

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

June 27, 2014 at 10:30 A.M.

1. [11-42576](#)-B-11 ATMAN HOSPITALITY GROUP, MOTION TO SELL FREE AND CLEAR
MLG-32 INC. OF LIENS, MOTION APPROVING
BIDDING PROCEDURES AND MOTION
FOR COMPENSATION FOR COLLIERS
INTERNATIONAL CA, INC.,
BROKER(S) O.S.T.
5-23-14 [[575](#)]

Tentative Ruling This motion is unopposed. In this instance, because of the possibility of overbids for purchase of the Property (as that term is defined herein) the court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 363(b) and (f) (2) the plan administrator is authorized to sell the unimproved real property located at the northeast corner of 18th Street and N. Street in downtown Merced, California (APN 031-054-22-000) (the "Property") to Nuovo Land Development, LLC ("Nuovo") in an "as-is, where-is" condition for \$325,000.00 on the terms set forth in the Purchase and Sale Agreement for Vacant Land (the "PSA") filed as an exhibit to the motion (Dkt. 579). The plan administrator is authorized to sell the Property free and clear of all liens, claims, encumbrances and other interests created by the Atman DDA and the Merced Center LLC DDA, as those terms are described in the PSA. The trustee is authorized to execute all documents necessary pursuant to the PSA to effect the sale. Pursuant to 11 U.S.C. § 330, the court approves compensation in the amount of 6% of the gross purchase price of the Property for the trustee's broker, Colliers International CA, Inc. ("Colliers"). The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The plan administrator seeks to sell the Property free and clear of certain liens and interests of the Merced Designated Local Authority (the "Authority"), successor to the interests of the Redevelopment Agency of the City of Merced, evidenced by two Disposition and Development Agreements recorded in the official records of the Merced County Recorder. The court can only authorize a sale free and clear of a lien or interest if the trustee establishes one or more of the bases set forth in 11 U.S.C. § 363(f) with respect to the lien or interest. Furthermore, the court cannot either statutorily or constitutionally authorize a sale free and clear of a lien or interest the holder of which did not receive sufficient notice of the sale to enable it to object. 11 U.S.C. § 363(b); In re Center Wholesale, Inc., 759 F.2d 1440, 1448-49 (9th Cir. 1985); In re Moberg Trucking, Inc., 112 B.R. 362 (9th Cir. BAP 1990). In this case, the court finds that the plan administrator has presented sufficient evidence of the Authority's consent to a sale free and clear

of its interests evidenced by the Atman DDA and the Merced Center LLC DDA.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The court approved employment of Colliers as real estate broker for the plan administrator by order entered March, 11, 2013, and extended the term of Colliers employment to and include September 20, 2014, by order signed June 26, 2014. The court finds that the 6% commission for Colliers is reasonable compensation for actual, necessary services.

The plan administrator has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the plan administrator shall submit a proposed form of order in the form filed as Exhibit "A" to the motion (Dkt. 578 at 2-5).