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*Counsel for the Debtors*

***ELECTRONICALLY FILED***
***March 12, 2013***

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

| | | |
|---|---|---|
| In Re: | ) | Chapter 11 |
| | ) | |
| AMERICA WEST RESOURCES, INC., *et al.*, | ) | Jointly Administered Under |
| | ) | Case No. BK – 13-10865 bam |
| Debtors. | ) | |
| | ) | **NOTICE OF ENTRY OF ORDER** |

**PLEASE TAKE NOTICE** that the Court in the above-captioned case entered the attached *Order Approving Bidding and Noticing Procedures Related to the Auction Sale*, and approved the attached *Bidding Procedures* [Dkt. No. 148, entered 3/6/2013].

**DATED** this 12th day of March, 2013.

FLASTER/GREENBERG P.C.

BY: **/s/ Steven D. Usdin**
Steven D. Usdin, Esq. (Admitted Pro Hac Vice)
William J. Burnett, Esq. (Admitted Pro Hac Vice)
Eric J. Van, Esq. (Nevada Bar No. 10259)





Honorable Bruce A. Markell
United States Bankruptcy Judge

**Entered on Docket**
**March 06, 2013**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

| | | |
|---|---|---|
| In Re: | ) | Jointly Administered Under |
| | ) | Case No. BK – 13-10865 bam |
| AMERICA WEST RESOURCES, INC., *et al.* | ) | Chapter 11 |
| | ) | |
| Debtors. | ) | **ORDER APPROVING BIDDING AND NOTICING PROCEDURES RELATED TO THE AUCTION SALE** |
| | ) | |
| | ) | **Date: March 6, 2013** |
| | ) | **Time: 1:00 p.m. PT** |
| | ) | **Place: Foley Building, Courtroom 3** |

Debtors, America West Resources, Inc.; Hidden Splendor Resources, Inc.; America West Marketing, Inc.; and America West Services, Inc. a/k/a Wildcat Loadout (each a "Debtor," and collectively, the "Debtors") filed a Motion for Entry of Orders Authorizing (A) Emergent Consideration of a Proposed Sale of Substantially All of the Debtors' Assets, Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (B) Emergent Consideration of Bidding and Noticing Procedures Related to the Sale; (C) Consideration of Proposed Form of Asset Purchase Agreement; (D) Consideration of Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (E) Scheduling an Auction Sale and Approval of Notice of Same; and (F) Granting Related Relief (the "Motion") [ECF No. 43].

The Debtors' request for an Order Authorizing (A) Emergent Consideration of a Proposed Sale of Substantially All of the Debtors' Assets, Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (B) Emergent Consideration of Bidding and Noticing Procedures Related

to the Sale (the "Bidding Procedures Order") came on for hearing before this Court on March 6, 2013 at 1:00 p.m. All appearances were duly noted on the record at the hearing on this Motion.

The Court having reviewed the Motion and all matters submitted therewith; and upon consideration of the Motion and any response thereto; and notice of the Motion having been proper; the Court having stated its findings of fact and conclusions of law at the hearing; and good cause appearing therefor;

**IT IS HEREBY ORDERED** as follows:

1. The Bidding Procedures, attached as "Exhibit A" to the Motion, are approved.

2. The Bidding Deadline is April 1, 2013 at 2.00 p.m. prevailing Pacific time.

3. The Auction is hereby scheduled for April 3, 2013 at 12:00 p.m. prevailing Pacific time, at the offices of Sidhu Law Firm, 810 S. Casino Center Boulevard, Suite 104, Las Vegas, Nevada 89101.

4. The hearing to approve the Auction is hereby scheduled for April 4, 2013 at 1:00 p.m. prevailing Pacific time.

5. Within two (2) days after the entry of this Order, the Debtor shall serve a copy of the Notice of Entry of Bidding Procedures Order and the Bidding Procedures by electronic mail, U.S. mail, postage prepaid, or electronic filing, upon (i) the Office of the United States Trustee; (ii) counsel for Denly; (iii) the Nevada Department of Revenue; (iv) the Utah Department of Revenue; (v) the Internal Revenue Service; (vi) any taxing and other governmental authorities that may have an interest in any Assets; (vii) any persons or entities known to have asserted a claim, lien, liability, right, interest, and/or encumbrance in the Assets; (viii) all persons or entities who have filed a notice of appearance and request for service of papers in the Debtors' cases on or before the date the Bidding Procedures Order is mailed; and (ix) all persons and entities on the matrix service list of the Debtors.

**IT IS SO ORDERED.**





PREPARED AND SUBMITTED:

FLASTER/GREENBERG P.C.

By: /s/ Steven D. Usdin
Steven D. Usdin, Esq.
William J. Burnett, Esq.
Eric J. Van, Esq.
4 Penn Center, 2nd Floor
1600 J.F.K. Boulevard
Philadelphia, PA 19103

*Counsel for the Debtors*

**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the Order accurately reflects the Court's ruling and that:

☐ The Court waived the requirement of approval under LR 9021.

☐ No party appeared at the hearing or filed an objection to the Motion.

■ I have delivered a copy of this proposed Order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Denly Utah Coal, LLC approved of the Motion.

Howard Kent Profit Sharing Plan disapproved of the Motion.

No other party responded to the Motion.

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this Order with the Motion pursuant to LR 9014(g), and that no party has objected to the form or content of the Order.

###

## BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the potential sale (the "Sale") of certain assets (the "Assets") of Debtors, America West Resources, Inc.; Hidden Splendor Resources, Inc.; America West Marketing, Inc.; and America West Services, Inc. d/b/a Wildcat Loadout (each a "Debtor," and collectively, the "Debtors"), in jointly administered Case No. 13-10865 (bam) under chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"). The Debtors remain as debtors-in-possession of their estates.

On February 11, 2013, the Debtors filed a *Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014; for Entry of Orders Authorizing (A) Emergent Consideration of a Proposed Sale of Substantially All of the Debtors' Assets, Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (B) Emergent Consideration of Bidding and Noticing Procedures Related to the Sale; (C) Consideration of Proposed Form of Asset Purchase Agreement; (D) Consideration of Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (E) Scheduling an Auction Sale and Approval of Notice of Same; and (F) Granting Related Relief* (the "Sale Motion"). On March 6, 2013, the Bankruptcy Court entered an Order approving the Bidding Procedures set forth herein (the "Bidding Procedures Order"). The Bidding Procedures Order also set **April 4, 2013 at 1:00 p.m. prevailing Pacific time** as the date the Bankruptcy Court will conduct the Sale Hearing (as defined below). At the Sale Hearing, the Debtors may seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets to a Qualified Bidder (as defined below) that the Debtors determine to have made the highest or best offer for the Assets.

## ASSETS TO BE SOLD

The Debtors are offering to sell in one or more transactions the Assets and Qualified Bidders may submit bids for all or substantially all of the Assets. The Debtors shall retain all rights to the Assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing.

## BID DEADLINE

All offers, solicitations, or proposals (each, a "Bid") must be submitted in writing so that they are actually **received** no later than **2:00 p.m. prevailing Pacific time on April 1, 2013** (the "Bid Deadline"). Prior to the Bid Deadline, a Qualified Bidder that wants to make a Bid shall deliver written copies of its Bid to following: (i) the Debtors' financial advisor, CFCC Partners, LLC ("CFCC"), Attn: Raymond Davis rdavis@cfccpartners.com; (ii) the Debtors' counsel, Flaster/Greenberg P.C. ("Flaster"), Attn: Steven D. Usdin, Esquire and William J. Burnett, Esquire, steven.usdin@flastergreenberg.com and william.burnett@flastergreenberg.com; (iii) the Debtors, Attn: Alexander H. Walker III awalkerlaw@aol.com and John W. Chapman, CRO, jchapman@cfccpartners.com and (iv) the Debtors' DIP Lender, Denly Utah Coal, LLC ("Denly") Attn: Paul B Saenz, Esquire PSaenz@gdhm.com and James V. Hoeffner, Esquire, JHoeffner@gdhm.com.





## PARTICIPANT REQUIREMENTS

To participate in the process detailed by the Bidding Procedures and to otherwise be considered for any purpose hereunder, each Bid and each Potential Bidder submitting a Bid (a "Potential Bidder") must be determined by the Debtors to have satisfactorily provided the Debtors with each of the following (unless such requirement other than the "Confidentiality Agreement requirement set forth below is waived by the Debtors) on or before the Bid Deadline (the "Participant Requirements"):

1. Identification of Potential Bidder. Identification of the Potential Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

2. Corporate Authority. Written evidence of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction and acceptance of the terms set forth in the Bidding Procedures; *provided, however*, that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "Acquisition Entity"), then the Potential Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transaction by the equity holder(s) of such Potential Bidder (the "Principals");

3. Confidentiality Agreement. An executed confidentiality agreement (the "Confidentiality Agreement") in form and substance reasonably acceptable to the Debtors and their counsel.

## ACCESS TO DUE DILIGENCE MATERIALS

Only Potential Bidders that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Potential Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with the sale of the Assets. To the extent the Debtors do not provide due-diligence to any Potential Bidder, the Debtors shall inform a representative of the office of the United States Trustee of the identity of such Potential Bidder and the Information that was not provided.

## DESIGNATION AS QUALIFIED BIDDER

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose Bids for the Assets do not overlap and who agreed to have their Bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described in paragraphs above, and that the Debtors in their reasonable determination and with assistance from their advisors determine is (i) reasonably likely to submit a bona fide offer and

(ii) reasonably able to consummate a sale if selected as a Successful Bidder (defined below) within the approximate overall time frame contemplated by the Bidding Procedures Order and (iii) has provided to the Debtors and their advisors sufficient Proof of Financial Ability to Perform described below.

Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

1. the Potential Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);

2. contact names and numbers for verification of financing sources;

3. evidence of the Potential Bidder's or Principals' internal resources and written evidence of a commitment for debt or equity funding that is needed to close the contemplated transaction; and

4. any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction; provided, however, that the Debtors shall determine, in their reasonable discretion whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Potential Bidder's financial qualifications.

Upon the receipt from a Potential Bidder of the information required above, as soon as is practicable, the Debtors shall determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

## DUE DILIGENCE FROM BIDDERS

Each Potential Bidder and Qualified Bidder (collectively, a "Bidder") shall comply with all reasonable requests for additional information and due-diligence access by the Debtors or their advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that a Bid made by a Qualified Bidder is not a Qualified Bid.

## BIDDING PROCESS

The Debtors and their advisors shall: (a) determine whether a Potential Bidder is a Qualified Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence





investigations, as permitted by the provisions herein; (c) receive offers from Qualified Bidders; and (d) negotiate any offers made to purchase the Assets. Subject to the Bidding Procedures Order, the Debtors shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein), that, in the Debtors' reasonable discretion, will better promote the goals of the Bidding Process.

## BID REQUIREMENTS

To participate in the Auction (as defined below), each Bid (including any credit bid, if any is made) and Qualified Bidder submitting such a Bid must be determined by the Debtors to satisfy each of the following conditions:

(a) Written Submission of APA and Commitment to Close. Qualified Bidders must submit by the Bid Deadline a blackline of the APA reflecting their proposed changes, and a written commitment that they intend to close on the terms and conditions set forth therein;

(b) Identification of Executory Contracts and Leases to be Assumed. Qualified Bidders must submit by the Bid Deadline a comprehensive list of all executory contracts and leases that they will assume and the corresponding cure amounts associated with the assumption and assignment of such leases and contracts;

(c) Irrevocable. A Bid must be irrevocable until five (5) business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court in a final, non-appealable order (the "Termination Date") unless such Bid is designated as the Back-Up Bid (defined below);

(d) Contingencies. A Bid may not be conditioned on obtaining financing or upon regulatory contingencies (other than on the condition that any applicable waiting period be satisfied, which may occur subsequent to the date of the Bid Deadline), any internal approval or on the outcome or review of due diligence. Any other contingencies or conditions associated with a Bid may not be more burdensome taken as a whole than those set forth in the APA taken as a whole;

(e) Financing Sources. A Bid must contain written evidence of a firm commitment for financing or other evidence of the financial wherewithal and ability to consummate the sale and which the Debtors reasonably believe to be sufficient to satisfy the standards to provide adequate assurance of future performance under Bankruptcy Code Section 365, with appropriate contact information for such financing sources;

(f) No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement fee or similar type of payment. Further, by submitting a Bid, a Bidder shall be deemed to waive its right to pursue a substantial contribution claim under

Section 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures;

(g) Good-Faith Deposit. Each Bid must be accompanied by a deposit (the "Good Faith Deposit") in the form of a wire or certified check payable to the order of "America West Resources, Inc." in the amount of not less than 10% of the Bid to be held in escrow by the Debtors until the Termination Date;

(h) Minimum Bid. Each Bid shall be no less than an amount that the Debtors and their advisors and Denly deem to be a minimum acceptable bid for the Assets proposed to be sold;

(i) Terms. A Bid must be on terms that, taken as a whole, are determined by the Debtors and their advisors not to be materially burdensome or too conditional to constitute a transaction worthy of consummating; and

(j) Purchase of Assets and Assumption of Liabilities. A Bid must provide for the purchase of all or a substantial portion of the Assets and payment or assumption of all or a substantial portion of the liabilities to be paid or assumed under the APA.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements, and that satisfies the Bid Deadline requirement above, shall constitute a "Qualified Bid," if the Debtors believe, in their reasonable discretion that such Bid would be consummated if selected as the Successful Bid (as defined below). For purposes herein, the APA shall constitute a Qualified Bid. A Qualified Bid shall be considered such Qualified Bidder's "Baseline Bid."

If any Bid is determined by the Debtors, in consultation with its advisors and Denly, not to be a Qualified Bid, the Bidder shall be refunded its Good Faith Deposit and all accumulated interest thereon within three (3) business days after that determination.

Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors.

## AUCTION

Only if a Qualified Bid is received by the Bid Deadline shall the Debtors conduct an auction (the "Auction") to determine the highest and/or best bid with respect to the Assets. The Auction shall commence on **April 3, 2013** at 12:00 p.m. prevailing Pacific time at Sidhu Law Firm, 810 S. Casino Center Boulevard, Suite 104, Las Vegas, Nevada 89101.

If no such Qualified Bid is received by the Bid Deadline, then (i) the Auction will not be held, and (ii) at the Sale Hearing on **April 4, 2013** at 1:00 p.m. prevailing Pacific time, the Debtors will withdraw the Sale Motion in its entirety.

The Auction shall be conducted according to the following procedures:





### Participation At The Auction

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. Only the authorized representatives of each of the Qualified Bidders and the Debtors shall be permitted to attend the Auction; provided, however, that if a creditor of the Debtors did not receive the Sale Motion then nothing herein shall prevent such creditor from petitioning the Bankruptcy Court for the ability to attend the Auction. During the Auction, bidding shall begin initially with a minimum bid to be established by the Debtors prior to the Auction and after the Bid Deadline. At least one (1) business day prior to the Auction, each Qualified Bidder that has submitted a Qualified Bid must inform the Debtors whether it intends to participate at the Auction. At least one (1) day before the Auction, the Debtors shall provide copies of all Qualifying Bids to all Qualifying Bidders who have indicated their intent to participate at the Auction.

### The Debtors Shall Conduct The Auction

The Debtors and their professionals shall direct and preside over the Auction. The determination of which Qualified Bid constitutes the Opening Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estate, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities; (iii) the ability of the Qualified Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the APA, if any, contemplated by the contemplated transaction documents (the "Contemplated Transaction Documents"); (viii) the net after-tax consideration to be received by the Debtors' estates; and (ix) such other considerations the Debtors deem relevant in their reasonable discretion (collectively, the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors shall arrange for the actual bidding at the Auction to be transcribed or videotaped. Each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion regarding the Bidding Procedures, the Auction or the proposed transaction.

### Terms of Overbids

An "Overbid" is any Bid made at the Auction subsequent to the Debtors' announcement of the Opening Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

### Minimum Overbid Increment

Any Overbid after the Opening Bid shall be made in increments of at least $50,000 (or such other amount the Debtors determine to facilitate the Auction).

### Consideration of Overbids

Any overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (A) the Debtors accept a higher Qualified Bid as an Overbid and (B) such Overbid is not selected as the Back-up Bid (as defined below).

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction proposed by such Overbid.

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Debtors and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed; (C) consider and determine the current highest and best Overbid at any given time during the Auction; and (D) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

**Additional Procedures**

The Debtors, in their reasonable discretion, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bidding Procedures, the Bidding Procedures Order or the Bankruptcy Code.

**Closing the Auction**

Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall (i) immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest, best, and/or otherwise financially superior offer for the Assets (the "Successful Bid" and the entity submitting such Successful Bid, the "Successful Bidder"), which highest, best and/or otherwise financially superior offer will provide the greatest amount of net cash value to the Debtor, and the next highest or otherwise best offer after the Successful Bid (the "Back-up Bid"), and advise the Qualified Bidders and Notice Parties of such determination. No additional bids may be considered following the closing of the Auction.

Within one (1) day(s) after the closing of the Auction, the Debtors shall file with the Bankruptcy Court and serve upon all Qualified Bidders and entities that have requested notice in the Bankruptcy Cases a notice identifying the Successful Bidder.

**Consent to Jurisdiction as Condition to Bid**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdictions of the Bankruptcy Court and to have waived any right to a jury trial in connection





with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.

**ACCEPTANCE OF SUCCESSFUL BID**

The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of the Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the Bankruptcy Court.

**CREDIT BIDDING BY DENLY**

Unless the Bankruptcy Court prohibits Denly from doing so, Denly reserves the right to credit bid at the Auction, in addition to the requirements set forth in the section titled "Bid Requirements" above (other than with respect to clause (h) of such section), in order to be a Qualified Bid, a credit bid must provide for (a) the payment in cash to the Debtors at closing and/or the assumption of the Carve Out (as defined in the DIP Financing Motion) and (b) a description of all assets to be purchased that are not subject to a valid and perfected security interest held by Denly, if any.

**"AS IS, WHERE IS"**

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the APA or the purchase agreement of another Successful Bidder. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures and, as to a Successful Bidder, the terms of the sale of the Assets set forth in the applicable purchase agreement.

**FREE OF ANY AND ALL ENCUMBRANCES**

Except as otherwise provided in the APA or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Encumbrances") in accordance with 11 U.S.C. § 363, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

## SALE HEARING

A hearing to approve the sale of the Assets to the Successful Bidder shall be conducted by the Bankruptcy Court on April 4, 2013 at 1:00 p.m. prevailing Pacific time, located at the U.S. Bankruptcy Court, District of Nevada, Foley Federal Building, Courtroom 3, 2000 Las Vegas Boulevard South, Las Vegas, NV 89101 (the "Sale Hearing"). Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved sale within fourteen (14) days after entry of order by the Bankruptcy Court approving the sale of the Assets (except where the sole cause of any delay in closing is as a result of default by the Debtors), the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such Back-up Bid without further notice or orders of the Bankruptcy Court. The Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Sale Hearing. A Back-Up Bid must remain open until the consummation of the Sale to the Successful Bidder.

## RETURN OF GOOD FAITH DEPOSIT

The Good Faith Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. Good Faith Deposits of all other Qualified Bidders shall be held by the Debtors until five (5) business days after closing of the transactions contemplated by the Successful Bid, and thereafter returned to the respective Qualified Bidders. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

## MODIFICATIONS AND RESERVATIONS

The Debtors may (a) determine which Qualified Bid, if any, is the highest, best, and/or otherwise financially superior offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors.

At or before the Sale Hearing, the Debtors may impose such other terms and conditions as the Debtors may determine to be in the best interests of their estate and creditors and other parties in interest thereof that are not inconsistent with the Bidding Procedures Order, the Bidding Procedures, and/or the Bankruptcy Code.

The Bidding Procedures may be materially modified only upon the express written consent of the Debtors (such consent not to be unreasonably withheld), or by order of the Bankruptcy Court.





## RESERVATION OF RIGHTS

Subject to the Bidding Procedures Order, the Debtors reserve the right as they may determine to be in the best interests of their estates to: (a) determine which Potential Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code or any other orders entered by the Bankruptcy Court, or (iii) contrary to the best interests of the Debtors and their estates or stakeholders, as applicable; (e) impose additional terms and conditions with respect to any or all Potential Bidders; (f) adjourn the Auction and/or Sale Hearing in open court without further notice; and (h) remove a portion of the Assets from the Auction. Without limiting the foregoing, the Debtors may determine to distribute or not distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction other than with respect to the distribution of the Opening Bid as set forth above.