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A LIMITED LIABILITY LAW PARTNERSHIP

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Debtor-in-Possession,
ROLLOFFS HAWAII, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

ROLLOFFS HAWAII, LLC,

Debtor and
Debtor-in-Possession.

Case No. _____
(Chapter 11)

Hearing:

Date:

Time:

Judge: Honorable Robert J. Faris

THIS MOTION AFFECTS THE PROPERTY RIGHTS OF:

**AMERICAN SAVINGS BANK
c/o Wayne K.T. Mau, Esq.
Koshiba Price Gruebner & Mau
Pauahi Tower, Suite 2600
1003 Bishop Street
Honolulu, HI 96813**

DEBTOR'S MOTION TO APPROVE SALE OF ASSETS OF THE ESTATE AND TO APPROVE OVERBIDDING PROCEDURE

On December 9, 2016, Rolloffs Hawaii, LLC filed its petition for relief.

At the time of the filing, the Debtor operated a trash hauling business on Oahu. Prior to the filing of the Petition for Relief, the Debtor received a “stalking horse” bid to purchase the assets of the Estate for \$5,000,000.00 plus an obligation to pay accounts payable not more than 60 days past due up to \$300,000.00 over the Rolloffs accounts receivable.

Given the condition of the Debtor’ operations, the Debtor, and the only secured creditor, American Savings Bank (“ASB”), have agreed that the sale of the Debtor’s assets, as a going concern operation, would be in the best interests of ASB and the other creditors.

In addition to the Base Purchase Price, or any overbid, WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs AR. However in no event will WOA or the Successful Bidder be responsible for (1) payment of any AP more than 60 days past due and (2) for the payment of AP, current and not more than 60 days past due, if said AP exceeds \$300,000 over the AR collected by WOA or the Successful

Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder.

The sale will be made pursuant to 11 U.S.C. § 363(b), § 363(f)(2), (f)(3) and (f)(5) and § 363(m), free and clear of all liens and encumbrances, including all liens, to the extent possible, Rule 6004, F.R.Bk.P., and LBR 6004-1, the Declaration of Craig Enenstein. ASB will retain its rights pursuant to 11 U.S.C. § 363(k) and the perfected liens of ASB will be transferred to the sales proceeds with the same validity, priority and extent that ASB had in the collateral on the petition date.

Attached hereto as Exhibit A is the Asset Purchase Agreement and the Overbidding Procedures as Exhibit B.

DATED: Honolulu, Hawaii, December 9, 2016.



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Attorneys for Debtors and
Debtors-in-Possession
ROLLOFFS HAWAII, LLC

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**MEMORANDUM IN SUPPORT OF MOTION;
EXHIBITS A TO B**

Rolloffs Hawaii, LLC (“Rolloffs”), the Debtor and Debtors-in-Possession, hereby submit this Memorandum in Support of its Motion to Authorize the Sale of Assets of the Estate as provided for by the Asset Purchase Agreement, Exhibit A, and the Approve Overbidding Procedures, Exhibit B.

I. BACKGROUND

On December 9, 2016, Rolloffs Hawaii, LLC, filed its Petition for Relief and continued to operate its trash hauling business on Oahu. Prior to the filing of the petition, Rolloffs received an offer to purchase its assets from West Oahu Aggregates (WOA), to purchase the assets of the Debtor for \$5,000,000.00 free and clear of all liens, encumbrances and claims, as defined in 11 U.S.C. § 101(5).

In addition to the base purchase price of \$5,000,000.00, or any overbid, WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs AR. However in no event will WOA or the Successful Bidder be responsible for (1) payment of any AP more than 60 days past due and (2) for the payment of AP, current and not more than 60 days past due, if said AP exceeds \$300,000 over the AR collected by WOA or the

Successful Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder.

The offer is for \$5,000,000.00 for the assets AND the payment current accounts payable and accounts payable not more than 60 days past due, provided that these payments do not exceed \$300,000.00 more than what WOA or a successful bidder collects from Rolloffs' AR.

The detailed terms and conditions of the sale to WOA, and to all Qualified Overbidders are set forth in Exhibit A hereto, the Asset Purchase Agreement which provides,

- (1) for the basic purchase price of \$5,000,000.00, and
- (2) WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs AR. However in no event will WOA or the Successful Bidder be responsible for (1) payment of any AP more than 60 days past due and (2) for the payment of AP, current and not

more than 60 days past due, if said AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder.

In addition to the Asset Purchase Agreement, the Debtor will request the Court to approve, the Overbid Procedures attached as Exhibit B. The Overbid Procedures provide in part,

(1) for a “stalking horse” bid of \$5,000,000.00 by WOA, plus the payment by the Successful Bidder of all current accounts payable and all accounts payable not more than 60 days past due, provided that this payment by the Successful Bidder does not exceed \$300,000.00 over the receipts collected by the Successful Bidder from the Rolloffs’ AR.

- (2) an all initial Overbid of \$300,000.00;
- (3) subsequent overbids in increments of \$30,000.00;
- (4) a break-up fee of \$100,000.00 for WOA.

A. A DEBTOR MAY SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES WITH THE CONSENT OF THE SECURED CREDITORS. 11 U.S.C. § 363(f)(2).

A debtor may sell property of the estate free and clear of liens and encumbrances if the sale satisfies any one of the five § 363(f) factors, including § 363(f)(2) and (f)(3). A debtor may satisfy § 363(f)(3), by showing the “sale” satisfies the “economic value” of the liens. In this Motion, ASB, as the sole secured creditor has consented to the sale of the collateral free and clear of all liens, and said liens attached to the sales proceeds with the same validity priority and extent ASB had in the collateral on the petition date.

ASB has consented, pursuant to § 363(f)(2) to the sale of its assets at \$5,000,000.00. ASB is allowed to exercise its 11 U.S.C. § 363(k) rights. As to the amount of ASB § 363(k) credit bid the Court In re Monarch Beach Venture Ltd., 166 B.R. 428 (C.D.Cal. 1993) noted that ASB can bid the full face amount of the lien.

“Notwithstanding the discretionary language of 363(k), each of the six decisions that has addressed this issue has held that the secured creditor had a right to credit bid his entire claim.”⁷ See Friedman at 1530. Most persuasive, in John Hancock Mutual Life Insurance Co. v. California Hancock, Inc., 88 Bankr. 226 (Bankr. 9th Cir. 1988), the Ninth Circuit Bankruptcy Appellate Panel upheld a bankruptcy court's rejection of a reorganization plan that did not permit a "non-recourse" creditor the right to credit bid. While the court noted "the language of § 363(k) is unclear as to whether the right to credit bid is applicable when the property is being sold pursuant to a reorganization plan," nevertheless it held legislative history supported the creditor's right to bid at a sale of property pursuant to a reorganization plan. Id at 230-231. Thus, at least in this Circuit, the right to credit bid may not be taken from the creditor. Since Aetna was not given the right to credit bid, the

Debtor's plan cannot qualify as "fair and equitable" under that alternative. (emphasis supplied).

⁷ See John Hancock Mutual Life Ins. Co. v. California Hancock. Inc., 88 Bankr. 226, 230-231 (Bankr. 9th Cir. 1988); In re H & M Parmely Farms v. Farmers Home Admin., 127 Bankr. 644, 648 (Bankr. D.S.D. 1990); In re 222 Liberty Assocs., 108 Bankr. 971, 979 (Bankr. E.D. Pa. 1990); In re Realty Invs., Ltd. V, 72 Bankr. 143, 146 (Bankr. CD. Cal. 1987); In re Woodbridge N. Apartments. Ltd., 71 Bankr. 189, 191-92 (Bankr. N.D. Cal. 1987); In re Yagow, 60 Bankr. 543, 547 (Bankr. D.N.D. 1986). See also In the Matter of Martindale, 125 Bankr. 32, 37 n.4 (Bankr. D. Idaho 1991) (holding that a plan that does not permit credit bidding cannot be approved under clause (ii), but might be approved under clause (iii)). See Friedman at 1531 n. 162.

This would allow ASB to credit bid up to the full amount of the claim, not just the value of their lien in the vessels.

B. 11 U.S.C. § 363(f)(5).

Alternatively in approving the sale of estate property free and clear of liens and encumbrances, the Debtor has to satisfy § 365(f)(5), as provided for by In re Jolan, 403 B.R. 866 (Bankr. W.D. Wash. 2009).

A debtor may satisfy § 363(f)(5) by showing that a secured creditor may be compelled to take less than the full amount of their claim and still sell the property free and clear and in full satisfaction of their claim.

In discussing the availability of legal and equitable proceedings in which a junior lienholder could be compelled to accept a money satisfaction, less than the full amount, in Hawaii, includes the following:

Article 9, § 490:9-617, Haw. Rev. Stat., which provides,

§490:9-617 Rights of transferee of collateral.

(a) A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

Again, in § 490:9-615, Haw. Rev. Stat., provides:

§490:9-615 Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) A secured party shall apply or pay over for application the cash proceeds of disposition under section 490:9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law,

reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

* * *

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

In a state tax sale § 231-25(D), Haw. Rev. Stat., the State tax collector, the law provides,

(D) Manner and conditions of sale. Sufficient property shall be sold to pay all taxes, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner.

Federal tax sales are to the same effect.

Because there are in Hawaii, legal and equitable proceedings by which lien holders, such as ASB, may be compelled to accept money satisfactions, § 363(f)(5) permits a sale free and clear of liens, with the liens attaching to the proceeds, notwithstanding that those proceeds may be insufficient to pay all liens.

In In re Boston Generating LLC, 440 B.R. 302 (Bankr.S.D.N.Y. 2010), the Court discussed the application of § 363(f)(2) for the sale of property,

The Second Lien Agent argues that the Debtors have not met their burden to prove that the Second Lien Lenders could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their liens. It relies on Clear Channel, where the Court held that (i) the fact that a lender could be satisfied with money in respect of credit extended and (ii) the existence of cramdown under section 1129(d) did not mean there were legal or equitable proceedings that could compel satisfaction of a junior lien for less than payment in full. Clear Channel, 391 B.R. at 45-47. As noted above, this Court declines to follow Clear Channel. Section 363(f)(5) does not require that the sale price for the property exceed the value of the interests. As recognized in a post-Clear Channel decision from a Bankruptcy Court in the Ninth Circuit, the existence of

judicial and nonjudicial foreclosure and enforcement actions under state law can satisfy section 363(f)(5). See In re Jolan, 403 B.R. 866, 870 (Bankr. W.D. Wash. 2009). Numerous legal and equitable procedures exist by which the Second Lien Lenders could be forced to accept less than full payment of the Second Lien Debt.²⁹ Thus, the Court finds that because the Second Lien Lenders could be compelled under state law to accept general unsecured claims to the extent the sale proceeds are not sufficient to pay their claims in full, section 363(f)(5) is satisfied.

²⁹ Under New York law, a junior lienholder (either in a foreclosure of real property or of collateral under the Uniform Commercial Code) is entitled to nothing more than the surplus cash generated in a sale. See, e.g., N.Y. U.C.C. §§ 9-608, 9-615; see also N.Y. Real Prop. Acts. Art. 13. Similar laws exist in Massachusetts.

On this basis, the Debtor can sell the assets of the Debtor, free and clear of liens based on either § 363(f)(2), and § 363(f)(5), the Debtor can sell the Debtor's property free and clear of all encumbrances with all liens and encumbrances transferred to the sales proceeds with the same validity priority and extent that ASB had in the collateral on the petition date. The liens and encumbrances of ASB on the Debtor's property will be transferred to the sales proceeds with the same validity, priority and extent that ASB had in the Debtor's assets and ASB retains the right to credit bid the full face amount of its claim.

C. THE SALE IS A “GOOD FAITH” SALE. 11 U.S.C. § 363(m).

The Stalking Horse Bidder and the Qualified Overbidders are allowed to be designated 11 U.S.C. § 363(m), “good faith” purchasers, since the Stalking Horse bidder and qualified Overbidders are entitled to “good faith” designation.

II. CONCLUSION

Based on the above, Rolloffs Hawaii, LLC requests this Court authorize:

(1) the Debtor to sell assets of the Estate free and clear of the liens and encumbrances, and the liens and encumbrances to the sales proceeds, pursuant to 11 U.S.C. § 363(f)(2) and § 363(f)(5);

(2) that Rolloffs Hawaii, LLC may sell assets of the Estate subject to the terms and conditions of the Assets Purchase Agreement as per Exhibit A;

(3) approve the Overbidding Procedures as per Exhibit B;

(4) the purchasers be deemed a 11 U.S.C. 363(m) “good faith” purchaser.

DATED: Honolulu, Hawaii, December 9, 2016.



JERROLD K. GUBEN
JEFFERY S. FLORES
Attorneys for Debtors and
Debtors-in-Possession
ROLLOFFS HAWAII, LLC

Exhibit A

CB DRAFT 12/9/16

ASSET PURCHASE AGREEMENT

Between

WEST OAHU AGGREGATE CO., INC.,

And

ROLLOFFS HAWAII, LLC

Dated as of December ____, 2016

This document is not intended to create nor will it be deemed to create a legally binding or enforceable offer or agreement of any type or nature, unless and until agreed and executed by the parties.

Exhibit A

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EXHIBIT A – DEFINITIONS..... A-1

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) is entered into as of December ____, 2016, between West Oahu Aggregate Co., Inc., a Hawaii Corporation (the “*Purchaser*”), and Rolloffs Hawaii, LLC, a Hawaii limited liability company as the Debtor and Debtor-in-Possession in In re Rolloffs Hawaii, LLC, Case No. 16-01294 (D. Hawaii) (“*Seller*”).

WHEREAS, the Seller is engaged in the business of waste collection and disposal located on the island of Oahu, Hawaii (the “*Business*”); and

WHEREAS, the Seller desires to sell and the Purchaser desires to purchase the assets of the Seller which are identified in this Agreement;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1 PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

1.1 Purchase and Sale of Assets. On and subject to the terms of this Agreement, at the Closing, the Seller shall sell and deliver to Purchaser, free and clear of all Liens (other than Permitted Encumbrances), and the Purchaser shall purchase and accept from the Seller, the Acquired Assets, in exchange for FIVE MILLION DOLLARS AND NO/100 (\$5,000,000.00) the Total Consideration, as adjusted pursuant to this Agreement, and (y) the assumption by the Purchaser of the Assumed Liabilities. The Purchase Price is subject to the Overbidding by Third Parties pursuant to the Overbidding procedures approved by the United States Bankruptcy Court in Case No. 16-01294.

1.11 In addition to the base purchase price of \$5,000,000 or any overbids accepted by the court, WOA or the Successful Bidder will be responsible for the payment of ordinary course Accounts Payable (“AP”), both current and not more than 60 days past due, up to \$300,000 if any such AP remains unpaid after the collection of Rolloffs Accounts Receivables (“Rolloffs AR”) by WOA or the Successful Bidder.

WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs AR. However in no event will WOA or the Successful Bidder be responsible for (1) payment of any AP more than 60 days past due and (2) for the payment of AP, current and not more than 60 days past due ,if said AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder, and (3) all non-ordinary course accounts payable.

1.12 The Seller is a party to certain real property leases (“Leases”). After the identification of the Successful Bidder, the Purchaser or Successful Bidder will have the option of assuming or rejecting the Leases and the Landlord will have a claim as prescribed by 11 U.S.C. § 365 and § 502(b)(6). The assumption or rejection of the Leases will be at the option of the Purchaser or Successful Bidder.

1.13 Except for the Stalking Horse Bidder, West Oahu Aggregates (“WOA”) the Purchase must not be subject to or conditioned on any financing contingency, obtaining title insurance, any board of directors’, shareholders’ or other corporate or approval, or any other conditions which would prevent the closing of the sale.

1.2 This Agreement must be approved by the United States Bankruptcy Court of the District of Hawaii in Case No. 16-01294, after Notice and Hearing, pursuant to 11 U.S.C. § 363(b), (f) and (m) and the applicable Federal Rules of Bankruptcy Procedure.

1.3 This Agreement is subject to the Overbid Procedures approved by the Bankruptcy Court and incorporated herein as Exhibit B to the Motion to Sell.

1.4 The Acquired Assets. For purposes of this Agreement, the “*Acquired Assets*” means all of the assets of the Seller, other than the Excluded Assets, including the following:

(a) all machinery, equipment, furniture, tools, computers, office equipment, business machines, telephone systems, parts, and the like, and as set forth on Schedule 1.4(a) (collectively, the “*Equipment*”);

(b) all of the Seller’s rights under any contracts or other agreements and business arrangements for the Business, including without limitation the contracts as set forth in Schedule 1.4(b) and Section 4.8 of this Agreement (“*Business Contracts*”). As part of the sale, the Seller will assume and assign all customer contracts to the successful Bidder, and such assignment are approved pursuant to 11 U.S.C. § 365.

(c) all raw materials, work-in-progress, finished goods, goods held for resale, spare parts, waste materials, scrap, samples, and supplies wherever located (collectively, the “*Inventory*”);

(d) all motor vehicles, trucks, forklifts, and the like and as set forth on Schedule 1.4(d), (collectively, the “*Vehicles*”);

(e) all Intellectual Property Rights that are either (i) owned or controlled by Seller or (ii) as to which Seller has rights as licensee, including without limitation the tradename “*Rolloffs Hawaii*” and accounting software and systems (collectively, the “*Seller Intellectual Property*”);

(f) all records with respect to the Contracts, the Equipment, the Vehicles, and suppliers and other records of the Seller relating to the Business or the Acquired Assets, including manufacturing, operating, accounting and financial records;

(g) to the extent transferable and permitted by applicable Law, the Permits and the like and as set forth herein;

(h) all marketing and advertising materials and the use of any telephone numbers, email addresses and websites or other internet content used in the operation of the Business;

(i) the right to receive and retain mail, accounts receivable payments and other communications relating to the Business; and

(j) all goodwill of the Seller as a going concern and all other intangible assets and properties.

(k) NOTWITHSTANDING ALL OTHER PROVISION OF THIS ASSET PURCHASE AGREEMENT, THIS TRANSACTION IS SUBJECT TO THE PROVISIONS OF THE TITLE 11 OF THE UNITED STATES CODE AND 11 U.S.C. 363(b), (f) AND (m) AND APPROVAL OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF HAWAII AND THE OVERBID PROCEDURES APPROVED BY THE COURT IN CASE NO. 16-01294

(l) As provided by the Federal Bankruptcy Code, this sale to the Purchaser is subject to “Overbidding” and the Overbid procedures approved by the Bankruptcy Court. The Motion to Approve the Sale to the Purchaser and the Overbid Procedures are incorporated herein and attached as Exhibit B to the Motion to Sell.

1.5 Excluded Assets. The Acquired Assets shall not include the following (the “*Excluded Assets*”):

(a) all cash and cash equivalents and restricted cash of Seller;

(b) the sponsorship of, and all assets maintained pursuant to or in connection with, any Employee Benefit Plan (including for the avoidance of doubt, all contracts and policies of insurance thereunder);¹

(c) the Seller’s corporate franchise, minute record books, minutes of meetings of members and managers, Tax Returns and records; provided that copies of such documents, books and records shall be provided to the Purchaser;

(d) the Seller’s bank accounts;²

(e) any rights that accrue or will expressly accrue to the Seller under this Agreement prior to the Closing Date;

¹ Note to draft: To discuss treatment of Seller’s 401(k) Plan.

² Note to draft: To discuss logistics of banks accounts.

(f) All claims, causes of action, choses in action, rights of recovery, defenses or counterclaims and rights of set-off of any kind (including rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment or components thereof) relating to any assets and liabilities other than Acquired Assets and Assumed Liabilities;

(g) Any contracts and policies of insurance and the rights thereunder, including liability insurance, and proceeds therefrom; and

(h) the assets, contracts, properties, and rights listed and described on a Schedule, if any.

1.6 Assumption of Liabilities. At the Closing, the Purchaser shall assume only the following Liabilities (the “*Assumed Liabilities*”):

(a) all of the executory obligations and Liabilities of the Seller arising from and after the Closing Date pursuant to the Business Contracts, but in each case excluding any liabilities relating to any breach, default or violation of the Business Contracts by Seller which accrued prior to the Closing Date;

(b) the Successful Bidder and ultimate purchaser of the Seller’s asset must pay up to \$300,000.00 of the current and ordinary course of business expenses which payment shall be made in accordance with Section 6.3; and

(c) all liabilities related to the Acquired Assets solely to the extent arising on or after the Closing Date.

1.7 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any Excluded Liabilities. The term “*Excluded Liabilities*” shall mean all Liabilities, other than the Assumed Liabilities.

(a) This Asset Purchase Agreement is being executed subject to 11 U.S.C. § 363(b) and (f) and all assets will be transferred from and clear of all liens and encumbrances and claims as defined by 11 U.S.C. § 101(5). All of the liens, encumbrances and claims will be transferred to the sales proceeds with the same validity, priority and extent that said liens, encumbrances and claims had in the assets, as of December ___, 2016.

ARTICLE 2 CALCULATION AND ADJUSTMENT OF PURCHASE PRICE

2.1 Purchase Price. The aggregate purchase price for the Acquired Assets (such amount, the “*Total Consideration*”) shall mean the following:

(a) the Base Purchase Price of FIVE MILLION DOLLARS AND NO/100 (\$5,000,000.00). The payment will be made within two (2) business days after the Court’s order

approving the sale is non-appealable. This purchase price is subject to the overbid procedures approved by the Court.

(b) In addition to the base purchase price of \$5,000,000 or any overbids accepted by the court, WOA or the Successful Bidder will be responsible for the payment of ordinary course Accounts Payable ("AP"), both current and not more than 60 days past due, up to \$300,000 if any such AP remains unpaid after the collection of Rolloffs Accounts Receivables ("Rolloffs AR") by WOA or the Successful Bidder.

WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs AR. However in no event will WOA or the Successful Bidder be responsible for (1) payment of any AP more than 60 days past due and (2) for the payment of AP, current and not more than 60 days past due, if said AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder, and (3) all non-ordinary course accounts payable.

(c) the base purchase price of \$5,000,000.00 and any final purchase price, must include the purchase price and additional consideration of the payment of current payables and payables in the ordinary course of not more than 60 days post due provided that the payment do not exceed more than \$300,000.00 more than the Successful Bidder collects from the Rolloffs AR.

ARTICLE 3 PROCEDURE FOR CLOSING

3.1 Time and Place of Closing. The closing of the Transactions (the "**Closing**") will be held by electronic exchange of documents on the date which is two business days after the Court's order approving the sale is non-appealable.

3.2 Deliveries by Seller. At the Closing, Seller will deliver or cause to be delivered to Purchaser the following (the "**Seller Closing Deliverables**"): All customary conveyance, assignments and other documents to transfer the assets to the Purchaser.

3.3 Further Assurances. On and after the Closing, upon the reasonable request of the Seller, on the one hand, or the Purchaser, on the other hand, the other Party shall prepare, execute and deliver such other agreements, instruments, and other documents, and take and perform such other actions, as may be reasonably necessary or appropriate to effectuate the purposes and intent of this Agreement and to consummate the transactions contemplated hereby. In this regard, the Seller and the Purchaser shall, and shall cause their respective Affiliates to, execute and deliver all such further instruments, and shall take such further actions, as may be reasonably necessary or appropriate to transfer the Acquired Assets and to assure the assumption by the Purchaser

from the Seller of the Assumed Liabilities and to otherwise make effective the transactions contemplated hereby.

ARTICLE 4 THE SELLER

The Seller represents and warrants, except as set forth on the corresponding section of the Disclosure Schedule, to the Purchaser that on the date of this Agreement and of the Closing Date:

4.1 Organization and Qualification. The Seller is a limited liability company validly existing and in good standing under the laws of the State of the Hawaii. The Seller has furnished to the Purchaser a complete and accurate copy of such Seller's current articles of organization, limited liability company agreement, or similar governing documents, as amended or restated. The Seller is not in violation of any of the provisions of any such governing documents. The Seller has no Subsidiaries.

4.2 The Seller is a Hawaii limited liability corporation with TrashMaster as the sole manager of Rolloffs Hawaii, LLC and is authorized to operate for Rolloffs.

4.3 The Seller filed for Chapter 11 protection on December 9, 2016 as Case No. 16-01294 (D. Hawaii) and continued to operate as Debtor-in-Possession.

4.4 The transfer of the assets must be approved by the United States Bankruptcy Court in Case No. 16-01294. The entry of the final order approving the sale is subject to 11 U.S.C. § 363(m) and will be final non-appealable order and judgment fourteen (14) days after the entry of the Order authorizing the sale and judgment thereon.

4.5 No Violation. The execution of the Purchase Documents by the Seller and the performance of all obligations contained therein does not and will not: (a) conflict with the Seller's governing documents, (b) violate in any material respect any Laws, (c) result in the creation or imposition of any Lien, (d) result in a breach, default, termination, acceleration or penalties under any material Contract, Permit or other material instrument to which any of the Seller is a party or any of its assets or properties is bound, or (e) require the Consent of, filing with or notice to any Third Party, including a Regulatory Authority.

4.6 Power and Authority; Validity; Enforceability. The Seller has the power and authority necessary to enter into and perform his or its obligations under the Purchase Documents to which it is a party. All instruments or documents executed by the Seller in connection with the Purchase Documents have been duly authorized, executed and delivered and constitute valid and binding obligations of the Seller, enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws affecting the rights of creditors generally and (ii) principles of equity, whether considered at law or in equity.

4.7 Title to the Acquired Assets. The Seller has good and valid title to, or a valid and binding leasehold interest in, all tangible personal property included in the Acquired Assets, free and clear of any Liens other than Permitted Encumbrances.

4.8 Contracts.

(a) The Seller is a party to customer contracts for trash hauling as set forth in Schedule 1.4(b). The Seller will assume and assign all Business Contracts to the successful bidder and the assumption and assignment of customer contracts will be effective on the closing:

(i) any Contract to which any Seller is party relating to the licensing of Intellectual Property Rights by any of the Seller to a Third Party or by a Third Party to any of the Seller and all other agreements affecting any of the Seller's ability to use or enforce any Intellectual Property Rights (including without limitation development agreements, concurrent use agreements, joint venture agreements, settlement agreements and consent to use agreements); and

(ii) any equipment or personal property leases to which Seller is a party.

(iii) The Seller will not assign or transfer the lease for the premises located _____, Honolulu, Hawaii will be subject to the assumption and assignment or rejection at the option and sole discretion of the Successful Bidder.

(b) Each of the Business Contracts is in full force and effect, and there exists no Default under any of the Business Contracts by the Seller. Each Business Contract is fully assignable without the Consent of any Third Party. No rights of the Seller under such Contracts have been assigned or otherwise transferred as security for any obligation of any Person.

(c) There exists no actual or, to the Seller's Knowledge, any threatened termination or limitation of, or any modification to any Business Contract.

(d) The Seller has not granted any power of attorney affecting the Acquired Assets.

4.9 Compliance with Laws; Permits and Orders. All Permits held or obtained by the Seller and necessary for the lawful operation of the Business or the Acquired Assets as presently conducted and the Seller is in compliance, in all material respects, with all such Permits and all applicable Laws and Orders, and except as set forth, Seller in the past twelve (12) months has not received any written notices of violation or the like alleging any violations and/or non-compliance with any laws, ordinances or governmental regulations .

4.10 Taxes. (i) Seller has filed all federal and State tax returns required to be filed by Seller and has paid all taxes shown thereon; (ii) there are no proposed or final assessments of additional taxes, penalties or interest against Seller and (iii) to Seller's knowledge, there are no pending audits or investigations of Seller's taxes by any federal or State taxing authority.

4.11 Tax Status. Seller is a "resident person" within the meaning of Haw. Rev. Stat. §235-68 and is not a "foreign person" within the meaning of Sections 1445(f)(3) of Code. Seller is treated as a [disregarded entity][partnership] for federal and state income tax purposes and has not elected to be taxed as a corporation.

4.12 No Undisclosed Liabilities or Litigation. To Seller's Knowledge, except as set forth in Schedule 4.10 attached hereto and incorporated herein by reference, (a) the Seller has no material liabilities, obligations or unpaid loans of any nature (whether absolute, accrued, contingent, or otherwise), including without limitation, any loans between Seller and its members and/or affiliates, except for liabilities or obligations reflected or reserved against in the financial statements and current liabilities incurred in the ordinary course of business or litigation; and (b) to Seller's knowledge, the Seller has not been named in any litigation, regulatory proceedings, or other legal processes, and no threats or claims have been made against the Seller.

4.13 Employee Benefits. There are no employee benefit plans (as defined in Section 3(3) of ERISA), multi-employer plans (as defined in Section 4001 (a) (3) of ERISA), and compensation programs and employment arrangements that are maintained, or contributed to, by the Seller for the employees of Seller, other than those for which information has been made available to Purchaser. Seller does not maintain or sponsor, and is not required to make contributions to, any written or oral pension, profit sharing, thrift, deferred compensation, bonus, incentive, stock purchase, severance, hospitalization, insurance or other similar plan, agreement, or arrangement relating to employee benefits for any employee or to former employees of the Seller, other than those for which information has been made available to Purchaser.

4.14 Environmental Matters. "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules and/or regulations, as well as common law, relating to protection of human health or the environment, Hazardous Materials, conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property or requiring notification or disclosure of Releases of Hazardous Materials or other environmental condition of a property to any governmental authority or other person, including, without limitation, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act; those relating to Lead Based Paint; the Hawaii Environmental Response Law, Hawaii Revised Statutes Chapter 128D; the Hawaii Pesticides Law, Hawaii Revised Statutes Chapter 149A; the Hawaii Solid Waste, Hawaii Revised Statutes Chapter 340A; the Hawaii Safe Drinking Water, Hawaii Revised Statutes Chapter 340E; the Hawaii Noise Pollution, Hawaii Revised Statutes Chapter 342F; the Hawaii Hazardous Waste, Hawaii Revised Statutes Chapter 342J; the Hawaii Air Pollution Control, Hawaii Revised Statutes Chapter 342B; the Hawaii Ozone Layer Protection, Hawaii Revised Statutes Chapter 342C; the Hawaii Water Pollution, Hawaii Revised Statutes Chapter 342D; the Hawaii Nonpoint Source Pollution Management and Control, Hawaii Revised Statutes Chapter 342E; the Hawaii Integrated Solid Waste Management, Hawaii Revised Statutes Chapter 342G; the Hawaii Solid Waste Pollution, Hawaii Revised Statutes Chapter 342H; the Hawaii Underground Storage Tanks, Hawaii Revised

Statutes Chapter 342L; and the Hawaii Asbestos and Lead, Hawaii Revised Statutes Chapter 342P.

(a) “Hazardous Materials” means any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including, but not limited to, mold, mycotoxins, microbial matter, airborne pathogens (naturally occurring or otherwise), petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

(b) “Release” means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, or other releasing into the environment, whether intentional or unintentional.

(i) To Seller’s Knowledge, the Seller is, and at all times has been, in compliance, in all material respects, with, and has not been and is not in violation of or liable under, any Environmental Law.

(ii) To Seller’s Knowledge, there are no pending or threatened claims, liens, or other restrictions of any nature, resulting from any Environmental Law, with respect to or affecting the Business.

(iii) Seller has not received any written citation, directive, inquiry, notice, order, summons, warning, or other communication that relates to Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental Law with respect to the Business, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed by Seller, or any other person for whose conduct they are or may reasonably be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(iv) To Seller’s Knowledge, there are no Hazardous Materials present on or in the environment on the property of the Business or, at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the property of the Business or such adjoining property, or incorporated into any structure therein or thereon.

(v) To Seller’s Knowledge, there has been no Release or threat of Release, of any Hazardous Materials at or from the property of the Business or at any other locations where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by the property of the Business or, any geologically or hydrologically adjoining property, whether by Seller or any other person.

**ARTICLE 5
POST CLOSING COVENANTS**

1. The only representation and warranties by the Seller set forth in by 11 U.S.C. § 363(b), (f) and (m).

**ARTICLE 6
POST CLOSING COVENANTS**

6.1 Access. For a period of twelve (12) months, at Seller's sole cost and expense, Purchaser shall provide the Seller with access to documents and other information which Seller may reasonably request, for any proper purpose in connection with the Seller's defense or prosecution of any Third Party or Regulatory Authority claims, actions or investigations arising out of or related to its ownership of the Acquired Assets or the conduct of the Business prior to the Closing or as to any other liabilities not assumed by Purchaser.

6.2 Employees. Purchaser or the Successful Bidder hereby agrees to offer employment to all employees of Seller on such terms and conditions of employment as determined by Purchaser.

6.3 True Up. Not later than sixty (60) days after the Closing, Seller and Purchaser shall perform and agree upon an accounting of the adjustment to purchase price set forth in Section 1.11 of this Agreement, Purchaser shall pay to Seller the amounts, if any, required under said Section 1.11.

**ARTICLE 7
MUTUAL COVENANTS**

7.1 Further Assurances. The Parties will cooperate with the other and execute and deliver to the other Parties such other instruments and documents and take such other actions as may be reasonably requested from time to time by any other Party as necessary to carry out this Agreement in accordance with its terms. Each Party shall bear its own costs and expenses incurred in compliance with this Section 7.1. Each Party shall promptly notify the other Party of any action that shall be instituted or threatened against such Party to challenge the legality of any transaction contemplated by this Agreement.

7.2 Proration. To the extent not included in the Assumed Liabilities, all charges or expenses of the Business including ad valorem taxes imposed upon the Acquired Assets other than the Leased Real Property ("**Personal Property Taxes**"), ad valorem taxes imposed upon any portion of the Leased Real Property, general assessments imposed with respect to the Leased Real Property, special assessments upon the Leased Real Property, whether payable in full or by installments prior to the Closing Date, utility charges, utility charges, rental charges, equipment charges, and service contracts (including amounts owed pursuant to transferable Permits applicable to the Acquired Assets and transferred to Purchaser hereunder) and including accruals or prepayments thereof (collectively, "**Proration Items**") and all other items that otherwise affect the Business or the Acquired Assets and that relate to periods prior to the Closing Date, shall be

apportioned to the Closing Date. The net amount of all Proration Items will be settled and paid on the Closing Date. In the event that the amount of any of the Proration Items is not known by the Seller and Purchaser at the Closing, the proration shall be made based upon the amount of the most recent cost of such Proration Item to the Seller. After Closing, the Parties each shall provide to the other written notice within 10 business days after receipt, of each Third Party invoice relating to any Proration Item so estimated or any other Proration Item not otherwise identified or paid at Closing, whether known or unknown by Purchaser or the Seller on the Closing Date. Within 10 business days thereafter, Purchaser and the Seller each shall make any payments to the other that are necessary to compensate for any difference between the proration made at the Closing and the correct proration based on the Third Party invoice. The Parties shall fully cooperate to avoid, to the extent legally possible, the payment of duplicate Personal Property Taxes, and each Party shall furnish, at the request of the other, proof of payment of any Personal Property Taxes or other documentation that is a prerequisite to avoiding payment of a duplicate Tax.

ARTICLE 8 SURVIVAL

8.1 Survival. The representations and warranties set forth in this Agreement, in any other Purchase Document or in any officer's certificate delivered pursuant to this Agreement shall not survive the Closing.

ARTICLE 9 CONDITIONS PRECEDENT TO OBLIGATIONS TO CONSUMMATE

9.1 Conditions to the Purchaser's and the Seller's Obligations. The respective obligations of the Purchaser and the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or, to the extent permitted, waiver, of the following conditions:

(a) No Regulatory Authority or court shall have enacted, issued, promulgated, enforced or entered any order or other legal restraint or prohibition (whether temporary, preliminary or permanent) which is then in effect and has the effect of making this Agreement or the transactions contemplated hereby illegal or otherwise prohibiting consummation of the transactions contemplated hereby and no litigation seeking, or which if adversely determined would have, such effect is pending or threatened.

9.2 Conditions to Obligations of the Purchaser. The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by the Purchaser) of the following additional conditions at or prior to Closing (it being agreed that if any of the following conditions are not satisfied as of the Closing and the parties nevertheless consummate the transaction contemplated hereby, such conditions shall be deemed waived except to the extent that the parties agree specifically to the contrary in writing):

(a) The Seller shall have delivered to Purchaser the Seller Closing Deliverables.

(b) As of the Closing Date, each and every one of the representations and warranties by Seller under this Agreement shall be true and correct in all material respects as if made on the Closing Date.

(c) As of the Closing Date, each and every one of the covenants and obligations of Seller under this Agreement has been completed and satisfied, and as of the Closing Date, Seller is not in breach of or non-compliance with any covenants or obligations under this Agreement.

(d) Purchaser shall have received financing commitment from Central Pacific Bank not later than the hearing date in the Bankruptcy Court on the sale, which will be after the time period in the notice of the sale has expired.

9.3 Conditions to Obligations of the Seller. The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by the Seller) of the following additional conditions at or prior to Closing (it being agreed that if any of the following conditions are not satisfied as of the Closing and the parties nevertheless consummate the transaction contemplated hereby, such conditions shall be deemed waived except to the extent that the parties agree specifically to the contrary in writing):

(a) Purchaser shall have delivered to the Seller the Purchaser Closing Deliverables.

ARTICLE 10 GENERAL PROVISIONS

10.1 Fees and Expenses.

(a) Except as otherwise specifically provided elsewhere in this Agreement, the Seller and the Purchaser each shall pay their respective fees and expenses in connection with the transactions contemplated by this Agreement.

(b) All Transfer Taxes shall be paid by Purchaser.

10.2 Notices. All notices and other communications made in connection with this Agreement shall be in writing and shall be delivered (a) in person or by courier or overnight service, (b) mailed by first class registered or certified mail, postage prepaid, return receipt requested, or (c) by facsimile transmission, as follows:

If to Purchaser:

West Oahu Aggregate Co., Inc.
855 Umi Street
Honolulu, Hawaii 96819-1770
Attention: Georgette Silva
Telephone: (808) 847-6746
Facsimile: (808) 306-5643

With copy to (which copy shall not constitute notice):

Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, HI 96813
Attention: Karl K. Kobayashi, Esq.
Tom Roesser, Esq.
Telephone: (808) 523-2535
Facsimile: (808) 523-0842

If to the Seller:

TrashMasters, LLC
c/o SPB Capital Partners, LLC
1317 5th Street, 2nd Floor
Santa Monica, California 90401
Attention: Kenneth M. Pressberg and Ari D. Bass
Telephone: (310) 255-0025
Facsimile: (310) 255-0029

And

Corridor Capital, LLC
12400 Wilshire Blvd, Suite 645
Los Angeles, California 90025
Attention: Craig Enenstein and Geoff Greulich
Phone: (310) 442-7001
Facsimile: (815) 301-2786

With copy to (which copy shall not constitute notice):

O'Connor Playdon & Guben LLP
Pacific Guardian Center
Makai Tower, Suite 2400
733 Bishop Street
Honolulu, HI 96813
Attention: Jerrold K. Guben, Esq.
Jeffery S. Flores, Esq.
Telephone: (808) 524-8350
Facsimile: (808) 531-8628

or to such other address as the Parties may designate in writing to the other in accordance with this Section 10.4. Any Party may change the address to which notices are to be sent by giving written notice of such change of address to the other parties in the manner above provided for giving notice. If delivered personally or by courier, the date on which the notice, request, instruction or document is delivered shall be the date on which such delivery is made and if

delivered by facsimile transmission or mail as aforesaid, the date on which such notice, request, instruction or document is received shall be the date of delivery.

10.3 Assignment. Prior to the Closing, this Agreement shall not be assignable by any Party without the written consent of the other Parties; provided that the Purchaser may assign this Agreement to (a) an Affiliate, (b) for collateral security purposes to any lender of the Purchaser or its Affiliates, and (c) any acquirer of all the equity or all or any material portion of the assets of the Purchaser or its Affiliates, provided, however, Purchaser shall remain responsible and liable for all of its obligations hereunder.

10.4 No Benefit to Others. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties.

10.5 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same Agreement, and shall become effective when one counterpart has been signed by each Party and delivered to the other Parties. Any signature page delivered electronically or by facsimile (including transmission by PDF or other similar format) shall be binding to the same extent as the original signature page.

10.6 Integration of Agreement. The Purchase Documents constitute the entire agreement among the Parties and supersede all prior agreements between the Parties. Neither this Agreement, nor any provision in this Agreement, may be modified, discharged, or terminated orally, but only by an agreement in writing signed by the Party against which the enforcement of such modification, discharge or termination is sought. The failure or delay of any Party at any time to require performance of any provision of this Agreement shall in no manner affect its right to enforce that provision. No single or partial waiver by any Party of any condition of this Agreement, or the breach of any term of this Agreement or the inaccuracy or warranty of this Agreement in any one or more instances shall be construed or deemed to be a further or continuing waiver of any such condition, breach or inaccuracy or a waiver of any other condition, breach or inaccuracy.

10.7 Governing Law; Exclusive Jurisdiction. The United States Bankruptcy Court of the District of Hawaii shall retain jurisdiction over the enforcement of this Asset Purchase Agreement (“APA”), the Order Approving the Sale. The Purchaser hereby consents to the “core” jurisdiction of the Bankruptcy Court pursuant to 28 U.S.C. § 157(b)(2). Any and all actions related to this APA must be brought in the United States Bankruptcy Court for the District of Hawaii, and this shall be construed as a “forum selection” clause and all claims arising out of this APA shall be brought in Case No. 16-01294. Hawaii law shall be the choice of law under this APA.

10.8 Specific Performance. The Parties agree that immediate and irreparable damage would occur for which monetary damages, even if available, would not be an adequate remedy if any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, the Parties agree that, if for any reason any Party shall have failed to perform its obligations under this Agreement or otherwise breached this Agreement, then the Party seeking to enforce this Agreement against such nonperforming Party may be entitled to specific performance and the issuance of immediate injunctive and other

equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of proving the inadequacy of money damages as a remedy. The Parties further agree that the obtaining of any such injunctive or other equitable relief is in addition to and not in limitation of any other remedy to which they are entitled at Law or in equity.

10.9 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT OR THE FINANCING LETTERS.

10.10 Amendment. The Parties may amend this Agreement only by a written instrument executed by the Parties, and any such amendment will be enforceable against the Parties.

10.11 Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted as to be effective and valid under applicable Law. If any of the provisions in this Agreement are held to be invalid in any respect, such invalidity shall not affect any other provisions of this Agreement. This Agreement shall be construed as if such invalid provision had never been contained in this Agreement unless the deletion of such provision would result in a material change that would cause the transactions contemplated under this Agreement to be unreasonable.

10.12 Broker's Commission. Except for Seller's agreement with Lincoln International LLC or as otherwise disclosed on Schedule 10.14, each party warrants and represents to the other that it has employed no brokers or finders in connection with this transaction and each agrees to indemnify, protect, defend and hold the other harmless from and against all claims, losses, costs, expenses and damages (including attorneys' fees) resulting from a breach of this warranty and representation. Notwithstanding any provision of this Agreement to the contrary, the obligations of the parties under this Section 10.14 shall survive any termination of this Agreement.

10.13 Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

10.14 Time of Essence. Time is of the essence of every provision of this Agreement in which time is an element.

(Signatures on Following Page)

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized officers (as applicable) as of the day and year first above written.

THE PURCHASER:

[_____],
a _____

By: _____
Name: _____
Title: _____

THE SELLER:

ROLLOFFS HAWAII, LLC,
a Hawaiian limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE 1.4(a)

(To be completed prior to Closing)

SCHEDULE 1.4(b)

CUSTOMER SERVICE AGREEMENTS

1. International Environmental Management, Inc. (Ala Moana Center)
2. Hickam Communities, LLC
3. Outrigger Hotels Hawaii
4. Forest City Residential Management, Inc., as agent for Ohana Military Communities LLC
5. Victoria Ward, Limited.
6. Disney Worldwide Services, Inc.
7. Chevron Products Company
8. M&W Development Partners, as represented by its agent Colliers International Real Estate Management Services
9. Waste Management National Services, Inc.
10. Foodland Super Market, Limited, Coffee Pacific LLC, Food Pantry, Ltd., and The Kalama Beach Corporation
11. McDonalds Corporation.
12. Nordic PCL Construction, Inc.
13. Nan Inc.
14. Hawaii Bio Waste, Inc.
15. Rubicon Global Holdings, LLC, on behalf of Walmart.
16. Hawaiian Dredging Construction Company, Inc.
17. Costco Wholesale - Iwilei
18. Waste Management National Services, Inc.

19. All other customer service agreements as of the date of the execution of the Asset Purchase Agreement.

(To be updated and agreed upon prior to Closing.)

SCHEDULE 1.4(d)

VEHICLES

1. Transfer Station - 3
 - a. 2006 Volv Mstr, License # 879TSE
 - b. 1990 Ford Trtc, License # 329TRX
 - c. 1998 Westsr Mstr, License # ROH22

2. Trailers - 3
 - a. Unk Inters Vntl, License # 470WER
 - b. Unk Inco Mstl (not active; not registered), License #750WEN
 - c. Unk Sparta Mstl, License # 443WDV

3. Rolloffs - 16
 - a. 2000 Frnt Dump, License # 761TRZ
 - b. 1987 Whit Dump, License # 473TSD
 - c. 1998 Volv Mstr, License # 800TSE
 - d. 2008 Ptrb Dump, License # 880TSZ
 - e. 2007 Ford Mstr, License # 966TSE
 - f. 1998 Westsr Mstr, License # ROH24
 - g. 2003 Auto Mstr, License # ROH27
 - h. 2004 Volv Dump, License # ROH29
 - i. 2001 Volv Mstr, License # 740TSW
 - j. 2005 Auto Mstr, License # ROH33
 - k. 2001 Wstr Mstr, License # 097TSN
 - l. 2000 Volv Mstr, License # 072TTC
 - m. 2007 Volv Dump, License # 061TSZ
 - n. 2005 Strg Mstr, License # 791TTA
 - o. 2004 Auto Mstr, License # 060TVU
 - p. 2005 Auto Dump, License # 843TVU

4. Fork Trucks - 9
 - a. 2002 Ford Pkup, License # 735TSE
 - b. 2000 Ford Dump, License # 882TSZ
 - c. 2004 Ford Pkup, License # 013TRR
 - d. 2003 Chev Mstr, License # ROH45
 - e. 2006 GMC Pkup, License # 071TTC

- f. Unk Chev Mstr (missing title), License # 757TTA
 - g. 2008 Ford Mstr, License # 271TVB
 - h. 2008 Ford Pkup, License # 992TVB
 - i. 2008 Ford Pkup, License # 021TVE
5. Front Loaders - 25
- a. 1998 Volv Mstr, License # 075TTC
 - b. 2003 Auto Mstr, License # ROH58
 - c. 2003 Auto Mstr, License # 074TTC
 - d. 2004 Auto Mstr, License # ROH63
 - e. 2007 Auto Mstr, License # 089TSF
 - f. 2007 Auto Mstr, License # 077TSV
 - g. 2005 Auto Mstr, License # 810TSC
 - h. 2003 Volv Dump, License # 191TVG
 - i. 2006 Auto Dump, License # 454TVG
 - j. 1999 Volv Dump, License # 203TTN
 - k. 2007 Auto Dump, License # 669TSY
 - l. 2008 Auto Dump, License # 614TSX
 - m. 2007 Auto Dump, License # 881TSZ
 - n. 2001 Volv Dump, License # 276TRC
 - o. 2012 Ptrb Mstr, License # 066TTX
 - p. 2002 Ptrb Dump, License # 114TTZ
 - q. 2003 Ptrb Dump, License # 223TVC
 - r. 2005 Ptrb Dump, License # 011TVE
 - s. 2004 Auto Dump, License # 347TVR
 - t. 2005 Ptrb Dump, License # 316TVR
 - u. 2007 Ptrb Mstr, License # 143TTV
 - v. 2002 CCC Mstr, License # 080TTX
 - w. 2002 CCC Mstr, License # 082TTX
 - x. 2002 CCC Mstr, License # 081TTX
 - y. 2008 Ptrb Mstr, License # 249TVC
6. Side Loaders - 3
- a. 2000 Ptrb Dump, License # 225TTD
 - b. 2000 Ptrb Dump, License # 983TTT
 - c. 2007 Auto Mstr, License # 358TVU

7. Support Vehicles - 6
 - a. 2000 GMC Pkup, License # 253TTG
 - b. 1997 Chev Pkup, License # 936TSC
 - c. 2002 Ford Pkup, License # ROH6
 - d. 2006 Ford Pkup, License # 808TSJ
 - e. 2008 Chev Pkup, License # 738TTA
 - f. 2005 Ford Pkup, License # 166TTC

8. Flatbed Trucks - 3
 - a. 2008 Mits Ftbd, License # 699TSZ
 - b. 2002 Ford Ftbd, License # 888TPG
 - c. 2001 Intl Ftbd, License # 401TTU

9. Executive - 4
 - a. 2004 Ford Pkup, License # BZ823
 - b. 1994 Ford Pkup, License # 460TSZ
 - c. 2002 Ford Pkup, License # 459TSZ
 - d. 2001 Chev Vans, License # 350TSZ

10. Rear Loader - 1
 - a. 1999 Intl Mstr, License # 404TSV

(To be updated and agreed upon prior to the Closing.)

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

ROLLOFFS HAWAII, LLC,

Debtor and
Debtor-in-Possession.

Case No. _____
(Chapter 11)

(Non-Hearing Motion)

Judge: Honorable Robert J. Faris

**ORDER GRANTING DEBTOR'S MOTION TO
ESTABLISH OVERBID PROCEDURES**

Rolloffs Hawaii, LLC (“Rolloffs”), the Debtor, has filed a Motion to Sell the Assets of the Estate Free and Clear of All Liens and Encumbrances, and claims, as defined by 11 U.S.C. § 101(5) and requests the approval of these Overbidding procedures.

The Purchaser, as per the Asset Purchase Agreement to sell assets, is West Oahu Aggregates (“WOA”) or Purchaser. The Asset Purchase Agreement is

attached as Exhibit A to the Debtor's Motion to Sell Assets.

The terms of the WOA offer, or "stalking horse" offer, a bid of FIVE MILLION DOLLARS AND NO/CENTS (\$5,000,000.00). The exact terms of the WOA offer are set forth in the Asset Purchase Agreement.

In addition to the base purchase price of \$5,000,000.00 or any overbid accepted by the Court, WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs AR. However in no event will WOA or the Successful Bidder be responsible for (1) payment of any AP more than 60 days past due and (2) for the payment of AP, current and not more than 60 days past due, if said AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will be responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000 over the AR collected by WOA or the Successful Bidder. ALL QUALIFIED OVERBIDDERS MUST AGREE TO THIS ADDITIONAL CONSIDERATION PAYMENT.

The bid of \$5,000,000.00 of WOA may be overbid according to the

procedures set forth herein. The Asset Purchase Agreement (“Agreement”) is attached to the Debtor’s Motion to Sell Assets as Exhibit A and incorporated herein as the required terms for an overbid by third-parties and qualified bidders.

Based on the Motion of the Debtor to sell assets, being advised in the premises and for good cause,

IT IS HEREBY ORDERED, that the Motion to Sell the Assets of the Estate Free and Clear of All Liens and Encumbrances is GRANTED, and the following terms and conditions regarding overbidding are established:

1. Any person or entity (other than the WOA or Purchaser) (“Overbidder”) that is interested in purchasing the assets of the Estate must submit to the Debtor an “Initial Overbid”, at least 24 hours prior to the Sale Hearing (the “Overbid Deadline”). At the request of the Debtor, any entity that fails to submit a timely, conforming Initial Overbid, as set forth herein, unless good cause is shown, may be disqualified from Overbidding at the Sale Hearing. Any such Initial Overbid must on or before the Overbid Deadline,

(a) the Overbidder must serve upon the Debtor’s counsel, the Purchaser (“WOA”), and counsel for American Savings Bank (“ASB”) in a manner such that the Initial Overbid actually is received on or before the Overbid Deadline including service by electronic means;

(b) The Overbid must contain a signed Asset Purchase Agreement, attached as Exhibit A to the Motion to Sell, agreeing to Overbid the WOA Stalking Horse Bid, on the same terms and conditions as set forth in the Agreement. The WOA Stalking Horse Bid is set forth in the Debtor's Motion to Sell Assets and the Asset Purchase Agreement. These approved Overbid Procedures will bind all Overbidders as to the amount of the Initial Overbid and Subsequent Overbids and deposit requirement. The successful Overbid must accept the base purchase price of \$5,000,000.00 or any overbids accepted by the Court, WOA or the Successful Bidder will be responsible for the payment of AP, both current and not more than 60 days past due, up to \$300,000.00, if any such AP remains unpaid after the collection of Rolloffs' AR by WOA or the Successor Bidder.

WOA or the Successful Bidder must be prepared, as a condition of bidding, to pay, in addition to the purchase price or overbid accepted by the Court, the Current AP and AP not more than 60 days past due, if any, remaining after collection by WOA or the Successful Bidder of Rolloffs' AR. However, in no event will WOA or the Successful Bidder be

responsible for (1) payment of any AP more than 60 days past due, and (2) for the payment of AP, current and not more than 60 days past due, if said AP exceeds \$300,000.00 over the AR collected by WOA or the Successful Bidder. WOA or the Successful Bidder will be responsible for the AP, current and not more than 60 days past due, up to \$300,000.00 if the Rolloffs AR is insufficient to pay these particular AP. Rolloffs will be responsible for (1) all AP more than 60 days past due, and (2) current AP and AP not more than 60 days past due, if such AP exceeds \$300,000.00 over the AR collected by WOA or the Successful Bidder.

(c) The initial Overbid must provide for a cash purchase price of at least \$300,000.00 more than the Stalking Horse purchase price of \$5,000,000.00 offered by WOA in the Purchase Agreement and Motion to Sell Assets.

- (d) ASB may submit a credit bid to be offset against its secured indebtedness owed by Debtor ("Credit Bid");
- (e) The Overbidder shall deliver a cashier's or certified check in the amount of at least 10% (ten percent) of the Overbidder's projected purchase price ("Overbid Deposit") to the Debtor,

which Overbid Deposit will be returned to the Overbidder following the conclusion of the Sale Hearing unless the Overbidder ultimately submits the successful bid in which case the Overbidder's qualified Overbid Deposit will be credited against the winning bid. If the Successful Bidder fails to deposit 10% of the projected Overbid, the bidder will be disqualified from bidding. If the successful bidder does not execute a purchase agreement within two (2) days after delivery to the Overbidder or is in default under the purchase agreement executed by the Overbidder, in which case the Overbid Deposit shall be forfeited in full, as full and complete liquidated damages for default of its obligations. The Assets will be offered to the Stalking Horse bidder at the initial bid price of \$5 million or the next highest Overbidder, as the back-up bidder.

- (f) All incremental Overbids after the initial Overbid of \$300,000.00, must be at least \$30,000.00 over the previous Overbid. The requirements for an Initial Overbid, Overbid Deposit, Qualified Overbidder, Overbid Deadline and other bid procedures shall not apply to any Credit Bid submitted by ASB or to WOA;

- (g) The Qualified Overbid must be accompanied by evidence satisfactory to the Debtor establishing the Overbidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code, and its "adequate assurance of future performance" of the Section 365 Agreements, within the meaning of Section 365(f)(2)(B) of the Bankruptcy Code, including the assumed and assigned Customer Contracts;
- (h) the Qualified Overbid must be accompanied by evidence satisfactory to Debtor that the Overbidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under the terms of a purchase agreement approved by the Debtor in the event that it submits the prevailing Overbid at the Sale Hearing. This is evidenced by depositing with the Debtor, a cashier's check equal to at least ten percent (10%) of Qualified Overbidders Projected Overbid.
- (i) The Overbids shall remain open and irrevocable until the Bankruptcy Court's approval at the Sale Hearing of a competing Overbid. Except for WOA, all Qualified Overbids shall not be conditioned or contingent on the outcome of unperformed due

diligence by the Overbidder, any financing contingency, obtaining title insurance, any board of directors', shareholders' or other corporate or entity approval, or any other conditions not set forth in the purchase agreement executed by the Overbidder.

2. If no timely, conforming Initial Overbids are submitted, the Debtor will request at the Sale Hearing that the Court approve the proposed sale to Purchaser, WOA, pursuant to the terms and conditions set forth in the Purchase Agreement and Motion thereon.

3. In the event that the Debtor timely receives a conforming Initial Overbid as described above (a "Qualified Overbid"), then Purchaser, WOA, shall have the right to increase its proposed purchase price by no less than the Initial Overbid, of \$300,000.00 plus the Incremental Bid Amount of \$30,000.00 (as defined below) at the Sale Hearing. The persons or entities submitting Qualified Overbids and Purchaser may then submit successive bids in increments of at least \$30,000.00 or greater than the previous bid (the "Incremental Bid Amount") at the Sale Hearing until there is only one offer that the Bankruptcy Court determines is the highest and best offer (the "Prevailing Bid").

4. All Overbidders 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 and/or the sale of the assets. Purchaser and all qualified Overbidders shall be bound by their Overbids until such time as a definitive Agreement is executed by the prevailing Overbidder (as modified for the increased bid amount, and other terms acceptable to the Debtor) and approved by the Bankruptcy Court at the Sale Hearing. If, for any reason, such prevailing Overbidder is unable or unwilling to execute a purchase agreement within two (2) calendar days after delivery to the Overbidder or to perform its obligations thereunder, Debtor, in the exercise of its business judgment, (i) may cash and retain any Qualified Overbid Deposit as full and complete liquidated damages for default of its obligations; and (ii) may sell the assets to the Stalking Horse Bidder or Overbidder with the next highest Qualified Overbid at the auction (as approved by the Bankruptcy Court), upon ex parte application to the Bankruptcy Court without further notice or a hearing, provided that such Overbidder submits a new deposit and otherwise is authorized, capable, and qualified to proceed with the sale.

5. A copy of the Order Approving Motion to Establish Overbid Procedure shall be delivered to any Overbidder seeking to submit an Overbid, and such Overbidder shall execute an acknowledgement of receipt of this Order regarding sale and Asset Purchase Agreement and agrees to be bound by the terms and conditions of the Overbidding process and procedures.

6. The Purchase Agreement contemplates that if the Successful Bidder, at its option and sole discretion assumes any and all amounts or actions required to cure any defaults under either the State of Hawaii Lease or Benda Trust Lease, said assumption of the State of Hawaii and Benda Trust Lease shall be the sole obligations of the successful Bidder, if the Seller assumes and assigns said Leases to the Purchaser or Overbidder, and are not included in any bid or purchase price amount. The bid offer or purchase price amount shall be the amount offered or required, respectively, to obtain assignment of any executory contracts or unexpired leases, as designated by the Debtor and successful bidder, with all respective defaults, if any, to be cured by the successful Bidder, not by Rolloffs.

7. Should the successful Overbidder be other than WOA, then WOA will receive a breakup fee of \$100,000.00 from the sales proceeds.

8. This Order is without prejudice to the rights and remedies of any party in interest with respect to any motion to approve assumption and assignment of the subject leases.

END OF ORDER

APPROVED AS TO FORM:

CURTIS B. CHING
Office of the United States Trustee

WAYNE MAU
Attorney for Secured Creditor
AMERICAN SAVINGS BANK

CYNTHIA M. JOHIRO
Attorney for State of Hawaii
Department of Taxation

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WEST OAHU AGGREGATES

Submitted by:

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A LIMITED LIABILITY LAW PARTNERSHIP

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