

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Law Offices Of Steven R. Fox Steven R. Fox, CBN 138808 17835 Ventura Blvd., Suite 306 Encino, CA 91316 (818) 774-3545 ph. (818) 774-3707 fx. srfox@foxlaw.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Debtor-In-Possession	FOR COURT USE ONLY
--	--------------------

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SAN FERNANDO VALLEY DIVISION**

In re: Sweiss Petrol, Inc. Debtor(s).	CASE NO.: 1:14-bk-15679-MT CHAPTER: 11 <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p>
---	--

Sale Date: 05/25/2016	Time: 9:00 am
Location: Courtroom 302, 21041 Burbank Blvd., Woodland Hills, CA 91367	

Type of Sale: Public Private **Last date to file objections:** 05/17/2016

Description of property to be sold: Substantially all of the Debtor's assets
 Real property commonly known as 18056 Saticoy St., Reseda, CA 91335 and all assets of the Debtor's fuel station. See exhibit 1 of attached marketing and bidding procedures for a list of assets being sold and not being sold. Proposed sale price of \$2,188,529.40 below is the opening credit bid, plus \$150,000 carve out for professionals, \$40,000 for County taxes plus payment of applicable sales taxes.

Terms and conditions of sale:

 See attached Marketing and Bidding Procedures. These procedures are lengthy and complicated. Please retain experienced bankruptcy counsel to assist you.

Proposed sale price: \$ 2,188,529.40

Overbid procedure (if any):

See attached Marketing and Bidding Procedures.

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

Date and time: May 25, 2016 at 9:00 a.m.

Location: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA 91367

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

Steven R. Fox
Law Offices Of Steven R. Fox
17835 Ventura Blvd., Suite 306
Encino, CA 91316
(818) 774-3545 ph. (818) 774-3707 fx.
srfox@foxlaw.com

Date: 04/18/2016

MARKETING AND AUCTION PROCEDURES

1. Introduction.

The Debtor is selling substantially all of its assets ("assets") at an auction to be conducted under the auspices of the U.S. Bankruptcy Court for the Central District of California in open court and on the date specified below. G&M Gapco, LLC., (G&M") is the stalking horse bidder with an opening bid of the amount of its claim as allowed by the Bankruptcy Court, which is anticipated to be \$2,188,529.40 and which includes a carve outs of \$150,000 for professional fees and expenses of the Debtor's professionals.

2. What is Being Sold. Substantially all of the assets of the Debtor's fuel station plus the real property commonly known as 18056 Saticoy Street, Reseda CA 91335.

Exhibit "1" attached here includes a list of the assets being sold and assets not being sold. The Debtor will be retaining specified assets. See Exhibit "1".

3. Time line.

a. Qualified bids must be received by the broker for the Debtor no later than Tuesday, May 3, 2016, by midnight. Electronic transmission of any such offer to the Debtor's broker is acceptable. What constitutes a qualified bid is described below.

b. If qualified bids are received, the auction for substantially all of the Debtor's assets will take place in open court on May 25, 2016, at 9:00 a.m. The Debtor shall advise the Court concerning the salient

terms of all qualified bids and which offer, in the Debtor's opinion, is the highest and best offer. The determination of which offer is the and highest and best offer will be based on factors such as the amount of the bid, the ability of the qualified bidder to perform and the ability of the qualified bidder to close the transaction quickly.

c. Following the auction and the Court's determination of whom the successful bidder is, the successful bidder must be prepared to fully perform within 20 calendar days of the date the Court designates the successful bidder in open court.

d. Other than G&M, no break up fee shall be paid to any bidder, qualified or otherwise in connection with the sale of the Debtor's assets. All bidders shall bear their own costs.

As to G&M, because it is the initial bidder, in the event it is not the high bidder, it shall be entitled to a break-up fee of \$25,000, which shall be paid at the close of escrow if G&M is not the successful purchaser. Pursuant to discussion in open court at a hearing held April 6, 2016, in this case, the break-up fee is intended to serve as a substitute for accruing interest and legal fees G&M believes it will incur through June 30, 2016, pending the proposed sale. In the event of an unusual circumstance, G&M may seek allowance of additional interest and attorneys' fees. If the sale occurs following June 30, 2016, G&M may seek allowance of additional fees and interest.

4. Access to Information.

The Debtor's broker shall provide electronically (or by hard copy) to bidders copies of the Debtor's Monthly Operating Reports as well as other records normally provided by interested parties when marketing a fuel station. The Debtor shall also provide a copy of the Franchise Agreement (and related agreements) between the Debtor and Circle K Stores. The

Debtor shall not be required to provide proprietary information should any such information exist.

5. Business as Usual.

Pending the date the sale goes effective, meaning, the date the successful purchaser is able to close the sale, the Debtor shall maintain its business operations in the ordinary course and shall continue with its business as usual and in the same fashion as it has since the commencement of the bankruptcy case.

6. Qualified Bid.

To be a qualified bid, all of the following requirements must be met unless waived by the Debtor or by the Court:

- The bid must be in writing and submitted to counsel for the Debtor by email, by U.S. Mail or by messenger as follows:

LAW OFFICES OF STEVEN R. FOX
17835 Ventura Blvd., Suite 306, Encino, CA 91316
srfox@foxlaw.com

- The bid must be signed by the qualified bidder.
- The bid must be submitted to and received by the Debtor's broker on or before May 3, 2016, before midnight, local time.
- The bid must be an offer to pay money in U.S. funds to acquire the assets listed in Exhibit 1.
- The bid may not be a conditional bid with the exception of a financing commitment as to which the qualified bidder must be prepared to close within 20 calendar days of the date the Court designates the successful bidder in open court.

- The bid must be for all of the assets the Debtor is selling and not for a portion of the assets the Debtor is selling. Notwithstanding, a bid may decline to seek the assumption and assignment of the Circle K franchise agreement and related agreements.
- The bid must specify whether the qualified bidder seeks to have the Debtor move to assume and to assign the Circle K franchise agreement and related agreements.
- The bid must be accompanied by a cashiers' check in the amount of \$250,000. The \$250,000 shall be deposited into the Debtor's attorneys' client trust account or into an escrow account the Debtor designates. The \$250,000 deposit shall be deemed a good faith deposit and shall be non-refundable if (i) the bidder is the successful bidder (ii) the Court enters an order(s) approving the sale of the assets to the successful bidder and the successful bidder does not close within 20 calendar days of the date the Court approves in open court the sale of the assets to the successful bidder. Where an entity is entitled to credit bid, the requirement of the \$250,000 up front monies may be waived. See below for further requirements concerning overbidding.
- All bids must include a carve out for the Debtor's professionals' fees and expenses of \$150,000.00.
- All bids must provide that the first \$150,000 of the bid made, if such bid is the successful bid, shall be paid first to administrative expenses of the Debtor's professionals.
- The bid must obligate the bidder to pay the monies into either an escrow account designated by the Debtor or into Debtor's counsel's client trust account and subject only to Court approval.
- The bid must contain proof of ability to perform as to the initial bid and any overbidding. (See below for more information.)
- For a bidder to be eligible for a good faith finding under 11 U.S.C. §363(m), the bid should also include all factual

statements and evidence necessary for the Court to make a finding of good faith under such Bankruptcy Code section.

- The bid must explicitly state that the bidder will pay all taxes incurred upon the sale of the Debtor's assets and assessed by the City of Los Angeles, the County of Los Angeles and the State of California.

7. Credit Bidding.

G&M, shall be entitled to credit bid in the amount of its allowed secured claim.

Any bidder believing it is entitled to credit bid some or all of the offering price must either (1) timely file a motion with the Bankruptcy Court so that the motion is heard prior to the May 25, 2016, auction date (by at least 7 calendar days and (2) obtain an order prior to May 25, 2016, specifying the amount such entity may credit bid.

8. Ability to Perform Initial Bid and Subsequent Overbids.

- Any over-bidder, other than G&M, must provide at the time the bidder makes his/her/its bid, documentary proof satisfactory to the Debtor in the form of bank statements or similar financial records that such bidder has the financial ability to pay the amount bid. The documentary proof may also include balances sheets and public filings which demonstrate proof of ability to perform (as determined by Debtor's counsel).

Ability to perform may also be demonstrated by setting aside in the bidder's counsel's client trust account funds equal to any initial bid and/or overbid and a declaration by the bidder's counsel stating the fact of the deposit and the amount deposited. The declaration shall be submitted with the bid and

cashiers check but the declaration, along with all other financial information, shall be kept confidential.

- For a qualified bidder to be qualified to participate in the event of overbidding, a bidder must provide, at the time it submits its bid, additional evidence of financial ability to perform and to close the transaction in the time period listed above. The additional evidence of financial ability will be on a need to know basis only with the financial information only being available to the Debtor's broker, to the Debtor's counsel, and to the Court, if the Court determines it needs to review such financial information. Debtor's counsel and broker shall keep such information confidential.

In lieu of providing such information, a qualified bidder may bring to the auction, and must deliver to Debtor's counsel prior to the start of the auction, cashier's checks for an amount equal to or more than the difference between such bidder's initial bid and such bidder's highest overbid in order for such bidder's overbids to be considered or selected as the highest and best bid or as a backup bid.

G&M is deemed to be a qualified bidder for purposes of bidding and overbidding.

9. Identity of the Bidder.

All bids must include a separate statement, signed under oath, addressing satisfactorily to the Debtor (i) the identity of the bidder (and any designees), (ii) any connections of bidder/designee with the Debtor or Debtor's insiders, (iii) reassurance that there are no contingencies to the bid other than then auction, (iv) reassurance that the bidder, if the successful bidder, will promptly proceed to close the transaction within 20 calendar

days of approval of the bidder's bid in open court and (v) reassurance that all authorizations required (e.g., board approval, etc.), if any, have been secured.

That a bidder is an insider by the fact of family relationship and/or a financial relationship. However, the fact of any such relationship must be disclosed in bids.

10. No Auction.

If the Debtor does not timely receive any qualified bids from a qualified bidder, then G&M will be the successful bidder and \$2,188,529.40, (or in the amount approved by the Court) plus payment of \$150,000 to the estate and payment in the amount of \$40,000 (estimated) to the County of Los Angeles Tax Assessor will be the successful bid (all subject to G&M claim being allowed in such amount plus the payment of applicable sales taxes.

In the event there are no overbids and G&M's bid is accepted, then there shall be paid no commission to the Debtor's broker.

11. Broker.

If there are no over-bids, no broker's fees shall be paid and G&M shall pay \$150,000 to the estate and \$40,000 (estimated) in property taxes owed to the County of Los Angeles. In the event of no overbidding, then G&M shall credit bid its allowed claim, be found by the Court to be the high and successful bidder and it shall pay the taxes and the professionals.

If there are any over-bids, then a broker's commission shall be paid in the amount approved by this Court but no more than 5%; G&M shall not be prohibited from utilizing a buyer's broker in the event of an over-bid process and such buyer's broker shall be entitled to the same compensation as any

other over-bidder's broker. Said payment shall be made through escrow and prior to the time of closing.

12. Auction.

- If the Debtor timely receives a qualified overbid from a qualified bidder, an auction will take place in open Court on May 25, 2016, beginning at 9:00 a.m.
- The first over-bid shall be \$2,528,529.40. The first overbid shall be in the amount of G&M's allowed claim, estimated here to be \$2,188,529.40 plus the carve out of \$150,000 for the estate's professionals, plus a carve out for taxes owed to the County of Los Angeles estimated to be \$40,000, plus a breakup fee of \$25,000 to G&M in the event G&M is not the high bidder, plus a commission of 5% estimated to be \$125,000 or \$2,528,529.40 (\$2,188,529.40, + \$150,000 + \$40,000 + \$25,000 + \$125,000).

All subsequent overbids must be in minimum increments of at least \$10,000.00. Only qualified bidders who timely submitted qualified bids may bid at the auction. In addition, qualified bidders must also satisfy the requirements of ability to perform on subsequent overbids. (see above concerning proof of ability to perform or bringing good funds to the auction)

Subject to other direction by the Court, all qualified bidders and their brokers, attorneys and agents are required to remain in the courtroom during the entire auction and bidding process.

13 Highest and Best Bid.

The determination of which bid is the highest and best bid shall be determined by the Court.

The Debtor may select the second highest and best bid as the backup bid. Any unsuccessful bidder cannot be selected as a backup bidder without its express consent. The monies for bidders who are not selected as the highest and best bid or as the backup bid shall be returned to such bidders by Debtor's counsel promptly following the auction. The cashier's check(s) for the backup bidder shall be returned promptly after the transaction between the Debtor and the successful bidder have closed.

14. Good Faith Finding.

G&M's shall be deemed a good-faith purchaser under the Bankruptcy Code unless otherwise ordered by the Bankruptcy Court.

To the extent applicable and as determined by the Court, the successful bidder shall be deemed a good faith purchaser pursuant to 11 U.S.C. § 363(m) and any stay of the order approving the sale of the Debtor's assets under the Federal Rules of Bankruptcy Procedure is waived.

Any qualified bidder seeking a good faith finding must be prepared to timely submit proof to support such a finding.

15. Successful Bidder's Obligation.

The successful bidder shall be obligated to purchase the assets and to promptly pay all monies then owed to the Debtor. The failure to pay all monies bid within 20 calendar days of the designation in open court of the bidder as the successful bidder (or the failure of the back up bidder to perform and to pay all monies owed within 20 calendar days of the date the Debtor informs the back up bidder that it has 20 calendar days to perform) shall constitute a default under the terms of the auction and the Debtor shall be entitled, at its election, to retain the deposit and to offer the assets to the back-up bidder instead. In the event the back-up bidder fails to perform, then the Debtor may retain the deposit provided by the back-up bidder.

The successful bidder and the back-up bidder must cooperate as necessary and provide the necessary information, testimony and/or declarations to fully consummate the transaction.

16. Assumption and Assignment or Rejection of the Circle K Franchise Agreement and Related Agreements.

- The bid must state whether the bidder wishes the Debtor to assume and to assign to the bidder the existing Circle K franchise agreement and related agreements (the "agreements") or to reject the agreements.
- In the event the bidder wishes the Debtor to assume and to assign the agreements, then the bidder must promptly work with Circle K to ascertain if Circle K will accept the bidder as a franchiser. Circle K shall be obligated to review each such request and to reasonably approve such proposed transfer.
- The Debtor shall forward all bids seeking assumption and assignment of the agreements to Circle K. The Debtor shall forward to Circle K any financial information also provided with each such bid.

17. Free and Clear Sale.

- The sale shall be free and clear of all claims, liens, security interest, law suits, legal proceedings, suits, actions and other encumbrances of any and every nature and kind whatsoever and howsoever arising (whether by contract, statute, by tort or in any other manner or fashion whatsoever) including, without limitation, the following:

- A. Claims arising by reason of any theory of successor liability, de facto merger, or substantial continuity, whether based in law or equity;
- B. Any and all employee benefit obligations;
- C. The claims of all creditors and claimants and equity holders of this bankruptcy estate or of the Debtor;
- D. Any and all security interests, liens, mortgages, charges, claims, debts, deeds of trusts, lis pendens and encumbrances of any and all kinds
- E. County of Los Angeles for any obligation existing prior to close of escrow, except as stated herein;
- F. City of Los Angeles for any obligation existing prior to close of escrow;
- G. State of California for any obligations existing prior to the close of escrow;
- H. Any and all environmental claims of any and all kinds and nature.

Claims of any entity asserting a security interest in monies shall attach to the proceeds from the sale of assets except to the extent such funds are to be paid to the County of Los Angeles, to Debtor's professionals, to the broker(s) as a commission(s) and the break up fee to G&M.

18. Sales Taxes.

The State of California charges sales taxes it asserts are due on the

sale of business assets such as fixtures and equipment in bankruptcy proceedings. The State of California asserts that this requirement applies here in this bankruptcy case. The list of what the Debtor is selling is found below and contains items which may be construed as business assets, fixtures and equipment.

As a condition of closing, the successful bidder shall be responsible to pay through escrow the amount of sales taxes owed, in an amount necessary to satisfy the state's claim. If during the course of closing escrow there arise a dispute whether the successful bidder is fully paying sales taxes due, the successful bidder shall be responsible for depositing into escrow sufficient funds to satisfy the state's claim and shall be responsible for negotiating and/or litigating with the state to determine and to then pay the ultimate amount of tax owed.

Exhibit "1"

List of Assets Being Sold

What follows is a listing of assets the Debtor is selling at auction.

1. Any and all rights under the Debtor's franchise agreement with Circle K Stores, Inc. including assumption of the franchise agreement and assignment of the franchise agreement to the successful bidder if the successful purchaser wishes it to be assumed and assigned.
2. The land commonly known as 18056 Saticoy Street, Reseda, CA 91335.
3. All personal property located on the premises including spanners, trash receptacles, freezer/cooler units, display cases for beverages, 3 gondolas in the market, deli display case,
4. All inventory on hand at time of closing
5. All fuel on hand at the time of closing.
6. The point of sale hardware/software. .
7. All machinery and equipment in which Circle K asserts an interest, e.g., the Pegasus sign, fuel pumps.
8. The security and camera monitoring system

List of Assets Not Being Sold

The Debtor is not selling the following:

1. Monies on hand at the time of closing
2. Receivables on hand at the time of closing
3. Security deposits
4. Any leased machinery and equipment if not assumed and assigned
5. Any vendor supplied racks and machines (e.g., coffee machine and Slurpee machine, fountain machines, cigarette racks, the air/water machine
6. Its financial books and records.
7. Computers and related hardware; software and data

In re
Swiss Petrol, Inc.

Chapter 11
Case No.: 1:14-bk-15679-MT

Debtor(s)

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: **17835 Ventura Blvd., Suite 306, Encino, CA 91316**

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 **May 4, 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:

Trustee: Katherine Bunker kate.bunker@usdoj.gov, **Counsel for Circle K Stores, Inc.:** Matthew S Covington mcovington@archernorris.com, **Counsel for Debtor:** Steven R Fox emails@foxlaw.com, **On behalf of County of L.A.:** Barry S Glaser bglaser@swesq.com, erhee@swesq.com, **Counsel for G&M Oil Company, Inc.:** Jeffrey S Shinbrot jeffrey@shinbrotfirm.com, sandra@shinbrotfirm.com, **Trustee:** United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **May 4, 2016**, 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.

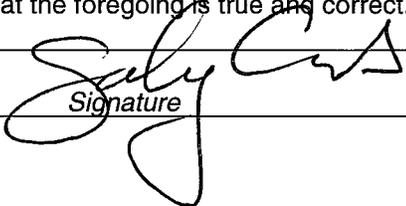
Honorable Maureen Tighe, U.S. Bankruptcy Court, 21041 Burbank Blvd., Courtroom 302, Woodland Hills, CA 91367

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 **February 11, 2014**, 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.

May 4, 2016	Sandy Cuevas	
Date	Printed Name	