any responding memorandum of points and authorities; or (ii) a
24 written statement that the motion will not be opposed. A judge's copy of the
25 opposition must be served on the judge in chambers in accordance with LBR 5005-
26 2(d).

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

4
5 DATED: August 23, 2013

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

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8 By: /s/ Steven J. Schwartz

9 STEVEN J. SCHWARTZ

10 Attorneys for David A. Gill, Chapter 7
11 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) 8/23/2013, 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

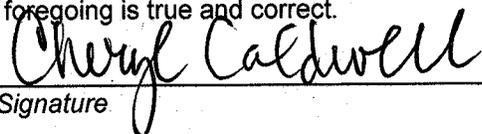
3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those 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.

8/23/2013
Date

Cheryl Caldwell
Printed Name


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:

ATTORNEY FOR ROBERT WEINGARTEN: Bruce Bennett bbennett@jonesday.com
INTERESTED PARTY: Richard S Berger rberger@lgbfirm.com, vedwards@lgbfirm.com;
marizaga@lgbfirm.com; chebert@lgbfirm.com
ATTORNEY FOR ROBERT WEINGARTEN: Erin N Brady enbrady@jonesday.com
ATTORNEY FOR GOSNELL BUILDERS CORPORATION OF CALIFORNIA: Jeffrey D Cawdrey
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ATTORNEY FOR CHAPTER 7 TRUSTEE: Richard K Diamond rdiamond@dgdgk.com,
DanningGill@gmail.com
FORMER ATTORNEY FOR PALOMBA WEINGARTEN: Joseph A Eisenberg jae@jmbm.com,
vr@jmbm.com
FORMER ATTORNEY FOR PALOMBA WEINGARTEN: Thomas M Geher tmg@jmbm.com,
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CHAPTER 7 TRUSTEE: David A Gill mlr@dgdgk.com, dgill@ecf.epiqsystems.com;
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INTERESTED PARTY: Leslie S Gold LGold@GershuniKatz.com
FORMER ATTORNEY FOR CHAPTER 7 TRUSTEE: Robert A Hessling rhessling@gmail.com
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ATTORNEY FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS: Howard N Madris
hmadris@madrislaw.com
ATTORNEY FOR GOSNELL BUILDERS CORPORATION OF CALIFORNIA: Edward Medina
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ATTORNEY FOR U.S. Trustee: S Margaux Ross margaux.ross@usdoj.gov
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DanningGill@gmail.com
INTERESTED PARTY: Larry D Simons larry@lsimonslaw.com
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INTERESTED PARTY: Genevieve G Weiner gweiner@gibsondunn.com
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