

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address D. EDWARD HAYS, #162507 ehays@marshackhays.com KRISTINE A. THAGARD, #94401 kthagard@marshackhays.com BRADFORD N. BARNHARDT, #328705 bbarnhardt@marshackhays.com MARSHACK HAYS WOOD LLP 870 Roosevelt Irvine, California 92620 Telephone: (949) 333-7777 Facsimile: (949) 333-7778 <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: RICHARD A. MARSHACK, Trustee	FOR COURT USE ONLY
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UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION	
In re: DON TERUO KOJIMA and SUSAN LORRAINE KOJIMA, Debtor(s).	CASE NO.: 8:21-bk-11352-TA CHAPTER: 7 NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 11/12/2024	Time: 11:00 am
Location: 5B - ZoomGov audio and video	

Type of Sale: ☒ Public ☐ Private **Last date to file objections:** 10/29/2024

Description of property to be sold:

40 Acre Parcel is commonly known as Vacant Land, Adelanto, California - APN: 3129-251-14

Terms and conditions of sale: The proposed sale is as-is, where-is, as more specifically provided in the Purchase and Sale Agreement attached to the Motion, and subject to overbid. See Motion for further details.

Proposed sale price: \$ 1,700,000.00

Overbid procedure (if any): SEE ATTACHED OVERBID PROCEDURES

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

Hearing:

Date: November 12, 2024

Time: 11:00 a.m.

Place: Courtroom 5B - Via ZoomGov audio and video
411 West Fourth Street
Santa Ana, CA 92701

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

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Date: 10/22/2024

Overbid Procedure

To maximize the benefit to the Estate, Trustee is setting this sale subject to overbid. Any potential overbidder is encouraged to obtain a copy of the Motion and contact Trustee's counsel prior to the hearing. The 40 Acre Parcel will be sold subject to overbid at an open auction ("Auction") to be conducted by Trustee before the Court at the time that this Motion is heard. Trustee has established the following proposed overbid procedures, which shall govern any bidding:

1. Any person or entity that is interested in purchasing the 40 Acre Parcel must serve Trustee and his counsel with an initial bid in conformance with these provisions ("Overbid"), such that any qualifying overbid is actually received no later than the commencement of the scheduled hearing on the sale motion ("Bid Deadline").
2. Any entity that submits a timely, conforming Overbid shall be deemed a "Qualified Bidder" and may bid for the Property at the hearing. Any entity that fails to submit a timely, conforming bid shall be disqualified from bidding for the Property.
3. Any party that submits an overbid must submit a \$100,000 deposit, to be refunded in the event the overbidder is not the Successful Bidder or Back-Up Bidder (as those terms are defined below).
4. Trustee, subject to the rights of a Bidder or party in interest to raise an issue with the Court, shall have sole authority to determine whether a party is a Qualified Bidder.
5. Any Overbid must remain open until the conclusion of the auction ("Auction") of the Property to be held at the hearing on this Motion.
6. Any initial Overbid must provide for a minimum purchase price of at least \$1,710,000 (*i.e.* \$10,000 more than the proposed Purchase Price).
7. Additional incremental overbids must be in the amount of no less than \$5,000.
8. To be a Qualified Bidder, any overbidder shall execute a Purchase and Sale Agreement and Joint Escrow Instructions on the same or better material terms and conditions as the Agreement between Trustee and Buyer.

9. If Trustee receives a timely, conforming Overbid for the Property, the Court will conduct an auction of such property at the hearing, in which all Qualified Bidders may participate. The Auction shall be governed by the following procedures: (a) all Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in connection with any disputes relating to the Auction or the sale of the Property; (b) the minimum bidding increment during the Auction shall be \$5,000; (c) bidding shall commence at \$1,710,000 (or such higher initial overbid as the initial overbidder may submit); and (d) the Court will determine which of the bids is the best bid (“Successful Bidder”).

10. The Successful Bidder must pay, at the closing, all amounts reflected in the Best Bid in cash and such other consideration as agreed upon.

11. Any bidder other than the Successful Bidder may be deemed, upon his/her/its consent, as the back-up bidder (“Back-Up Bidder”) who may be substituted for the Successful Bidder without further court order in the event that the Successful Bidder fails to close escrow.

12. If the Successful Bidder is accepted and confirmed by the Court, then the Successful Bidder is to reimburse the Buyer up to \$5,000 of costs incurred. Only physical inspection and loan appraisal are reimbursable expenses. The aforementioned costs incurred are to be collected by escrow, with proof of monies spent to be given to the Successful Bidder along with inspection reports.

13. If the Successful Bidder is not the Buyer, Trustee may return to the Buyer any and all monies submitted by Buyer towards the purchase of the 40 Acre Parcel.

14. Trustee believes that the requested overbid procedures, including the minimum \$1,710,000 initial overbid, and the \$5,000 minimum increment during bidding, constitutes a reasonable and modest protection for the Buyer to act as the stalking horse bidder, and the bidding procedures including the minimum overbid and the bidding increments will not chill bidding. *See McCarthy v. Goldman (In re McCarthy)*, 2008 Bankr. LEXIS 4688, at *56 (B.A.P. 9th Cir. Feb. 19, 2008) (overbid procedures should not chill bidding).