



**ORDERED** in the Southern District of Florida on November 13, 2013.

John K. Olson, Judge  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re: Case No. 13-23165-JKO  
Ocean 4660, LLC, Chapter 11  
Debtor.  
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**ORDER (A) APPROVING COMPETITIVE BIDDING AND SALE PROCEDURES; (B) APPROVING FORM AND MANNER OF NOTICE; (C) SCHEDULING DATES TO CONDUCT AUCTION AND HEARING TO CONSIDER FINAL APPROVAL OF SALE, INCLUDING TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) AUTHORIZING SALE OF SUBSTANTIALLY ALL THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; AND (E) GRANTING RELATED RELIEF**

THIS MATTER, came before the Court for a hearing on November 5, 2013 at 10:30 a.m., on the *Motion For Entry of Order (A) Approving Competitive Bidding and Sale Procedures; (B) Approving Form of Asset Purchase Agreement; (C) Scheduling Dates To*

*Conduct Auction and Hearing to Consider Final Approval of Sale, Including Treatment of Executory Contracts and Unexpired Leases; (D) Authorizing Sale of Substantially All The Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (E) Granting Related Relief* (the "Motion") (ECF No. 135), filed by Maria Yip, Chapter 11 Trustee ("Trustee Yip" or "Seller") for the bankruptcy estate of Ocean 4660, LLC ("Debtor"). Having reviewed the Motion, and the record in this case and having considered the statements of counsel for Trustee Yip, the Court finds that establishing procedures for a sale of the Assets (as defined below) in accordance with the Motion, is in the best interests of the Debtor's estate.

Accordingly, the Court **FINDS** and **DETERMINES** as follows.

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014;

B. The Court has jurisdiction over the Motion and the transaction contemplated by the Asset Purchase Agreement dated October 23, 2013, attached as Exhibit A to the Motion (the "APA") pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409;

C. The statutory bases for the relief requested in the Motion are (i) sections 105, 363, 364 and 365 of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"); (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006 and 9014; and (iii) Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Florida (the "Local Rules");

D. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the hearing (the “Sale Hearing”) to approve the sale to CRP/SP Lauderdale, LLC (the “Proposed Purchaser”) or another Qualified Bidder. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to creditors, equity holders and other parties in interest;

E. Trustee Yip’s proposed bid procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the scheduled sale of substantially all of the Debtor’s assets (as defined in the APA, the “Assets”), the auction for the sale of the Assets (the “Auction”), and the bid procedures to be employed in connection therewith, as such bid procedures are set forth in Schedule 5.1 of the APA (the “Bid Procedures”) as may be modified on the record and in this Order;

F. Trustee Yip has articulated good and sufficient reasons for the Court to: (i) approve the Bid Procedures; (ii) set the Sale Hearing and approve the manner of notice of the Bid Procedures Motion and the Sale Hearing; and (iii) approve the procedures for the assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Assumed Executory Contracts”), including notice of proposed cure amounts;

G. The entry of this Bid Procedures Order is in the best interests of the Debtor, its estate, its creditors, equity holders and other parties in interest; and

H. The Bid Procedures are reasonably designed to maximize the value to be achieved for the Assets.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that:

1. The Motion is **GRANTED** as set forth herein.

2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled or ruled upon by the Court, and all reservations of rights included therein, hereby are **OVERRULED** and **DENIED** on the merits.

3. The Bid Procedures attached hereto as Exhibit A are hereby incorporated herein and approved. Trustee Yip is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.

4. As further described in the Bid Procedures, the deadline for submitting bids for the Assets (the "Bid Deadline") is Friday, November 29, 2013 at 4:00 p.m. (prevailing Eastern Time). No bid shall be deemed to be a "Qualified Bid" or otherwise considered for any purposes unless such bid meets the requirements of a "Qualified Bid" set forth in the Bid Procedures.

5. The Court is approving the Bid Procedures proposed by Trustee Yip in their entirety; however, by approving the Bid Procedures the Court is not approving the proposed sale to the Prospective Purchaser, as the Court will consider whether to approve the sale at the Sale Hearing on **December 3, 2013 at 2:00 p.m.** ("Sale Hearing").

6. If Qualified Bids (other than the Qualified Back Up Bid of Comerica Bank and the Prospective Purchaser) are timely received by the Debtor in accordance with the Bid Procedures, the Auction shall take place on Tuesday, **December 3, 2013, starting at 10:00 a.m.** (prevailing Eastern Time) at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., New River Center, 200 East Las Olas, Suite 2100, Fort Lauderdale, Florida 33301. The Auction shall be conducted in accordance with the Bid Procedures. If, however, no such Qualified Bid (other than the Qualified Bids of Comerica Bank and the Prospective Purchaser) is received by the Bid Deadline, then the Auction will not be held, and the Debtor shall seek Court approval of the APA with the Proposed Purchaser at the Sale Hearing.

7. The Sale Hearing shall be held on **December 3, 2013 at 2:00 p.m.** at the United States Bankruptcy Court, 299 East Broward Boulevard, Courtroom 301, Fort Lauderdale, Florida 33301.

8. Objections, if any, to the sale of the Assets and the transaction contemplated by the APA must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division (or filed electronically via CM/ECF), on **November 29, 2013 by 4 p.m.** (prevailing Eastern Time) (the "Sale Objection Deadline"); and (d) be served upon all interested parties including (i) Drew M. Dillworth, Trustee, 2200 Museum Tower, 150 West Flagler Street, Miami, Florida 33130; (ii) Comerica Bank, N.A., c/o Joaquin J. Alemany, Holland & Knight, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131; (iii) Proposed Purchaser, c/o Mayer Brown, LLP, Attn: Keith Willner, Esq., 1999 K. Street, Washington, D.C., 20006; and (iv) the Office of the United States Trustee, 51 SW 1st Ave, #1204, Miami, Florida 33130, so as to be actually received by the time set forth above.

9. On or before three (3) business days after entry of this Bid Procedures Order, the Debtor will cause the Sale Notice and the Motion (less exhibits) to be sent by first-class mail postage prepaid, to (a) the Proposed Purchaser; (b) the U.S. Trustee; (c) all of the Debtor's creditors and parties that have an interest in the Assets; (d) all other parties who have filed a notice of appearance; and (e) all parties who have expressed an interest in purchasing the Assets.

10. Copies of exhibits to the Motion (including the APA) may be obtained by request in writing, by telephone, or via email from counsel to Trustee Yip: Drew M. Dillworth, Esq., Stearns Weaver Miller et al., 150 West Flagler Street, Suite 2200, Miami, Florida 33130, Tel.

(305-789-3598, email at [ddillworth@stearnsweaver.com](mailto:ddillworth@stearnsweaver.com)). In addition, copies of the aforementioned documents may be accessed at the following website <http://ecf.flsb.uscourts.gov>.

11. The Sale Hearing may not be continued without an Order of this Court, after notice to parties, counsel of record, and interested parties.

12. The APA, attached to the Motion as Exhibit A, is approved in all respects.

13. Upon issuance of this Order, the Debtor is authorized to cooperate with, and work with, the Proposed Purchaser to address any and all pre-closing issues and concerns relating to the proposed consummation of the transaction under the APA.

14. No party submitting an offer or bid for the Assets or a Qualified Bid shall be entitled to any expense reimbursement, breakup, termination or similar fee or payment, except that that the Proposed Purchaser, under the APA, shall be entitled to \$200,000 as a break-up fee in accordance with the terms of the APA and the Motion (the "Break-up Fee").

15. Except as otherwise provided in the APA or this Bid Procedures Order, Trustee Yip further reserves the right as it may reasonably determine to be in the best interests of its estate, after consultation with Comerica Bank to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bid Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate.

16. To the extent that any Chapter 11 plan confirmed in this case or any order confirming any such plan or any other order in this case (including any order entered after any conversion of this case to a case under Chapter 7 of the Bankruptcy Code) alters, conflicts with

or derogates from the provisions of this Bid Procedures Order, the provisions of this Bid Procedures Order shall control. The obligations under this Bid Procedures Order, the provisions of this Bid Procedures Order and the portions of the APA pertaining to the Bid Procedures, as amended, shall survive confirmation of any plan of reorganization or discharge of claims thereunder and shall be binding upon the Debtor, and the reorganized or reconstituted debtors, as the case may, after the effective date of a confirmed plan or plans in the Debtor's case (including any order entered after any conversion of this case to a case under Chapter 7 of the Bankruptcy Code).

17. To the extent there are any inconsistencies between the terms of this Bid Procedures Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Bid Procedures Order shall govern.

18. The purchase price obtained through the sale shall not be determinative of any rights, claims or defenses as between Comerica Bank and any of the guarantors of the Debtor's obligations to Comerica Bank, in connection with any matter. This Order is without prejudice to each parties rights related thereto.

19. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived and this Bid Procedures Order shall be effective immediately upon its entry.

20. All time periods set forth in this Bid Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. Trustee Yip is authorized to take all actions necessary to effectuate the relief granted pursuant to this Bid Procedures Order in accordance with the Bid Procedures Motion. Trustee Yip is authorized to prepare and execute those documents necessary to consummate the sale and evidence the conveyance of the Assets to the Prevailing Bidder.

22. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Bid Procedures Order.

# # #

Submitted by:

Copy furnished to:  
Drew M. Dillworth, Esq.

*(Attorney Dillworth is directed to serve conformed copies of this Bid Procedures Order upon all parties in interest, and to file a Certificate of Service with the Court confirming such service.)*

**EXHIBIT A**

**BID PROCEDURES**

**1. Marketing Period; Acceptance of Bids.**

(a) *Marketing Period.* Seller shall be entitled to market the Assets to third parties ("Marketing Period") and solicit and accept Qualified Bids (as defined below) for the purchase of the Assets.

(b) *Potential Bidder.* Before submitting a Qualified Bid Packet (as defined below), every potential bidder other than CRP/SP LAUDERDALE, L.L.C., a Delaware limited liability company (the "Stalking Horse Bidder"), and Comerica Bank must deliver to Seller (i) an executed confidentiality agreement in form and substance satisfactory to Seller and Comerica Bank (the form of confidentiality agreement may be obtained from Seller upon request), and (ii) some form of evidence acceptable to Seller establishing, in the business judgment of Seller, that the potential bidder has the financial ability to close the potential sale.

(c) *Qualified Bid Packet.* A "Qualified Bid Packet" shall comply with and/or include all of the following items:

(i) A deposit (the "Bidder Deposit") in an amount equal to the Deposit paid by the Stalking Horse Bidder payable by cashier's check or wire transfer (or other form acceptable to Seller in its sole discretion). The Bidder Deposit shall be deposited with and held in trust by the Escrow Agent identified in the Agreement;

(ii) An executed asset purchase agreement that substantially conforms to the Agreement that includes a purchase price equal to or greater than Ten Million Seven Hundred Twenty-Five Thousand and 00/100 Dollars (\$10,725,000.00), and a redline version showing any changes from the Agreement, which executed asset purchase agreement Seller will file with the Bankruptcy Court prior to the Bid Deadline;

(iii) Any bid must not contain any contingencies to the validity, effectiveness, and/or binding nature of the offer, including without limitation, contingencies for financing or due diligence;

(iv) Financial information sufficient for Seller and Comerica Bank to assess the financial wherewithal of the bidder to close on the sale of the Assets in the event that the bidder is the successful bidder; such information shall include, at a minimum, financial statements, bank account statements, or other documents of such entity (including information on any third-party funding required to consummate and perform under the asset purchase agreement) establishing the ability to timely close the transaction by the Auction (as defined below);

(v) A letter setting forth the identity of the potential bidder, the contact information for such potential bidder, and full disclosure of all parties participating with the potential bidder, as well as full disclosure of any pre-

petition and post-petition affiliation that the potential bidder may and the parties participating with the potential bidder have with (1) Seller, (2) Seller's members, (3) Seller's affiliates, (4) major creditors of Seller, (5) equity security holders of Seller, (6) any of Seller's former officers or directors or other insiders, and (7) the Town of Lauderdale-by-the-Sea (LBTS") through receipt of a notice of violation of LBTS' Code of Ordinances; and

(vi) The Qualifying Bid Packet must be delivered with the items described above on or before the Bid Deadline (as defined below) to: Drew M. Dillworth, 2200 Museum Tower, 150 West Flagler Street, Miami, Florida 33130, Telephone: (305) 789-3200, Facsimile: (305) 789-3395, E-mail: [DDillworth@stearnsweaver.com](mailto:DDillworth@stearnsweaver.com).

(d) *Bid Deadline.* Subject to extension in the discretion of Seller, the deadline for submitting bids by a Qualified Bidder shall be **November 29, 2013, at 4:00 p.m. EST** (the "Bid Deadline").

(e) *Qualified Bidder.* Before the Auction, Seller and Comerica Bank shall evaluate each Qualifying Bid Packet and may then identify a person, persons, entity, or entities from among those who submitted a Qualifying Bid Packet and deem those person(s) "Qualified Bidders" with "Qualifying Bids." By participating in the Auction, each Qualified Bidder consents to its bid being designated as a back-up bid in the event its bid is designated as the second highest and best offer to purchase the Assets (a "Back-Up Bid"). A Qualified Bid will be valued based upon the following factors: (a) the purchase price relating to the Qualified Bid; (b) the ability to close the sale transaction without delay and by the Auction; (c) any adverse history between LBTS and the Qualified Bidder; and (d) any other factors Seller and Comerica Bank may deem relevant. Seller and Comerica Bank reserve the right to make the final determination of who is a Qualified Bidder. Stalking Horse Bidder shall be deemed to be a Qualified Bidder. Seller shall notify all Qualified Bidders no later than 5:00 p.m. Eastern Time one business day before the Auction that they may participate in the Auction and shall also provide a summary of the Qualified Bids. All Qualified Bidders and Stalking Horse Bidder shall be bound by their bids until conclusion of the Auction.

(f) *Comerica Bank Credit Bid.* Comerica Bank is entitled to credit bid up to an amount not to exceed the purchase price stated in the Agreement as a Back Up Bid. Comerica shall be deemed a Qualified Bidder without further action. In the event that Seller closes on the Comerica Back Up Bid, such closing and the sale of the Assets free and clear of liens, claims, encumbrances, and interests shall not act as a waiver, forfeiture, or resolution of Seller's rights under 11 U.S.C. Sec. 506(c).

## **2. Auction.**

(a) *No Qualified Bids.* If no Qualified Bid (other than Stalking Horse Bidder's bid) is received by the Bid Deadline, Seller shall report the same to the Bankruptcy Court and Seller shall deem Stalking Horse Bidder's bid the highest or otherwise best offer for the Assets and proceed with the transaction contemplated by the Agreement.

(b) *Time and Location of Auction.* If one or more Qualified Bids (other than Stalking Horse Bidder's bid) are received, Seller will conduct an auction (the "Auction") with respect to the Assets. The Auction, if required, will commence at **10:00 a.m. Eastern Time on December 3, 2013 at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., New River Center, 200 East Las Olas, Suite 2100, Fort Lauderdale, Florida 33301.** The Auction is an absolute auction, and Seller reserves the right to reject, subject to Comerica Bank's approval, any and all bids, other than the Qualified Bid of the Stalking Horse Bidder. Only Stalking Horse Bidder, Seller, the Trustee, Comerica Bank, and any Qualified Bidders (and such parties' representatives and professionals) will be entitled to attend, participate, and be heard at the Auction.

(c) *Bidding Increments.* The Auction shall be conducted as an "open cry" auction. Bidding will begin at the purchase price stated in the Agreement or if higher, highest purchase price stated by one or more Qualified Bids for the Assets provided that such highest purchase price equals the sum of \$10,725,000.00 -- i.e. product of the purchase price plus the Overbid Protection discussed below. Bidding will subsequently continue in additional minimum increments of no less than Ten Thousand and 00/100 Dollars (\$10,000.00) in cash. Stalking Horse Bidder is not required to participate in the bidding but shall have the right to bid at any time during the Auction.

(d) *Prevailing Bid.* The Auction shall conclude when the Trustee receives what is determined by Seller and Comerica Bank to be the highest and best offer for the Assets (the "Prevailing Bid") (the Prevailing Bid being submitted by the "Prevailing Bidder"). Subject only to the subsequent approval of the Bankruptcy Court and the consent of Comerica Bank, the Seller shall have the unfettered discretion to determine whether any Qualifying Bid, constitutes the highest and best bid for the Assets, based on, among other things, the form of consideration being offered and the likelihood of the bidder's ability to close a transaction and the timing thereof. Seller and Comerica Bank shall then designate one or more Back-Up Bidders, with the Comerica Bank credit bid described above being the last resort Back-Up Bid.

**3. Sale Order.** At the conclusion of the Auction, the Bankruptcy Court will immediately conduct a hearing to approve the sale of the Assets to the Prevailing Bidder and enter the Sale Order. "Sale Order" means an order of the Bankruptcy Court, in form and substance acceptable to the Prevailing Bidder in its reasonable discretion, that, among other things, (i) approves the (a) sale of the Purchased Assets to the Prevailing Bidder free and clear of all Liens (hereinafter defined) and claims pursuant to sections 363(b) and 363(f) of the Bankruptcy Code (other than Permitted Liens), such Liens and claims to attach to the Purchase Price, (b) assumption and assignment to Prevailing Bidder of the Assumed Contracts and Permits pursuant to section 365 of the Bankruptcy Code, and (ii) provides that (a) Prevailing Bidder has acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code, (b) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions, (c) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or any breach hereof as provided in Section 9, and (d) this Agreement and the transactions contemplated hereby may be specifically enforced against and binding upon, and not subject to rejection or avoidance by, the Debtor, the Seller as Trustee or any chapter 7 of the Debtor. The

Sale Order shall further provide that the Prevailing Bidder is not a successor to the Debtor or the Seller; that the Prevailing Bid represents a fair market value of the Assets; that the Prevailing Bidder shall have no liability for any obligations of the Debtor or the Seller except as expressly provided herein; and that the automatic stays under Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedures are waived. "Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, right of first offer, covenant, right of way, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance, or any other restriction or limitation whatsoever.

**4. Back-Up Bidder.** If any Prevailing Bidder fails to consummate the sale of the Assets within five (5) business days of the required closing date because of a breach or failure to perform on the part of such Prevailing Bidder, the Prevailing Bidder shall forfeit its Bidder Deposit to Seller and the next highest or otherwise best Qualified Bid or Qualified Bids for each of the Assets will be deemed to be the Prevailing Bid, and Seller will be authorized to consummate the sale with the applicable Qualified Bidder submitting such bid without further order of the Bankruptcy Court (the "Back-Up Bidder"). The closing of the Sale to a Backup Bidder shall take place within ten (10) days after such Back-Up Bidder receives notice from Seller that the Prevailing Bidder failed to close and that Seller has elected to proceed to close with one or more Back-Up Bidders. If the Back-Up Bidder is unable or unwilling to close the sale in the time permitted, the Back-Up Bidder shall forfeit its Bidder Deposit to Seller.

**5. Breakup Fee.** If (a) the Bankruptcy Court approves the sale of the Assets to a third party Qualified Bidder unaffiliated with Stalking Horse Bidder pursuant to a higher or better offer for the Assets (an "Alternative Offer"), (b) the sale of the Assets pursuant to the Alternative Offer actually closes, and, (c) in either such case, Stalking Horse Bidder (x) is not in material breach of the Agreement beyond the period allowed for cure of such breach and (y) is otherwise willing and capable of closing the transaction contemplated by the Agreement, then Stalking Horse Bidder shall be paid by Seller, in cash, from the sale proceeds of such Alternative Offer the sum of **Two Hundred Thousand and 00/100 Dollars (\$200,000.00)** as a break-up fee (the "Breakup Fee"). Anything contained in the Agreement to the contrary notwithstanding, in the event that the Assets are sold and closed pursuant to an Alternative Offer, Stalking Horse Bidder shall have the right to terminate the Agreement, receive a prompt return of the Deposit, and the Breakup Fee shall be paid to Stalking Horse Bidder by wire transfer of immediately available funds within three (3) Business Days of the closing of a sale pursuant to an Alternative Offer. No bidder other than Stalking Horse Bidder shall be entitled to a break-up or termination fee, expense reimbursement, or similar payment. For the avoidance of doubt, the amount of the Breakup Fee shall act as a credit against any overbids made by the Stalking Horse Bidder.

**6. Bid Protection.** If Stalking Horse Bidder (x) is not in material breach of the Agreement beyond the period allowed for cure of such breach and (y) is otherwise willing and capable of closing the transaction contemplated by the Agreement, Seller agrees not to entertain or accept an Alternative Offer unless the amount of such Alternative Offer exceeds the Purchase Price by at least the Breakup Fee plus Twenty-five Thousand and 00/100 Dollars (\$25,000.00) (such overbid requirement being referred to as the "Overbid Protection").

7. **Return of Deposits.** Each Bidder Deposit shall be maintained in a non-interest bearing account and subject to the jurisdiction of the Bankruptcy Court. Within five (5) business days after the entry of the Sale Order, Seller shall return all Bidder Deposits to all Qualified Bidders except (i) the Bidder Deposit submitted by the Prevailing Bidder, whose Bidder Deposit shall be applied by Seller against the purchase price at the closing, and (ii) the Bidder Deposit submitted by the Back-Up Bidder. In the event that the Prevailing Bidder closes the sale, Seller shall return to the Back-Up Bidder its Bidder Deposit within five (5) business days after the closing. In the event the Back-Up Bidder closes on the purchase of the Assets, its Bidder Deposit shall be applied by Seller against the purchase price.

8. **Modifications to Bid Procedures.** Seller reserves all rights to impose, at or before the Auction, additional terms and conditions on the sale of the Assets, to extend or adjourn any deadlines set forth in these Bid Procedures, and to take any other actions with respect to the Auction, the Bid Procedures or the sale of the Assets which in its business judgment are reasonably necessary to preserve the bankruptcy estates or maximize the value thereof that are not inconsistent with these Bid Procedures, the Agreement, or any order of the Bankruptcy Court.

9. **Bankruptcy Court Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the sale, the Bid Procedures, the Agreement, the Auction, and/or any other matter that in any way relates to the foregoing. Any party disputing the sale, the Bid Procedures, the Agreement, the Auction and/or any other matter that in any way relates to the foregoing shall file an objection with the Bankruptcy Court as soon as practicable to facilitate resolution of the objection.

10. **Confirmation of Plan of Reorganization.** After the sale has been concluded, Seller will seek the entry by the Bankruptcy Court of an order approving the Plan (as defined in the Agreement) and any related disclosure statement.

11. **Miscellaneous.** All Qualified Bidders shall be deemed to have waived any right to a jury trial in connection with any disputes relating to the Auction and/or the sale of the Assets. All asset purchase agreements shall be governed by and construed in accordance with the laws of the State of Florida.

*[End of Bid Procedures]*