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Hon. Karen A. Overstreet  
Chapter 11  
Hearing Date: March 22, 2013  
Hearing Time: 9:30 a.m.  
Hearing Location: Seattle

7 **UNITED STATES BANKRUPTCY COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT SEATTLE**

9 In re,

10 WEST SEATTLE FITNESS, LLC

11 Debtor.

No. 12-18818-KAO

**LANDLORD H-P  
PROPERTIES/ALL STAR,  
LLC'S RESPONSE TO  
RESPONSE OF GRE 509 OLIVE  
LLC TO PROPOSED SALE  
AND RESPONSE TO GENERAL  
OBJECTIONS TO MEMBERS  
OF WEST SEATTLE FITNESS**

14 COMES NOW the Landlord, H-P Properties/All Star, LLC ("H-P"), in reply to the Response  
15 of GRE 509 Olive LLC and submits the following:

16 **A. Procedural Defenses**

17 **i. GRE 509 Olive LLC's claim is barred**

18 GRE 509 Olive LLC has failed to file a Proof of Claim in the above-entitled action. The  
19 deadline for filing proof of claim in the subject action was December 3, 2012. Therefore,  
20 notwithstanding the claim that the subject Creditor was listed in the Debtor's schedules, the failure to  
21 file the Proof of Claim timely bars such Creditor from asserting a claim in these bankruptcy  
22 proceedings.

LANDLORD H-P PROPERTIES/ALL STAR, LLC'S RESPONSE  
TO RESPONSE OF GRE 509 OLIVE LLC TO PROPOSED SALE  
AND RESPONSE TO GENERAL OBJECTIONS TO MEMBERS  
OF WEST SEATTLE FITNESS -1  
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1     **B. Substantive Argument**

2             **i.    Financing Statement does not Create a Secured Interest in Collateral**

3             Although GRE 509 Olive LLC asserts that a UCC Financing Statement was filed in November  
4 2009, the filing of a UCC Financing Statement does not, in and of itself, create a security interest. The  
5 filing of a Financing Statement is simply a procedural step to perfect a security interest. The security  
6 interest itself must be created by a specific Security Agreement duly executed by the Debtor for  
7 valuable consideration. Nothing in the record demonstrates that the Debtor received any consideration  
8 for this purported instrument, nor executed any agreement.

9             Indeed, it should be noted that GRE 509 Olive LLC has not filed as an exhibit the operative  
10 Security Agreement and it must be assumed by virtue of the failure to file the same that there is no  
11 Security Agreement. A Financing Statement without a Security Agreement is unenforceable. This is  
12 well settled law without need of citation.

13             **ii.   Assuming a Valid Security Interest, the Bankruptcy Code is Clear with Respect to  
14 an Under Secured Creditor**

15             GRE 509 Olive LLC claims a security interest based on an indebtedness of approximately \$2.5  
16 million dollars. From the schedules filed, the Proofs of Claim of record, the continuing rental  
17 indebtedness of the Debtor, it is without question that even assuming GRE 509 Olive LLC has a valid  
18 secured claim, it is under secured. Indeed, the Court was on the verge of converting this Chapter 11  
19 proceeding to a Chapter 7 proceeding and having the club go dark in January 2013.

20             If a secured creditor is under secured, its secured claim only rises to the value of the collateral  
21 and remainder of its claim is unsecured.

22             In this case, as presented by the Trustee, there has been absolutely no firm and competing  
offers to the proposed purchase of \$75,000 for the club's equipment and membership list. If this sale is

1 not approved, then the Court will be compelled to convert to a Chapter 7, the Landlord will take the  
2 premises back (the Debtor has already rejected the Lease and is only operating on a month-to-month  
3 term), and the Estate will lose everything.

4 **iii. Non-Competition Claim**

5 GRE 509 Olive LLC has not submitted any declarations outlining the full facts behind the  
6 transaction which forms the basis of the Agreement attached as Exhibit B. It is H-P's understanding  
7 that Mr. Adams believes that the Agreement attached as Exhibit B is null and void and unenforceable  
8 and that GRE 509 Olive LLC breached its contract.

9 **C. Proposed Lease**

10 H-P has a Lease which the proposed buyer is ready, willing and able to sign upon the Court's  
11 approval of the proposed sale. Indeed, H-P has requested the Trustee to amend its proposed Order to  
12 reflect that it has rejected the Master Lease, is operating on a month-to-month basis, and that the  
13 scheduled closing of the sale will be March 25, 2013, after which the buyer will be entitled to  
14 immediate possession of the premises.

15 H-P has been prepared to enter into a lease with the subject buyer for months now. The only  
16 issue was the negotiation of the purchase of the client list and equipment and the abandonment of the  
17 premises by the Debtor. The Landlord is presently owed \$5,000 in base rent for October 2012, real  
18 estate taxes of approximately \$61,000, insurance premium reimbursement of approximately \$41,000,  
19 and full base rent for January through March 2013 (to wit: \$135,000 x 3 = \$405,000). Either the sale is  
20 consummated or the Court is faced with having these premises go dark.

21 **D. General Objections**

22 The Court has received objections from members of West Seattle Fitness. Some may have post  
petition claims, but it is believed most are pre petition. Some are based upon a Note signed by an LLC

1 distinguishable from Debtor. These members have valid claims which can be asserted in bankruptcy,  
2 whether based upon pre petition or post petition as the case may be.

3 These members may also have claims against different parties, including the sole unit owner of  
4 West Seattle Fitness. Those claims could be pursued outside of the bankruptcy.

5 It is clear that the proposed buyer has no obligation to assume the contracts of all present  
6 members. Conceivably, to do so would put extraordinary strain on the buyer's operational capital.

7 The issue for the Court is whether the offer proposed is for fair value. Considering the dire  
8 straits of the gym facility, the necessary improvements that need to be made to the facility, and the fact  
9 that if the transaction is not consummated, the gym facility will go dark, the Court should approve the  
10 proposed purchase.

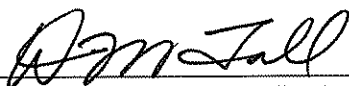
11 It is without question that the Trustee has attempted to market the facility and these assets, and  
12 Mr. Adams' offer was the only "firm" offer in town.

13 It is without question that some members may stand to lose their investment, but that is not the  
14 obligation of this buyer. If the sale is not consummated, all members will be prejudiced.

15 It is respectfully requested that the Court approve the proposed purchase.

16 DATED: March 21, 2013.

17 OSERAN, HAHN, SPRING, STRAIGHT & WATTS, P.S.

18 By:   
19 DAVID M. TALL, WSBA #12849  
20 Attorney for H-P PROPERTIES/ALL STAR, LLC,  
21 a Washington limited liability company, as assignee of BGPI, LLC  
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