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11 **IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

12 In re:
 13 STAR GOLDEN ENTERPRISES, LLC,
 14 Debtor.

Case No.: BK-S-17-10440-BTB
Chapter 11

Date: August 29, 2017
Time: 10:00 a.m.

16 **DEBTOR’S MOTION FOR ORDER: (A)(I) APPROVING BID PROCEDURES
 17 RELATING TO SALE OF DEBTOR’S REAL PROPERTIES; (II) APPROVING THE
 18 FORM AND MANNER OF NOTICE OF SALE BY AUCTION; (III) SCHEDULING A
 HEARING TO CONSIDER THE SALE; AND (IV) GRANTING RELATED RELIEF;
 19 AND (B)(I) AUTHORIZING THE SALE OF DEBTOR’S ASSETS OUTSIDE OF THE
 ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS,
 20 ENCUMBRANCES, AND INTERESTS AND (II) GRANTING RELATED RELIEF**

21 Debtor and debtor-in-possession Star Golden Enterprises, LLC (the “Debtor”), by and
 22 through its counsel, Garman Turner Gordon LLP, hereby submits its motion (the “Motion”)
 23 seeking an order, substantially in the form attached hereto as **Exhibit “A”** permitting the sale of
 24 certain Real Properties (as defined below) (the “Sale”)¹ through an auction (the “Auction”) free
 25 and clear of all liens, claims, encumbrances, and interests pursuant to Section² 363.

26 _____
 27 ¹ To the extent that an alternate form of transaction is presented that produces greater value for Debtor’s estate,
 creditors, and parties-in-interest, Debtor reserve the right to seek approval of such transaction.

28 ² Unless otherwise stated, all references to “Section” herein shall be to the Bankruptcy Code appearing in Title

1 This Motion is made and based upon the memorandum of points and authorities provided
2 herein, the declaration of Nicholas Rubin filed concurrently herewith (the “Rubin Decl.”), the
3 papers and pleadings on file herein, judicial notice of which is respectfully requested, and any
4 argument of counsel entertained by the Court at the time of the hearing of the Motion.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I.**
7 **JURISDICTION**

8 1. On January 31, 2017 (the “Petition Date”), the Debtor filed a voluntary petition
9 for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned
10 case (the “Chapter 11 Case”). See ECF No. 1.

11 2. The Debtor continues to operate its business and manage its property as debtor
12 and debtor-in-possession pursuant to Sections 1107(a) and 1108, and no request has been made
13 for the appointment of a trustee or examiner and no official committees have been appointed in
14 the Chapter 11 Case.

15 3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
16 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory basis for the
17 relief sought herein arises from Section 363, and Bankruptcy Rules 2002 and 6004, and Local
18 Rule 6004.

19 4. Venue of the Debtor’s Chapter 11 Case in this District is proper pursuant to 28
20 U.S.C. §§ 1408 and 1409.

21 5. Pursuant to Local Rule 9014.2, the Debtor consents to entry of final order(s) or
22 judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent
23 of the parties, cannot enter final orders for judgment consistent with Article III of the United
24 States Constitution absent consent.

25 ...

26 ...

27 _____ (continued)
28 11 of the U.S. Code; all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy
Procedure; and all references to a “Local Rule” shall refer to the Local Rules of Bankruptcy Practice of the
U.S. District Court for the District of Nevada.

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II.
RELEVANT FACTS

A. General Background

6. Debtor is in the business of acquiring and refurbishing residential real property for sale at a profit. See Rubin Decl. ¶ 6.

7. Commencing on or about March 15, 2013, Debtor purchased several residential real properties from homeowners' associations ("HOAs") following their acquisition of the properties by foreclosure of superpriority liens (the "HOA Foreclosures") pursuant to NRS Chapter 116. See id. ¶ 7.

8. Following Debtor's acquisition of the properties, certain parties (the "Alleged Lien Parties") continued to assert liens upon or interest in the properties purchased, notwithstanding that such liens and/or interests had been extinguished through the HOA Foreclosures. See id. ¶ 8.

9. As a result, Debtor commenced a series of lawsuits to quiet title and confirm that the Alleged Lien Parties did not hold liens upon or interests in the Real Properties (identified below) (the "Quiet Title Actions"). See id. ¶ 9.

B. The Real Property Subject to the Proposed Sale.

10. As set forth in the Debtor's Schedules [ECF No. 25], as of the Petition Date, the Debtor held the following real property:

- 8600 W. Charleston Blvd., Apt. 2070, Las Vegas, Nevada (the "Charleston Property");
- 8101 W. Flamingo Rd., Unit 2108, Las Vegas, Nevada (the "Flamingo Property");
- 1199 Chestwood Ave., Las Vegas, Nevada (the "Chestwood Property");
- 3448 Castanada St., North Las Vegas, Nevada (the "Castanada Property");
and
- 799 Mesquite Springs, Unit 101, Mesquite, Nevada; (the "Mesquite Property").

The Charleston Property, the Flamingo Property, the Chestwood Property, the Castanada

1 Property, and the Mesquite Property shall be referred to collectively as the “Real Properties.”

2 11. The Real Properties are collectively scheduled as having an aggregate value of
3 \$856,396, which value is based on comparable sales. See Rubin Decl., ¶ 11; ECF No. 25.

4 **C. The Quiet Title Actions and Claims Against the Real Properties.**

5 12. Clara Braud, Countrywide Home Loans, Inc., BAC Home Loans Servicing, LP,
6 U.S. Bank National Association, as Trustee for the benefit of Harborview 2005-16 Trust Fund,
7 and Reconstruct Company NA have asserted liens upon or interests in the Charleston Property,
8 which the Debtor disputes. As a result, on December 23, 2014, Debtor filed a Complaint in the
9 Eighth Judicial Distract Court, Clark County, Nevada, thereby commencing Case No. A-14-
10 711498 seeking to quiet title (the “Charleston Litigation”). Rubin Decl., ¶ 12.

11 13. The Charleston Property is also subject to a lien asserted by Cappella Mortgage in
12 the principal amount of \$45,000. See id., ¶ 13.

13 14. Bank of America, N.A., PRLAP, Inc., Jane Soo Hoo Fung, and Vincent W. Fung
14 have asserted liens upon or interests in the Flamingo Property, which the Debtor disputes. As a
15 result, on June 9, 2014, Debtor filed a Complaint in the Eighth Judicial Distract Court, Clark
16 County, Nevada, thereby commencing Case No. A-14-702119-C seeking to quiet title (the
17 “Flamingo Litigation”). See id., ¶ 14.

18 15. JP Morgan Chase Bank, Cooper Castle Law Firm, LLP, and Jason Ryan
19 Stevenson have asserted liens upon or interests in the Chestwood Property, which the Debtor
20 disputes. As a result, on June 5, 2014, Debtor filed a Complaint in the Eighth Judicial Distract
21 Court, Clark County, Nevada, thereby commencing Case No. A-14-791938 seeking to quiet title.
22 (the “Chestwood Litigation”). See id., ¶ 15.

23 16. Nationstar Mortgage LLC, PRLAP, Inc., Veronica Davalos, and Sergio Davalos
24 Navarro have asserted liens upon or interests in the Castanada Property, which the Debtor
25 disputes. As a result, on June 5, 2014, Debtor filed a Complaint in the Eighth Judicial Distract
26 Court, Clark County, Nevada, thereby commencing Case No. A-14-701939-C seeking to quiet
27 title (the “Castanada Litigation”). See id., ¶ 16.

28

1 active bidding. The Bid Procedures further reflect Debtor’s objective of conducting the Auction
2 in a controlled, but fair and open fashion that promotes interest in the Real Properties by
3 financially-capable, motivated bidders that are likely to close the transaction. See Rubin Decl., ¶
4 18.

5 21. Debtor seeks to conduct an open sales process pursuant to which the winning
6 bidder(s) will enter into an asset purchase agreement substantially in the form of the APA
7 attached hereto as **Exhibit “E”** for the purchase of the Real Properties, free and clear of liens,
8 claims, and encumbrances, with such liens, claims, and encumbrances attaching to the sale
9 proceeds. The Bid Procedures require a deposit, and require a bidder to be Qualified Bidder (as
10 defined in the Bid Procedures). For the avoidance of doubt, Qualified Bidders may bid on any
11 single Real Property or multiple Real Properties. See Ex. E.

12 22. Debtor believes that the sale of the Real Properties through the Auction and in the
13 manner prescribed by the Bid Procedures will maximize value for the Debtor’s estate and
14 creditors. See id. ¶ 19.

15 23. Debtor submits that the Motion and Bid Procedures provide all of the information
16 required by Local Rule 6004 and are typical for asset sales of this size and nature. See id. ¶ 20.

17 24. The following summarizes the key provisions of the Bid Procedures, but is
18 qualified in its entirety by reference to the actual Bid Procedures.³

19 **Participation Requirements and Due Diligence.**

20 In order to participate in the bidding process, the Auction, or otherwise be
21 considered for any purpose hereunder, a person interested in purchasing any of
22 the Real Properties (a “Potential Bidder”) must first deliver to the Debtor and its
23 counsel written evidence that enables the Debtor and its advisors to determine, in
the Debtor’s sole discretion, whether the Potential Bidder has the financial and
other ability to close the contemplated sale transaction

24 The Debtor shall provide the Bid Procedures, together with a copy of a form
25 Asset Purchase Agreement (the “APA”), to each Potential Bidder. All Potential
26 Bidders, whether deemed Qualified Bidders (as defined below) or not, consent to
the jurisdiction of this Bankruptcy Court to determine matters concerning the sale,

27 _____
28 ³ Capitalized terms not defined in this section shall have the meanings ascribed to them in the Bid Procedures
attached hereto as Exhibit C.

1 their Bid, and otherwise with respect to the process and waive any right to any
2 other venue.

3 The Debtor shall: (a) receive and evaluate any bids from Potential Bidders; (b)
4 request information from Potential Bidders, engage in discussions with Potential
5 Bidders, and take such other actions to determine whether any Bid constitutes or
6 could lead to a Qualified Bid; and (c) take any other actions contemplated under
7 these Bid Procedures.

8 **Submission of Bids.**

9 Any Qualified Bidder interested in purchasing all or a portion of the Real
10 Properties must submit a bid prior to 5:00 p.m. (PDT) on the deadline set forth in
11 the Bid Procedures (the "Bid Deadline").

12 The Debtor and its advisors, in their sole discretion, will determine if a bid is a
13 Qualified Bid based on the requirements set forth in the Bid Procedures. A
14 Potential Bidder will be deemed to be a "Qualified Bidder" if the Debtor, in its
15 sole discretion, determines that such Potential Bidder submitted a Qualified Bid.

16 A bid will be considered a "Qualified Bid" only if the bid fulfills the following
17 requirements on or prior to the Bid Deadline:

- 18 a. Provides that the Qualified Bidder's bid shall remain open and irrevocable
19 until the earlier of: (i) thirty (30) days following the date of entry of a Sale
20 Order; or (ii) the date of the closing of the sale of the Real Properties
21 pursuant to the Sale Order;
- 22 b. Provides that the Qualified Bidder is obligated to perform as a Back-Up
23 Bidder (as defined below) in the event such Qualified Bidder is not the
24 Prevailing Bidder;
- 25 c. Is a cash bid or, if there is any component of debt or equity in support of
26 the bid, is evidenced by fully committed and firm financing and other
27 ability to consummate the proposed transaction, in each case acceptable to
28 the Debtor in its sole discretion;
- 29 d. Provides written evidence that the Qualified Bidder has obtained
30 authorization and approval from its board of directors (or comparable
31 governing body) and its equity holders, if necessary, with respect to the
32 submission of its bid and the execution of the APA, or a representation
33 that no such authorization or approval is required;
- 34 e. Is accompanied by an earnest money deposit by wire transfer or
35 immediately available funds in an amount equal to: (i) 10% of the dollar
36 amount of the purchase price of such bid; or (ii) 10% of the value of such
37 bid, payable to the Debtor's counsel's trust account or to an appropriate
38 escrow agent approved by the Debtor's counsel in writing in advance, at
39 the Debtor's election, before the Bid Deadline (the "Deposit");

- 1 f. Is submitted in a writing in the form of the APA with any proposed
2 changes to the APA set forth in an electronic form both clean and marked
3 to reflect such changes signed by the Qualified Bidder, that:
- 4 i. Identifies the Qualified Bidder and any members of its investor
5 group, if applicable;
 - 6 ii. Identifies with specificity what Real Properties the Qualified
7 Bidder offers to purchase;
 - 8 iii. Is not subject to conditions, representations, or terms that the
9 Debtor determines to be unacceptable;
 - 10 iv. Does not contain any financing or due diligence contingencies to
11 closing the proposed transaction unless the Debtor otherwise
12 agrees in writing that such contingencies are acceptable;
 - 13 v. Does not contain any condition to closing the transaction relating
14 to the receipt of any third party or governmental approvals
15 (exclusive of the required Bankruptcy Court approval);
 - 16 vi. Expressly acknowledges and represents that the Qualified Bidder:
17 (A) has had an opportunity to conduct any and all due diligence
18 regarding the Real Properties and the proposed transaction prior to
19 making its bid; (B) has relied solely upon its own independent
20 review, investigation, and/or inspection of any documents and the
21 Real Properties in making its bid or that of any of its legal,
22 financial, or other advisors; and (C) did not rely upon any written
23 or oral statements, representations, promises, warranties, or
24 guaranties whatsoever, whether express, implied, by operation of
25 law or otherwise, regarding the business of Debtor or the Real
26 Properties or the proposed transaction, or the completeness or
27 accuracy of any information provided in connection therewith,
28 except as expressly stated in the representations and warranties
contained in the APA ultimately accepted and executed by the
Debtor;
 - vii. Identifies each and every executory contract and unexpired lease
that the Qualified Bidder desires the Debtor to assume and assign
to the Qualified Bidder at the closing and provides evidence of
such Qualified Bidder's ability to provide adequate assurance of
future performance of such contracts or leases (as required by
section 365(f)(2)(B) of the Bankruptcy Code);
 - viii. Includes a written acknowledgment by such Qualified Bidder that
it agrees to the terms of the Bid Procedures;
 - ix. Includes a written acknowledgment by such Qualified Bidder that
it does not have any lien rights against Debtor or its Real

1 Properties or that it waives and releases such lien(s), and expressly
2 waives any right to assert or file any lis pendens or other lien or
claim against the Real Properties;

- 3 x. Provides for a closing date that is no later than seven (7) days after
4 entry of the Sale Order or such later date as is acceptable to the
Debtor;
- 5 xi. Contains all other information reasonably requested by the Debtor.
- 6 g. A Qualified Bidder that desires to make a bid must deliver written
7 electronic copies of its bid on or prior to the Bid Deadline to Gabrielle A.
8 Hamm, Garman Turner Gordon, 650 White Drive, Suite 100, Las Vegas,
Nevada 89119, gamm@gtg.legal.

9 **The Auction.**

10 If more than one Qualified Bid has been submitted for the Real
11 Properties in accordance with these Bid Procedures, the Debtor will conduct
the Auction on the date set by the Bankruptcy Court in order to determine the
12 highest and best bid (the "Prevailing Bid") to submit for approval by the
Bankruptcy Court at the Sale Hearing. The Auction shall be organized and
13 conducted by the Debtor at the Bankruptcy Court for the District of Nevada
located at Courtroom 4, or such other location as may be announced prior to
14 the Auction to all Qualified Bidders.

15 The only persons or entities who will be permitted to bid at the
16 Auction are the authorized representatives of each Qualified Bidder (the
"Auction Participants").

17 Each Qualified Bidder participating in the Auction shall confirm at the
18 Auction that it has not engaged in any collusion with any other Qualified
Bidder with respect to the bidding, the Auction, or any proposed transaction
19 relating to all or a portion of the Real Properties.

20 The Debtor is authorized to conduct the Auction in accordance with
21 such procedures and requirements as may be established at the discretion of
the Debtor and its counsel, which rules may include, but shall not be limited
22 to, the determination of the amount of time between Qualified Bids, whether
to adjourn the Auction at any time and from time to time, the conducting of
23 multiple rounds of open or sealed bidding with notice only to the parties
entitled to attend the Auction, and to declare that the Auction has ended when
24 no further bids are timely made or otherwise.

25 The first Qualified Bid at the Auction shall be deemed to have been
26 made by the Initial Highest Bidder in the amount of the Initial Highest Bid.
The next Qualified Bid at the Auction shall be an amount equal to or greater
27 than the Initial Highest Bid plus no less than \$2,500 with respect to each Real
Property. Thereafter, the Auction will continue in the manner determined by
28

1 the Debtor above; provided, however: (a) additional bids must be Qualified
2 Bids (except that subsequent Qualified Bids made at the Auction, if made by a
3 Qualified Bidder that made a Qualified Bid prior to the Bid Deadline, need not
4 be received by the Bid Deadline); and (b) all subsequent Qualified Bids made
5 during the Auction must be made in higher increments of at least \$2,500,
6 unless otherwise determined by the Debtor, in its sole discretion, and
7 announced by the Debtor at the Auction.

8 The Debtor shall determine, in its sole discretion, whether a Qualified
9 Bid by a Qualified Bidder at the Auction matches or is higher and better than
10 the prior Qualified Bid.

11 At the conclusion of the Auction: (a) The Debtor shall, in its sole
12 discretion, select: (i) the Prevailing Bid, and (ii) the second highest or best
13 offer (the "Back-Up Bid"); (b) the Debtor shall notify the Prevailing Bidder
14 that such person's offer has been determined by the Debtor to be the
15 Prevailing Bid and will be contingent only on Bankruptcy Court approval, and
16 shall notify the person that made the Back-Up Bid (the "Back-Up Bidder")
17 that such person's offer has been determined by the Debtor to be a Back-Up
18 Bid and will be contingent only on the failure of the Prevailing Bid to close as
19 set forth below and Bankruptcy Court approval; and (c) the Debtor shall file a
20 notice with the Bankruptcy Court announcing the Prevailing Bidder. Prior to
21 the commencement of the Sale Hearing, the Prevailing Bidder shall complete
22 and sign all agreements and documents as necessary to bind the Prevailing
23 Bidder to all of the terms and conditions contemplated by the Prevailing Bid.

24 The Deposit of the Prevailing Bidder or the Back-Up Bidder, as the
25 case may be, shall be held by the Debtor and applied by the Debtor against the
26 purchase price to be paid by the Prevailing Bidder or the Back-Up Bidder, as
27 applicable, at the closing of the relevant transaction approved by the
28 Bankruptcy Court. The Prevailing Bidder's Deposit shall be held by the
Debtor and forfeited to the Debtor if the Prevailing Bidder breaches its
obligations to close under the APA.

The Debtor shall not be deemed to have finally accepted any Qualified
Bid unless and until such Qualified Bid and the Debtor's acceptance thereof
have been authorized by order of the Bankruptcy Court following the
conclusion of the Sale Hearing.

B. Notice and Scheduling of the Auction.

25. The Debtor requests an Auction and Sale Hearing to be set forth in the Notice of
Bid Procedures and Auction, attached hereto as **Exhibit "D"** (the "Auction Notice"). A firm
Auction date will encourage Potential Bidders to promptly engage in the contemplated sale
process. See Rubin Decl., ¶ 21. The Debtor submits that the proposed form of Auction Notice

1 provides sufficient information regarding the Bid Procedures, Auction, and Sale Hearing.

2 26. Within three (3) Business Days following the entry of the Bid Procedures Order,
3 the Debtor shall serve by ECF or first-class mail, the Bid Procedures and Auction Notice on: (i)
4 the Office of the United States Trustee; (ii) all parties known by the Debtor to be asserting a lien
5 on any of Debtor's assets; (iii) the Internal Revenue Service; and (iv) all of the Debtor's known
6 creditors, equity security holders, and other parties-in-interest entitled to notice under
7 Bankruptcy Rule 2002(a).

8 **C. Information Required by Local Rule 6004.**

9 *LR 6004(b)(1).* The form of Asset Purchase Agreement is attached as Exhibit E. The
10 form will be modified as appropriate by Potential Bidders and the Debtor to reflect particular
11 offers.

12 *LR 6004(b)(2).* The only known lienholder is Cappella Mortgage, which holds a lien in
13 the principal amount of \$45,000 on 8600 W. Charleston Blvd., Apt. 2070, Las Vegas, Nevada.
14 Numerous other persons and entities purport to hold some claim against or interest in the Real
15 Properties, identified in Section II.C, above.

16 *LR 6004(b)(3).* The proposed form of sale order is attached as Exhibit B.

17 *LR 6004(b)(4).* Section 332 of the Bankruptcy Code is inapplicable.

18 *LR 6004(b)(5).* The material terms of the sale(s) are as follows:

19 Seller: Star Golden Enterprises, LLC (APA, *preamble*)

20 Buyer: To be determined by the Auction (APA, *preamble*)

21 Subject Properties:

22 8600 W. Charleston Blvd., Apt. 2070, Las Vegas, Nevada.

23 8101 W. Flamingo Rd., Unit 2108, Las Vegas, Nevada.

24 1199 Chestwood Ave., Las Vegas, Nevada.

25 3448 Castanada St., North Las Vegas, Nevada.

26 799 Mesquite Springs, Unit 101, Mesquite, Nevada.

27 Price: To be determined by the Auction. (APA, § 2.4)

28 Deposit: 10% of the dollar amount of the purchase price or value of
the bid. (Bid Procedures (Ex. C), § C.3)

1 LR 6004(b)(6). The following are known to the Debtor with respect to the terms which
2 are deemed presumptively material under Local Rule 6004(b)(6):

- 3 (A) No insider has made a bid for any of the Real Properties. Insiders are not precluded
4 from submitting bids.
- 5 (B) The Debtor does not anticipate discussing or entering into any agreements with any
6 person regarding compensation or future employment of management or key
7 employees.
- 8 (C) The Motion does not contemplate release, waiver, or satisfaction of any claims by
9 the estate or release of any person or entity.
- 10 (D) The Bid Procedures provide for an auction if any bids are received. The Debtor has
11 not agreed not to solicit competing offers or otherwise limit the marketing of the
12 Real Properties.
- 13 (E) The Debtor has not imposed any deadlines for closing the proposed sale or
14 deadlines that are conditions to closing.
- 15 (F) To be a Qualified Bidder, a Potential Bidder must deposit 10% of the dollar amount
16 of the purchase price or value of the bid. The Prevailing Bidder's Deposit shall be
17 held by the Debtor and forfeited if the Prevailing Bidder breaches its obligations to
18 close under the APA.
- 19 (G) The Debtor does not anticipate entering into an interim agreement with a bidder
20 concerning management of the Real Properties or otherwise.
- 21 (H) The Debtor does not propose to release sale proceeds on or after closing without
22 further court order, or definitively allocate sale proceeds.
- 23 (I) No provision seeks to have the sale declared exempt from taxes under 11 U.S.C. §
24 1146(a).
- 25 (J) The Debtor is selling substantially all of its real property assets pursuant to the
26 Motion, but is not seeking to sell any other estate assets, including claims and
27 causes of action. The Debtor will retain its books and records, including as required
28 to enable it to administer its bankruptcy case.
- (K) The Debtor does not seek to sell or limit any rights under Chapter 5 of Title 11.
- (L) The Debtor seeks a finding that the Prevailing Bidder is not a successor to the
Debtor. See Exhibit B, p. 6.
- (M) The Motion seeks to sell the Real Properties free and clear of liens, claims, and
encumbrances, but does not seek to sell free and clear of any possessory leasehold
interest or license. The Purchaser will be required to assume any non-residential
real property lease in existence at the time of the Closing.
- (N) Any holder of a lien, including any DIP lender approved by the Bankruptcy Court,
may seek to credit bid its lien pursuant to applicable law.

- 1 (O) The Debtor does not have a stalking horse bidder, and therefore it is not known if
2 time will be of the essence to the Prevailing Bidder(s) in closing a sale.
3 Accordingly, the Debtor seeks relief from the 14-day stay solely in the event time is
4 of the essence for the Prevailing Bidder(s).

5 **IV.**
6 **LEGAL AUTHORITY**

7 **A. Applicable Standards**

8 **1. The Standard for Asset Sales - Section 363(b).**

9 Section 363(b) of the Bankruptcy Code provides that “the trustee, after notice and a
10 hearing, may use, sell, or lease, other than in the ordinary course of business, property of the
11 estate.” 11 U.S.C. § 363(b). The standard for approval of a sale of property of the estate under
12 Section 363 is whether there exists some articulated business justification for the proposed
13 transaction, and whether the sale is in the best interests of the debtor, creditors, and equity
14 holders. See Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19 (B.A.P. 9th Cir. 1988)
15 (quoting Institutional Creditors of Continental Airlines, Inc. (In re Continental Airlines, Inc.),
16 780 F.2d 1223, 1226 (5th Cir. 1986). Stated otherwise, the decision to sell assets outside of the
17 ordinary course of business is based upon the sound business judgment of the debtor. See
18 Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Montgomery Ward
19 Holding Corp., 242 B.R. 147, 153 (D. Del. 1999); In re Delaware & Hudson Ry. Co., 124 B.R.
20 169, 176 (D. Del. 1991); In re Trans World Airlines, Inc., 2001 WL 1820326, at *10 (Bankr. D.
21 Del. Apr. 2, 2001).

22 In making such a determination, courts may look to the following factors:

- 23 (a) Whether a sound business justification exists for the sale;
24 (b) Whether the assets are increasing or decreasing in value;
25 (c) Whether the sale will produce a fair and reasonable price for the property;
26 (c) Whether the assets have been given adequate marketing; and
27 (d) Whether adequate and reasonable notice of the sale was given.

28 See In re Work Recovery, 202 B.R. 301, 303-04 (Bankr. D. Ariz. 1996); and In re Wilde Horse
Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); In re Delaware & Hudson Ry., 124

1 B.R. at 176; In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); In re United
2 Healthcare Sys., Inc., No. 97-1159, 1997 WL 176574, at *4 and n.2 (D. N.J. Mar. 26, 1997).

3 **2. Procedural Requirements - Rules 6004(f) and 2002(c)(1).**

4 Rule 6004(f) of the Bankruptcy Rules provides that “[a]ll sales not in the ordinary course
5 of business may be by private sale or by public auction.” Fed. R. Bankr. P. 2002(c)(1). A
6 trustee is entitled to broad discretion in determining the manner of a sale, including whether to
7 sell property by public or private sale. See In re Frezzo, 217 B.R. 985, 989 (Bankr. M.D. Pa.
8 1988) (citing In re Canyon Partnership, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985)).

9 Bankruptcy Rule 2002(c)(1) provides that:

10 [N]otice of a proposed use, sale, or lease of property... shall include
11 the time and place of any public sale, the terms and conditions of any
12 private sale, and the time fixed for filing objections.

13 Fed. R. Bankr. P. 2002(c)(1).

14 **3. Sales “Free and Clear” - Section 363(f).**

15 Section 363(f) of the Bankruptcy Code provides:

16 The trustee may sell property under subsection (b) or (c) of this section
17 free and clear of any interests in such property of an entity other than the
18 estate, only if --

- 19 (1) applicable nonbankruptcy law permits sale of such property free
20 and clear of such interest;
- 21 (2) such entity consents;
- 22 (3) such interest is a lien and the price at which such property is to be
23 sold is greater than the aggregate value of all liens on such
24 property;
- 25 (4) such interest is in bona fide dispute; or
- 26 (5) such entity could be compelled, in a legal or equitable proceeding,
27 to accept a money judgment of such interest.

28 11 U.S.C. § 363(f). Section 365(f) is written in the disjunctive. Thus, satisfaction of any one of
the five conditions is sufficient to sell property free and clear of interest. See In re Kellstrom
Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the

1 disjunctive, not the conjunctive, and if any of the five conditions is met, the debtor has the
2 authority to conduct the sale free and clear of all liens” (citing Citicorp Homeowners Servs., Inc.
3 v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988)); In re Dundee Equity Corp., 1992 WL
4 53743, at *4 (Bankr. S.D.N.Y. March 6, 1992) (“Section 363(f) is in the disjunctive, such that
5 the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have
6 been met”); Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine
7 Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (holding that the court may approve the
8 sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f)
9 is met).

10 **4. Section 105.**

11 Section 105(a) of the Bankruptcy Code provides:

12 The court may issue any order, process, or judgment that is necessary
13 or appropriate to carry out the provisions of this title. No provision of
14 this title providing for the raising of an issue by a party in interest shall
15 be construed to preclude the court from, sua sponte, taking any action
or making any determination necessary or appropriate to enforce or
implement court orders or rules, or to prevent an abuse of process.

16 11 U.S.C. § 105(a).

17 **B. The Bid Procedures Are Fair, Appropriate, and Should Be Approved.**

18 Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of
19 business may be by private sale or public auction. The Debtor submits that the Real Properties
20 can best be valued in the context of an actual auction subject to competitive bidding. At the Sale
21 Hearing, the Debtor will then present to the Court the Prevailing Bid that was subjected to a
22 comprehensive sale process culminating in the Auction. As a result, the successful bid will
23 represent a fair and reasonable price for the Assets. See In re Onouli-Kona Land Co., 846 F.2d
24 1170 (9th Cir. 1988) (upholding the results of a Section 363 auction where there was no evidence
25 of bad faith); In re Gucci, 126 F.3d 380 (2d Cir. 1997) (“[W]here the purchaser is found to have
26 acted in good faith, the auction price suffices to demonstrate that the purchaser paid value for the
27 assets.”); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) (holding that
28

1 an auction is sufficient to establish the value of assets except where purchaser did not act in good
2 faith); In re Alpha Indus., Inc., 84 B.R. 703, 706 (Bankr. Mont. 1988) (“Generally speaking, an
3 auction may be sufficient to establish that one has paid ‘value’ for the assets of a bankrupt.”).

4 The Bid Procedures are structured so as to produce an open, transparent, and vibrant
5 auction process. The Debtor respectfully submits that the sale of the Assets, pursuant to the Bid
6 Procedures and by the public Auction, will ensure that the bidding process with respect to the
7 Assets is fair, reasonable, and will yield the maximum value for Debtor’s estate and creditors. It
8 is widely recognized that procedures intended to enhance competitive bidding are consistent with
9 the goal of maximizing the value received by the estate and are therefore appropriate in the
10 context of bankruptcy sales. See In re Integrated Res., Inc., 147 B.R. 650, 659 (Bankr. S.D.N.Y.
11 1992) (such procedures “encourage bidding and to maximize the value of the debtor’s assets”);
12 In re Financial News Network, Inc., 126 B.R. 152, 156 (S.D.N.Y. 1991) (as amended) (“court-
13 imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison
14 of offers, and [should] provide for an [sic] fair and efficient resolution of bankrupt estates”); see
15 also In re Montgomery Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr. D. Del. Aug. 6,
16 1997) [ECF No. 377]; In re Fruehauf Trailer Corp., Case No. 96-01563 (PJW) (Bankr. D. Del.
17 Jan. 31, 1997) [ECF No. 439].

18 The Debtor has determined that the sale process is the optimal mechanism for
19 maximizing the value of the Debtor’s assets for the benefit of the creditors. The Bid Procedures
20 provide a careful balance of ensuring sufficient time for marketing and effectuating a sale
21 process while also being cognizant of the bankruptcy estate’s financial constraints and the
22 potential loss resulting from any significant delay or uncertainty in the sale process. To
23 encourage competitive overbidding, the Bid Procedures provide for a minimal overbid amount,
24 provide for allow sufficient time for marketing the Real Properties, and provide for no expense
25 reimbursement or break-up fee. The Debtor submits that the sale process as set forth in the Bid
26 Procedures is necessary under the circumstances and provides the best mechanism to maximize
27 value for the Debtor and its estate. See Rubin Decl. ¶ 22.

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1 Similar procedures have previously been approved by this Court and others. See In re
2 Consolidated Resorts, Inc., et al., Case No. 09-22035 (Lead Case) (LBR) (Bankr. D. Nev. Mar.
3 16, 2012) [ECF No. 973]; In re Humboldt Creamery, LLC, Case No. 09-11078 (AJ) (Bankr.
4 N.D. Cal. July 28, 2009) [ECF No. 177]; In re Asyst Techs, Inc., Case No. 09-43246 (RJN)
5 (Bankr. N.D. Cal. June 8, 2009) [ECF No. 181]; In re Nortel Networks, Inc., Case No. 09-10138
6 (KG) (Bankr. D. Del. June 30, 2009) [ECF No. 1012]; In re Tweeter Home Entm't Group, Inc.,
7 Case No. 07-10787 (PJW) (Bankr. D. Del. June 26, 2007) [ECF No. 211]; In re Radnor Holdings
8 Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Sept. 22, 2006) [ECF No. 277].

9 As the Bid Procedures serve to maximize the value of the estate for the benefit of the
10 creditors, the Debtor requests approval of the Bid Procedures.

11 **C. The Sale of the Real Properties Should Be Approved.**

12 A sound business purpose for the sale of a debtor's assets outside the ordinary course of
13 business may be found where such a sale is necessary to preserve the value of assets for the
14 estate, its creditors, or interest holders. See, e.g., In re Abbotts Dairies, 788 F.2d 143; In re
15 Lionel Corp., 722 F.2d 1063 (2d Cir. 1983). In fact, the paramount goal in any proposed sale of
16 property of the estate is to maximize the proceeds received by the estate. See In re Food Barn
17 Stores, Inc., 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of
18 the Code [is] to enhance the value of the estate at hand"); In re Integrated Res., Inc., 147 B.R. at
19 659 ("It is a well-established principle of bankruptcy law that the . . . [Trustee's] duty with
20 respect to such sales is to obtain the highest price or greatest overall benefit possible for the
21 estate" (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

22 The Debtor believes that the proposed sale process for the Debtor's Real Properties is the
23 optimal (and likely only) mechanism in order to maximize the value of the Debtor's Real
24 Properties, for the benefit of all creditors and the estate. See Rubin Decl., ¶ 23. Accordingly, the
25 Debtor submits that the sale of the Real Properties amply satisfies Section 363(b) of the
26 Bankruptcy Code.

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1 **D. The Sale Should Be Made “Free and Clear.”**

2 Pursuant to Section 363(f) of the Bankruptcy Code, the Sale may be free and clear of
3 liens, claims, and encumbrances. The only parties holding such potential lien rights are the
4 Alleged Lien Parties asserting claims in the Quiet Title Actions described above, along with
5 Capella Mortgage with respect to the Charleston Property.

6 The Alleged Lien Parties’ liens and interests are in the subject of a bona fide dispute as
7 reflected by the pending Quiet Title Actions. “The purpose of Section 363(f)(4) is to permit
8 property of the estate to be sold free and clear of interests that are disputed by the representative
9 of the estate so that liquidation of the estate’s assets need not be delayed while such disputes are
10 being litigated.” In re Clark, 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001). To meet the requisites of
11 subsection (f)(4), the trustee needs to prove an objective basis for either a factual or legal dispute
12 as to the validity of the asserted interest. In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. N.D.
13 Ill. 1991) (citing In re Busick, 831 F.2d 745, 750 (7th Cir. 1987)). Here, the Debtor has filed
14 legal challenge to the validity of the Alleged Lien Parties’ claims as a result of such claims being
15 extinguished through the HOA Foreclosures.⁴ Therefore, a bona fide dispute exists and the
16 property may be sold free and clear of the Alleged Lien Parties’ liens, claims, and/or interests.

17 With respect to Capella Mortgage and any remaining secured creditors, if any, the Debtor
18 believes they will either consent or be deemed to have consented to the sale, thereby satisfying
19 Section 363(f)(2), and their liens will attach to the proceeds of the sale in the same order of
20 priority in which they attach to the Real Properties, thereby satisfying Section 363(f)(3).
21 Accordingly, the Debtor requests that the Real Properties be sold fee and clear of all liens,
22 claims, and encumbrances pursuant to Section 363(f).

23 **E. The Prevailing Bidder Is Entitled to a Good Faith Finding.**

24 Section 363(m) of the Bankruptcy Code provides:

25 The reversal or modification on appeal of an authorization under
26 subsection (b) or (c) of this section of a sale or lease of property does

27 ⁴ The Debtor’s position in the Quiet Title Actions was recently validated by the Nevada Supreme Court in
28 Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo Bank, N.A.,
388 P.3d 970 (Nev. 2017).

1 not affect the validity of a sale or lease under such authorization to an
2 entity that purchased or leased such property in good faith, whether or
3 not such entity knew of the pendency of the appeal, unless such
authorization and such sale or lease were stayed pending appeal.

4 11 U.S.C. § 363(m).

5 The Debtor submits, and will present evidence at the Sale Hearing if necessary, that the
6 selection of the Prevailing Bidder shall be the product of arms-length, good faith negotiations in
7 the anticipated competitive sale process. Accordingly, the Debtor requests that the Court make a
8 finding at the Sale Hearing and in the Sale Order that the Prevailing Bidder has purchased the
9 Real Property(ies) in good faith and is entitled to the full protections of Section 363(m), thereby
10 protecting the Prevailing Bidder's interest in the Real Property(ies) should the sale be reversed or
11 modified on appeal.

12 **F. The Form Notice of Hearing and Sale Should be Approved.**

13 Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify creditors
14 of the proposed sale of the Real Properties including a disclosure of the time and place of the
15 Auction, the terms and conditions of the proposed sale, and the deadline for filing objections.
16 The Debtor submits that the notice procedures described above fully comply with Bankruptcy
17 Rule 2002 and are reasonably calculated to provide timely and adequate notice of the proposed
18 sale of the Real Properties, the Bid Procedures, the Auction, and the Sale Hearing to the Debtor's
19 creditors and all other parties-in-interest that are entitled to notice. Based upon the foregoing,
20 the Debtor respectfully requests that the Court approve the notice procedure proposed above,
21 including the form and manner of service of the Auction Notice.

22 **G. Waiver of the Stay Imposed by Bankruptcy Rule 6004(h).**

23 To the extent time is of the essence for any Prevailing Bidder(s), the Debtor requests that
24 the Court waive the stay imposed pursuant to Bankruptcy Rule 6004(h).

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V.
CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of the Order attached hereto as **Exhibit "A"** granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 27, 2017.

GARMAN TURNER GORDON LLP

By: /s/ Gabrielle A. Hamm
GREGORY E. GARMAN, ESQ.
GABRIELLE A. HAMM, ESQ.
TERESA M. PILATOWICZ, ESQ.
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Debtor

4845-6598-8170, v. 6

EXHIBIT C

EXHIBIT C

BID PROCEDURES

These bid procedures (the “Bid Procedures”) set forth the process by which Star Golden Enterprises, LLC (the “Debtor”) shall market and sell its real properties, defined below, to interested parties and conduct a sale by public auction (the “Auction”).

On July __, 2017, the Debtor filed its *Motion for Entry of Orders: (A)(I) Approving Bid Procedures Relating to Sale of the Debtor’s Real Properties; (II) Approving the Form and Manner of Notice of Sale by Auction; (III) Scheduling a Hearing to Consider the Sale; and (IV) Granting Related Relief; and (B)(I) Authorizing the Sale of Debtor’s Real Properties Outside of the Ordinary Course of Business Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (II) Granting Related Relief* [ECF No. __] (the “Sale Motion”) with the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”) in Case No. BK-S-17-10440-BTB.

On August __, 2017, the Bankruptcy Court entered its order (the “Bid Procedures Order”), thereby approving these Bid Procedures and establishing the time and date of the public auction (the “Auction”) and the hearing to approve the sale of Debtor’s Real Properties (the “Sale Hearing”).

In accordance with the Bid Procedures, the Debtor will solicit bids (“Bids”) to determine the highest or otherwise best offer for the sale of the Debtor’s following real properties:

- Clark County Assessor’s Parcel No. 138-32-819-142, commonly known as 8600 W. Charleston Blvd., Apt. 2070, Las Vegas, Nevada (the “Charleston Property”);
- Clark County Assessor’s Parcel No. 163-21-515-196, commonly known as 8101 W. Flamingo Rd., Unit 2108, Las Vegas, Nevada (the “Flamingo Property”);
- Clark County Assessor’s Parcel No. 177-15-816-014, commonly known as 1199 Chestwood Ave., Las Vegas, Nevada (the “Chestwood Property”);
- Clark County Assessor’s Parcel No. 139-12-311-015, commonly known as 3448 Castanada St., North Las Vegas, Nevada (the “Castanada Property”); and
- Clark County Assessor’s Parcel No. 001-09-510-009, commonly known as 799 Mesquite Springs, Unit 101, Mesquite, Nevada (the “Mesquite Property”).

(each a “Real Property,” and collectively, the “Real Properties”) at the Auction under the provisions of title 11 of the United States Code (the “Bankruptcy Code”), which sale shall be free and clear of liens, claims, encumbrances, and interests, to a Qualified Bidder (as defined

herein) that is determined to have made the highest or otherwise best offer in accordance with the Bidding Procedures (the “Prevailing Bidder,” and the winning Bid, the “Prevailing Bid”).

Qualified Bidders may bid on any one or more Real Property or on the entire portfolio of Real Properties. To the extent that a Bid is made for more than one Real Property, the Qualified Bidder shall assign an amount of bid to each Real Property to aid in the determination of the highest and best offer.

Potential Bidders seeking information about the due diligence or qualification process should contact:

Garman Turner Gordon LLP
Attn: Gabrielle A. Hamm, Esq.
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Phone: (725) 777-3000
Email: gahamm@gtg.legal

A. Important Dates.

Bid Deadline – _____

Objection Deadline – _____

Auction – _____

Sale Hearing – _____

B. Participation Requirements and Due Diligence.

- 1) In order to participate in the bidding process, the Auction, or otherwise be considered for any purpose hereunder, a person interested in purchasing any of the Real Properties (a “Potential Bidder”) must first deliver to the Debtor and its counsel at the address above written evidence that enables the Debtor and its advisors to determine, in its sole discretion, whether the Potential Bidder has the financial and other ability to close the contemplated sale transaction.
- 2) The Debtor shall provide these Bidding Procedures, together with a copy of a form Asset Purchase Agreement (the “APA”), to each Potential Bidder. All Potential Bidders, whether deemed Qualified Bidders (as defined below) or not, consent to the jurisdiction of this Bankruptcy Court to determine matters concerning the sale, their Bid, and otherwise with respect to the process and waive any right to any other venue.
- 3) The Debtor shall: (a) receive and evaluate any Bids from Potential Bidders; (b) request information from Potential Bidders, engage in discussions with Potential Bidders, and take such other actions to determine whether any Bid constitutes or could lead to a Qualified Bid; and (c) take any other actions contemplated under these Bidding Procedures.

C. Submission of Bids.

- 1) Any Qualified Bidder interested in purchasing all or a portion of the Real Properties must submit a Bid prior to **5:00 p.m. (PST) on _____, 2017** (the "Bid Deadline").
- 2) The Debtor and its advisors, in their sole discretion, will determine if a Bid is a Qualified Bid based on the requirements herein. A Potential Bidder will be deemed to be a "Qualified Bidder" if the Debtor, in its sole discretion, determines that such Potential Bidder submitted a Qualified Bid.
- 3) A Bid will be considered a "Qualified Bid" only if the Bid fulfills the following requirements on or prior to the Bid Deadline (capitalized terms used in this section are defined later in the Bidding Procedures):
 - (a) Provides that the Qualified Bidder's Bid shall remain open and irrevocable until the earlier of: (i) thirty (30) days following the date of entry of a Sale Order; or (ii) the date of the closing of the sale of the Real Properties pursuant to the Sale Order;
 - (b) Provides that the Qualified Bidder is obligated to perform as a Back-Up Bidder (as defined below) in the event such Qualified Bidder is not the Prevailing Bidder;
 - (c) Is a cash bid or, if there is any component of debt or equity in support of the bid, is evidenced by fully committed and firm financing and other ability to consummate the proposed transaction, in each case acceptable to the Debtor in its sole discretion;
 - (d) Provides written evidence that the Qualified Bidder has obtained authorization and approval from its board of directors (or comparable governing body) and its equity holders, if necessary, with respect to the submission of its Bid and the execution of the APA, or a representation that no such authorization or approval is required;
 - (e) Is accompanied by an earnest money deposit by wire transfer or immediately available funds in an amount equal to: (i) 10% of the dollar amount of the purchase price of such Bid; or (ii) 10% of the value of such Bid, payable to the Debtor's counsel's trust account or to an appropriate escrow agent approved by the Debtor's counsel in writing in advance, at the Debtor's election, before the Bid Deadline (the "Deposit");
 - (f) Is submitted in a writing in the form of the APA with any proposed changes to the APA set forth in an electronic form both clean and marked to reflect such changes signed by the Qualified Bidder, that:
 - (i) Identifies the Qualified Bidder and any members of its investor group, if applicable;

- (ii) Identifies with specificity what Real Properties the Qualified Bidder seeks to purchase;
- (iii) Is not subject to conditions, representations, or terms that the Debtor determines to be unacceptable;
- (iv) Does not contain any financing or due diligence contingencies to closing the proposed transaction unless the Debtor otherwise agrees in writing that such contingencies are acceptable;
- (vi) Does not contain any condition to closing the transaction relating to the receipt of any third party or governmental approvals (exclusive of the required Bankruptcy Court approval);
- (vii) Expressly acknowledges and represents that the Qualified Bidder: (A) has had an opportunity to conduct any and all due diligence regarding the Real Properties and the proposed transaction prior to making its Bid; (B) has relied solely upon its own independent review, investigation, and/or inspection of any documents and the Real Properties in making its Bid or that of any of its legal, financial, or other advisors; and (C) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the business of Debtor or the Real Properties or the proposed transaction, or the completeness or accuracy of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the APA ultimately accepted and executed by the Debtor;
- (viii) Identifies each and every executory contract and unexpired lease that the Qualified Bidder desires the Debtor to assume and assign to the Qualified Bidder at the closing and provides evidence of such Qualified Bidder's ability to provide adequate assurance of future performance of such contracts or leases (as required by section 365(f)(2)(B) of the Bankruptcy Code) along with the Bid;
- (ix) Includes a written acknowledgment by such Qualified Bidder that it agrees to the terms of these Bidding Procedures;
- (x) Includes a written acknowledgment by such Qualified Bidder that it does not have any lien rights against Debtor or its Real Properties or that it waives and releases such lien(s), and expressly waives any right to assert or file any lis pendens or other lien or claim against the Real Properties;
- (xi) Provides for a closing date that is no later than seven (7) days after entry of the Sale Order or such later date as is acceptable to the Debtor;
- (xiii) Contains all other information reasonably requested by the Debtor.

- 4) A Qualified Bidder that desires to make a Bid must deliver written electronic copies of its Bid on or prior to the Bid Deadline to Teresa Pilatowicz, Garman Turner Gordon, 650 White Drive, Suite 100, Las Vegas, Nevada 89119, tpilatowicz@gtg.legal.
- 5) After the Bid Deadline, the Debtor, in its sole discretion, shall determine which Qualified Bid represents the then-highest or otherwise best bid (the “Initial Highest Bid” and the entity submitting such Bid, the “Initial Highest Bidder”). Prior to or at the start of the Auction, each Qualified Bidder that timely submitted a Qualified Bid will be advised of such Initial Highest Bid and the Debtor may: (a) distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction; or (b) proceed with an open or sealed bidding process.

D. Due Diligence From Potential Bidders or Qualified Bidders.

- 1) Each Potential Bidder shall comply with all reasonable requests for additional information by the Debtor or its advisors regarding such Potential Bidder’s financial wherewithal to consummate and perform obligations in connection with the acquisition of the Real Properties. Failure by a Potential Bidder to comply with requests for additional information is a basis for the Debtor to determine that a Potential Bidder is not a Qualified Bidder.
- 2) Similarly, each Qualified Bidder shall comply with all reasonable requests for additional information by the Debtor or its advisors regarding such Qualified Bidder’s financial wherewithal to consummate and perform obligations in connection with the acquisition transaction of the Real Properties as the Auction progresses. Failure by a Qualified Bidder to comply with requests for additional information is a basis for the Debtor to determine that the Qualified Bidder may no longer participate in the Auction.

E. “As Is, Where Is.”

- 1) The sale of the Real Properties shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents, or estate or any other party, except to the extent set forth in the APA between the Debtor and the Prevailing Bidder. Except as otherwise provided in the Prevailing Bidder’s APA, all of Debtor’s right, title and interest in and to the Real Properties shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein (collectively, the “Claims”) pursuant to Section 363(f) of the Bankruptcy Code, such Claims to attach to the net proceeds of the sale of the Real Properties, with the same validity and priority as existed immediately prior to such sale.
- 2) Several of the Real Properties are currently leased to third parties (the “Residential Leases”). **The Residential Leases are not subject to assumption or rejection by the Prevailing Bidder, and the purchase of any Real Property shall be subject to any applicable Residential Lease.** Additional information regarding the Residential Leases may be obtained from the Debtor’s counsel at the address set forth above.

F. The Auction.

- 1) If more than one Qualified Bid has been submitted for the Real Properties in accordance with these Bidding Procedures, the Debtor will conduct the Auction on _____, 2017, at ____:____.m., (PST) in order to determine the highest and best Bid (the "Prevailing Bid") to submit for approval by the Bankruptcy Court at the Sale Hearing. The Auction shall be organized and conducted by the Debtor at the Bankruptcy Court for the District of Nevada located at Courtroom 1, or such other location as may be announced prior to the Auction to all Qualified Bidders.
- 2) The only persons or entities who will be permitted to Bid at the Auction are the authorized representatives of each Qualified Bidder (the "Auction Participants").
- 3) Each Qualified Bidder participating in the Auction shall confirm at the Auction that it has not engaged in any collusion with any other Potential or Qualified Bidder concerning the concerning a Bid, the Auction, or any proposed transaction relating to all or a portion of the Real Properties.
- 4) The Debtor is authorized to conduct the Auction in accordance with such procedures and requirements as may be established at the discretion of the Debtor and its counsel, which rules may include, but shall not be limited to, the determination of the amount of time between Qualified Bids, whether to adjourn the Auction at any time and from time to time, the conducting of multiple rounds of open or sealed bidding with notice only to the parties entitled to attend the Auction, and to declare that the Auction has ended when no further Bids are timely made or otherwise.
- 5) The first Qualified Bid at the Auction shall be deemed to have been made by the Initial Highest Bidder in the amount of the Initial Highest Bid. The next Qualified Bid at the Auction shall be an amount equal to or greater than the Initial Highest Bid plus no less than \$2,500 with respect to each Real Property. Thereafter, the Auction will continue in the manner determined by the Debtor; provided, however: (a) additional Bids must be Qualified Bids (except that subsequent Qualified Bids made at the Auction, although received from a Qualified Bidder that made a Qualified Bid prior to the Bid Deadline, need not be received by the Bid Deadline); and (b) all subsequent Qualified Bids made during the Auction must be made in higher increments of at least \$2,500, unless otherwise determined by the Debtor, in its sole discretion, and announced by the Debtor at the Auction.
- 6) The Debtor shall determine, in its sole discretion, whether a Qualified Bid by a Qualified Bidder at the Auction matches or is higher and better than the prior Qualified Bid.
- 7) At the conclusion of the Auction: (a) the Debtor shall, in its sole discretion, select: (i) the Prevailing Bid, and (ii) the second highest or best offer for the Real Properties (the "Back-Up Bid"); (b) the Debtor shall notify the Prevailing Bidder that such person's offer has been determined by the Debtor to be the Prevailing Bid and will be contingent only on Bankruptcy Court approval, and shall notify the person that made

the Back-Up Bid (the “Back-Up Bidder”) that such person’s offer has been determined by the Debtor to be a Back-Up Bid and will be contingent only on the failure of the Prevailing Bid to close as set forth below and Bankruptcy Court approval; and (c) the Debtor shall file a notice with the Bankruptcy Court announcing the Prevailing Bidder. Prior to the commencement of the Sale Hearing, the Prevailing Bidder shall complete and sign all agreements and documents as necessary to bind the Prevailing Bidder to all of the terms and conditions contemplated by the Prevailing Bid.

- 8) The Deposit of the Prevailing Bidder or the Back-Up Bidder, as the case may be, shall be held by the Debtor and applied by the Debtor against the purchase price to be paid by the Prevailing Bidder or the Back-Up Bidder, as applicable, at the closing of the relevant transaction approved by the Bankruptcy Court. The Prevailing Bidder’s Deposit shall be held by the Debtor and forfeited to the Debtor if the Prevailing Bidder breaches its obligations to close under the APA.
- 9) The Debtor shall not be deemed to have finally accepted any Qualified Bid unless and until such Qualified Bid and the Debtor’s acceptance thereof have been authorized by order of the Bankruptcy Court following the conclusion of the Sale Hearing.

G. Back-Up Bidder.

If for any reason the Prevailing Bidder fails to consummate the acquisition of the Real Properties in accordance with the Prevailing Bid, and in any event no later than seven (7) days from the entry of the Sale Order, unless otherwise extended in writing by the Debtor, (i) the Prevailing Bidder’s deposit shall be forfeited to the Debtor’s estate, and (ii) the Debtor is authorized to proceed with the sale of the Real Property(ies) to the Back-Up Bidder in accordance with the Back-Up Bid without further order of the Bankruptcy Court. If for any reason the Back-Up Bidder fails to consummate the acquisition of the Real Property(ies) in accordance with the Back-Up Bid, the Back-Up Bidder’s Deposit shall be forfeited to Debtor’s estate.

H. Deposit.

No later than the third (3rd) business day following the entry of the Sale Order, the Debtor shall return to each Qualified Bidder(s), other than the Prevailing Bidder and the Back-Up Bidder, its respective Deposit(s) less any transfer fees. No later than the third (3rd) business day after the closing of the Sale of the Real Properties to the Prevailing Bidder, the Debtor shall return the Back-Up Bidder’s Deposit to the Back-Up Bidder.

I. Sale Hearing and Objection Deadline.

- 1) The Sale Hearing to consider the relief requested in the Sale Motion (defined below) and to consider whether to approve the Prevailing Bid and the Back-Up Bid shall be held before the Bankruptcy Court on _____, 2017, at _____.m., (PST) (the “Sale Hearing”), at which time it is expected that the Court will enter the order approving the sale (the “Sale Order”).

- 2) Objections, if any, to the to approval of the sale of Real Properties to the Prevailing Bidder (the "Sale Motion"), including, but not limited to, the sale of the Real Properties free and clear of Claims pursuant to 11 U.S.C. § 363(f) shall: (a) be in writing; (b) clearly specify the grounds for the objection; (c) conform to the Bankruptcy Rules and the Local Rules; and (d) be filed with the Court and served so as to be received by all parties required under Bankruptcy Rule 2002 and Local Rule 2002 (collectively, the "Objection Notice Parties") by _____, **2017** (the "Objection Deadline").
- 3) Any person objecting to the Sale Motion that has not filed an objection by the Objection Deadline shall not be heard at the Sale Hearing and shall be barred from objecting to the Sale Motion.

J. Modifications.

The Debtor in its sole discretion, may, without further notice or approval, adopt, implement, and/or waive such other, additional or existing procedures or requirements that serves to further an orderly Auction and bid process, including, but not limited to, the imposition of a requirement that all Qualified Bidders submit sealed Qualified Bids during the Auction.

EXHIBIT E

EXHIBIT E

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “*Agreement*”), dated as of _____, 2017, is entered into by and among: (i) Star Golden Enterprises, LLC (“*Seller*” or “*Debtor*”) and (ii) _____ (“*Purchaser*”).

PRELIMINARY STATEMENTS

A. On January 31, 2017, Debtor filed a voluntary petition for relief under Chapter 11 (“*Chapter 11 Case*”) of Title 11 of the U.S. Code (as amended, the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Nevada (the “*Bankruptcy Court*”).

B. Upon the terms and subject to the conditions set forth herein and pursuant to Section 363 of the Bankruptcy Code, Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase and acquire from Seller, the following real property(ies): _____ (the “*Real Property*”).

C. The parties desire to consummate the transactions contemplated hereby as promptly as practicable after the Bankruptcy Court enters the Sale Order (as defined in Section 1.6).

AGREEMENT

In consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Definitions.* As used in this agreement, the following defined terms have the meanings indicated below:

1.1 “*Escrow Agent*” shall mean First American Title Company.

1.2 “*Laws*” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any governmental or regulatory authority.

1.3 “*Liability*” means any claim, as defined by Section 101(5) of the Bankruptcy Code, including, without limitation, any indebtedness, obligation or other liability (whether or not absolute, accrued, matured, contingent, liquidated, known, suspected, fixed or otherwise), fine, assessment, penalty, judgment, award, loss, claim, demand, damage or settlement respecting any Action.

1.4 “*Lien*” means any lien, claim, charge, claim, pledge, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, security interest, option or other encumbrance (including, without limitation, the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

1.5 “*Person*” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or governmental or regulatory Authority.

1.6 “*Sale Order*” means the *Order Approving Sale Free and Clear of Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. 363(b) and 363(f)* to be entered by the Bankruptcy Court.

2. *Purchase and Sale of Assets; Closing.*

2.1 *Assets.* Upon the terms and subject to the conditions of this Agreement and the Sale Order, on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all Liabilities and Liens and Purchaser shall purchase, acquire and accept from Seller, all of Seller’s right, title and interest in and to all of the Real Property (the “*Purchased Assets*”).

2.2 *Assumed Liabilities.* At and as of the Closing, Purchaser shall assume and agree to pay, perform and discharge all Liabilities accruing or due to be performed from and after the Closing Date pursuant to or in respect of all Purchased Assets [including all obligations of the landlord pursuant that certain Residential Lease Agreement dated _____ by and between Star Golden Enterprises, LLC and _____] (the “*Assumed Liabilities*”).

2.3 *Excluded Liabilities.* Other than the Assumed Liabilities, Purchaser shall not assume or be liable for or bound by any Liabilities of Debtor or any Lien (whether or not asserted, scheduled or evidenced by a filed proof of claim or other form of writing evidencing such claim filed in the Bankruptcy Case, whether secured, priority, administrative or unsecured, or whether accruing prior to or after the commencement of the Bankruptcy Case) (collectively, the “*Excluded Liabilities*”).

2.4 *Consideration.* The total consideration payable by Purchaser to Seller in consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets to Purchaser, and in reliance upon the representations, warranties, covenants and agreements of Seller set forth herein, is: an amount equal to _____ Dollars (\$_____) (the “*Purchase Price*”).

3. *Closing.* The closing of the transactions contemplated herein (the “*Closing*”) will take place at the offices of the Escrow Agent and shall occur on _____, 2017 (the “*Closing Date*”) (or at such other time, place and date as may be mutually agreed in writing upon by Purchaser and Seller).

4. *Representations and Warranties of Seller.* Seller represents and warrants to Purchaser as follows:

4.1 *Authorization of Transaction.* Subject only to Bankruptcy Court approval pursuant to the Sale Order, Seller has full power and authority to execute and deliver this Agreement and each agreement, document or instrument required to be delivered by it hereby or in connection herewith and to perform its obligations under this Agreement and each agreement,

document or instrument required to be delivered by it hereby or in connection herewith and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement and the other agreements, documents or instruments required to be delivered by Seller hereby or in connection herewith and the performance by Seller of its obligations hereunder and thereunder have been duly and validly authorized by all necessary action on the part of Seller. This Agreement and each of the other agreements, documents or instruments required to be delivered by Seller hereby or in connection herewith have been, or when executed and delivered will have been, duly executed and delivered by Seller and is, or once executed will be, the valid and binding agreement of Seller, enforceable against Seller in accordance with their respective terms.

5. *Representations and Warranties of Purchaser.* Purchaser represents and warrants to Seller that the following statements are true and correct as of the date of this Agreement and as of the Closing:

5.1 *Organization.* Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization.

5.2 *Authorization of Transaction.* Purchaser has full power and authority to execute and deliver this Agreement and each agreement, document or instrument required to be delivered by it hereby or in connection herewith and to perform its obligations under this Agreement and each agreement, document or instrument required to be delivered by it hereby or in connection herewith and to consummate the transactions contemplated hereby. The execution and delivery by Purchaser of this Agreement and the other agreements, documents or instruments required to be delivered by Purchaser hereby or in connection herewith and the performance by Purchaser of its obligations hereunder and thereunder have been duly and validly authorized by all necessary action on the part of Purchaser. This Agreement and each of the other agreements, documents or instruments required to be delivered by Purchaser hereby or in connection herewith have been, or when executed and delivered will have been, duly executed and delivered by Purchaser and is, or once executed will be, the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with their respective terms.

5.3 *Sufficiency of Funds.* Purchaser has sufficient cash on hand or other sources of immediately available funds to enable it to pay the Purchase Price and consummate the transactions contemplated by this Agreement.

6. *Survival of Representations, Warranties, Covenants and Agreements.* Seller and Purchaser have the right to rely fully upon the representations, warranties, covenants and agreements of the other contained in this Agreement.

7. *Termination.*

7.1 *Termination.* This Agreement may be terminated and the transactions contemplated hereby may be abandoned upon the occurrence of any of the following:

(a) at any time prior to the Closing, by mutual written agreement of Seller and Purchaser;

(b) by Purchaser, if it is not then in material breach of this Agreement, upon written notice to Seller and Escrow Agent, if there shall be a material breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement, which breach has not been cured within five Business Days after the giving of written notice by Purchaser to Seller of such breach;

(c) by Seller, if it is not then in material breach of this Agreement, upon written notice to Purchaser and Escrow Agent, if there shall be a material breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement, which breach has not been cured within five Business Days after the giving of written notice by Seller to Purchaser of such breach;

7.2 *Effect of Termination.* Upon the termination of this Agreement pursuant to Section 7.1, this Agreement, all become void and have no further effect and there shall be no liability hereunder on the part of Seller or Purchaser with respect to this Agreement except in connection with its obligations set forth in such Sections.

8. *Miscellaneous.*

8.1 *Notices.* Any notice required or permitted to be given under this Agreement shall be in writing and delivered or sent by: (i) personal delivery; or (ii) Federal Express or similar nationally recognized overnight courier service, and addressed to the parties at their respective addresses as they appear below. The parties may change their addresses for notice by giving notice of such change in accordance with this Section 8.1. Notices shall be deemed to have been received upon the date of delivery (or refusal to accept delivery) as indicated on the return receipt or air bill.

If to Seller: Star Golden Enterprises, LLC
c/o Nicholas R. Rubin
Force 10 Partners, LLC
20341 SW Birch Suite 220
Newport Beach CA 92660

With a copy to: Garman Turner Gordon
Attention: Gabrielle A. Hamm, Esq.
650 White Drive, Suite 100
Las Vegas, Nevada 89119

If to Purchaser:

With a copy to:

8.2 *Entire Agreement.* This Agreement (and the exhibits attached hereto) supersedes all prior discussions and agreements between the parties with respect to the subject

matter hereof and thereof between the parties, and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof.

8.3 *Expenses.* Except as otherwise expressly provided in this Agreement or the Order, whether or not the transactions contemplated hereby are consummated, Seller and Purchaser shall bear their own costs and expenses arising out of the negotiation, execution, delivery and performance of this Agreement (including regulatory filing fees and costs) and the consummation of the transaction contemplated by this Agreement, including, without limitation, fees and expenses for legal counsel, accountants, business valuers, brokers and financial advisors.

8.4 *Waivers.* No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act, except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

8.5 *Assignment of Agreement.* Purchaser may, in its sole discretion, assign this Agreement to an affiliate or other designated assignee whom, upon assignment, shall become the defined Purchaser in this Agreement.

8.6 *Attorneys' Fees.* In the event of the bringing of any action, arbitration or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party will be entitled to have the recovery of and from the other party all costs and expenses of the action, arbitration or suit, reasonable attorneys' fees and any other professional fees resulting therefrom.

8.7 *Amendment.* This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

8.8 *No Third Party Beneficiary.* The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights upon any Person.

8.9 *Headings.* The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

8.10 *Governing Law.* This Agreement shall be governed by and construed exclusively in accordance with the Laws of the State of Nevada applicable to a contract executed and performed in such state, without giving effect to the conflicts of laws principles thereof.

8.11 *Consent to Jurisdiction; Venue.* Each party hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Nevada or the United States Bankruptcy Court for the District of Nevada in any action, suit or proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby, and

agrees that any such action, suit or proceeding shall be brought only in such court. Each party hereby irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such action, suit or proceeding brought in such a court and any claim that any such action, suit or proceeding brought in such a court has been brought in an inconvenient forum.

8.12 *Invalid Provisions.* If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof and (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

8.13 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

8.14 *Construction of Certain Terms and Phrases.* Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “*hereof*,” “*herein*,” “*hereby*” and derivative or similar words refer to this entire Agreement; (iv) the terms “*include*,” “*includes*” and “*including*” mean including without limiting the generality of any description preceding such term, and, for purposes of this Agreement, the rule of *ejusdem generis* shall not be applicable to limit a general statement that follows an enumeration of specific matters, to matters similar to the matters specifically enumerated; (v) reference to dollar amounts, unless otherwise specifically indicated, shall mean the lawful money of the United States of America; and (vi) the term “*Section*” refer to the specified Article or Section of this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified.

8.15 *Attorney Representation.* In the negotiation, preparation and execution of this Agreement, each party has been represented by, or has been afforded the opportunity to consult with an attorney of such party’s own choosing prior to the execution of this Agreement and has been advised that it is in such party’s best interest to do so. The parties have read this Agreement in its entirety and fully understand its terms and provisions. The parties have executed this Agreement freely, voluntarily and without any coercion whatsoever, they accept all terms, conditions and provisions hereof.

8.16 *Non-recourse.* This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, debtor, stockholder, affiliate, agent, attorney or other representative of any party hereto or of any affiliate of any party

hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

9. *Sales Procedures.* This Agreement is subject in all respects to the approval of the Bankruptcy Court through the entry of the Sale Order.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties as of the date set forth above.

PURCHASER:

SELLER:

STAR GOLDEN ENTERPRISES, LLC

By: _____

Name: _____

Its: _____

By: _____

Its: _____

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