

SO ORDERED.

SIGNED this 7th day of May, 2014.



Benjamin A. Kahn

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:)	
)	
CCP HOLDINGS, INC.)	Case No. 14-50202
)	Chapter 11
Debtor.)	
_____)	

ORDER UNDER 11 U.S.C. §§ 105(A) AND 363 AND FED. R. BANKR. P. 2002, 6004 AND 9014 APPROVING BIDDING PROCEDURES, BREAK-UP FEE, AND FORM AND MANNER OF NOTICE THEREOF WITH RESPECT TO PROPOSED SALE OF ASSETS BY DEBTOR TO HOVER NETWORKS, INC.

Upon the motion dated April 28, 2014, and as updated by the motion filed May 5, 2014 (collectively the "Motion"), of CCP Holdings, Inc., debtor-in-possession (the "Debtor"), for, *inter alia*, entry of an order pursuant to 11 U.S.C. §§ 105(A) and 363 and Fed. R. Bankr. P. 2002, 6004 and 9014 approving the Debtor's proposed bidding procedures annexed hereto and incorporated herein by reference as "**Exhibit A**" (the "Bidding Procedures) and a break-up fee with respect to the proposed transaction providing for a sale pursuant to Section 363 of the Bankruptcy Code of substantially all of the Debtor's assets (the "Sale Transaction"), pursuant to the Asset Purchase Agreement by and between the Debtor and Hover Networks, Inc. ("Hover") dated May 5, 2014, and the Amended and Restated Asset Purchase Agreement, dated May 6, 2014 (collectively the "Asset Purchase Agreement"), to Hover or the bidder making the highest or otherwise best offer pursuant to the Bidding Procedures (the "Highest Bidder"); and the Court having reviewed the Motion; and it appearing that notice of the Motion was good and sufficient under the circumstances

for the purposes of this Order, and no other or further notice need be given except as set forth herein; and the Court having considered the statements of counsel at the hearing held on approval of the Bidding Procedures, and it appearing that the relief requested in the Motion with respect to the Bidding Procedures and the break-up fee is in the best interest of the Debtor, its estate, and parties-in-interest; and after due deliberation thereon, and good cause appearing therefore, it is hereby found and determined that:

A. The Debtor has articulated good and sufficient reasons for approving the Bidding Procedures;

B. A break-up fee of \$13,200.00 (the "Break-Up Fee") is appropriate under the circumstances. The Debtor's obligation to Hover (under the conditions and as set forth in the Asset Purchase Agreement to pay the Break-Up Fee is (a) an actual and necessary cost and expense of preserving the Debtor's bankruptcy estate, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial and commensurate benefit to the Debtor's bankruptcy estate, (c) reasonable and appropriate, in light of the size and nature of the transaction and the efforts that have been and will be expended by Hover, and (d) necessary to ensure that Hover will continue to pursue its proposed acquisition of the Debtor's assets. The Break-Up Fee was a material inducement for, and condition of, Hover's entry into the Asset Purchase Agreement. Hover is unwilling to continue its obligation to purchase the subject assets under the terms of the Asset Purchase Agreement (including subjecting the Agreement to higher or otherwise better offers as contemplated by the Bidding Procedures), unless it is assured payment of the Break-Up Fee in each of the circumstances in which the Break-Up Fee may become payable under the Asset Purchase Agreement. Further, because the Break-Up Fee induced Hover to research the value of the subject assets and submit a bid that will serve as a minimum or floor bid on which other bidders can rely, Hover has provided a benefit to the Debtor's bankruptcy estate by increasing the likelihood that the Debtor will receive the best possible price for the purchased assets. Finally, absent authorization for the Debtor's payment of the Break-Up Fee in accordance with this Order and the terms of the Asset Purchase Agreement, Hover's obligations under the Asset Purchase Agreement will terminate and the Debtor may lose the opportunity to obtain the highest or otherwise best available offer for the purchased assets.

C. The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the value of the Purchased Assets for the benefit of the Debtor's bankruptcy estate.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Notice of the Motion was good and sufficient under the circumstances for the purposes of the relief granted in this Order, and no other or further notice of the same shall be required except as set forth herein.

2. The Break-Up Fee provided in the Asset Purchase Agreement, including the circumstances under which the Break-Up Fee is payable, as more fully described in the Asset Purchase Agreement, are approved in all respects and shall be payable as provided therein.

3. The Bidding Procedures are hereby approved and shall govern all proceedings related to the Asset Purchase Agreement and any subsequent bids for the purchased assets.

4. On May 29, 2014 at 9:30 a.m., or such other date as it may be adjourned to, the Court will hold a hearing on the approval of the asset sale, at which time the Debtor will present the results of the auction to the Court and request that the court enter an Order approving the sale to Hover or such other Highest Bidder as the case may be. All objections to the sale motion shall be in writing and comply with the General Objection Procedures and the Assigned Executory Contract Objection Procedures and be filed and served so as to be actually received not later than 5:00 p.m. (EST) on May 23, 2014.

5. This Order shall become effective immediately upon its entry.

6. On May 7, 2014, Debtor shall serve via U.S. Mail: (i) a copy of this Order; and (ii) the Notice of (I) Debtors' Request For Authority To Assume, Assign And Sell Certain Unexpired Leases And (II) Debtor's Proposed Cure Amounts; and (iii) the Notice of (I) Auction, (II) Bidding Procedures, (III) Debtor's Intent To Sell Substantially All Assets of The Debtor To Hover Networks, Inc. or a Higher or Better Bidder, Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (IV) Sale Hearing and (V) Objection Deadline and Procedures shall be served on the following: (a) all potential purchasers with whom the Debtor has received any communication within the last year concerning an interest in the sale of the Debtor's assets (b) all attorneys and other parties who have entered an appearance in this case; (c) all secured creditors and lessors; (d) all counterparties to executory contracts proposed to be assumed and/or assumed and assigned by Debtor pursuant to the Motion; (e) applicable taxing authorities; (f) the Bankruptcy Administrator; (g) all unsecured creditors. The Debtor shall file a certificate of service with the Court showing that it has complied with this notice procedure.

7. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order or the Bidding Procedures.

END OF DOCUMENT



AUCTION AND SALES PROCEDURES

The following procedures (the “Auction and Sales Procedures”) have been approved and authorized by order (the “Auction and Sales Procedures Order”) of the United States Bankruptcy Court for the Middle District of North Carolina (the “Court”) in the chapter 11 case of CCP Holdings, LLC (the “Debtor”), case no. 14-50202, and shall govern the proposed sale (the “Auction Sale”) of certain assets of the Debtor, pursuant to the Debtor’s motion for an order authorizing the Auction Sale and granting related relief filed on April 28, 2014, (the “Motion”) filed in connection with an Asset Purchase Agreement dated May 5, 2014 and the Amended and Restated Asset Purchase Agreement dated May 6, 2014 (collectively the “Asset Purchase Agreement”), between the Debtor and Hover Networks, Inc. (“Hover”) for the purchase of the Acquired Assets (collectively, and as it may be amended, modified, or supplemented, the Asset Purchase Agreement”).

1. Assets to be Sold. The assets to be sold (the “Acquired Assets”) are defined more completely in the Asset Purchase Agreement, but can be summarized as follows:

- i. all goods (whether held for sale or lease or furnished under contracts of service or deployed to customers), phones, equipment, machinery, furniture, fixtures, tools, servers, hardware, switches, routers, wiring and other tangible or personal property now or hereafter owned, leased or held by Seller used or useful in, or held for the use in, the Business;
- ii. the 2010 Chrysler PT Cruiser (VIN: 3A4GY5F94AT170872) and 2010 Chrysler PT Cruiser (VIN: 3A5GY5F97AT199699);
- iii. All of Seller’s rights and interests under the Contracts under certain executory contracts to be assumed by the Debtor and assigned to Hover;
- iv. all intellectual property rights of every kind, including all Patents, Trademarks, Copyrights, Software, Trade Secrets, rights in the foregoing and in other similar intangible assets, applications and registrations for the foregoing and rights and remedies against past, present and future infringement, misappropriation or other violation thereof, in each case, owned or purported to be owned by Seller in connection with the business of the Debtor;
- v. all books, files and records (whether on paper, electronic storage, tape or other media) to the extent they relate to the Acquired Assets, including, but not limited to, property records, marketing, advertising and promotional materials, customer lists, historical customer files, reports, plans, data, accounting and Tax records, financial reports, product specifications, drawings, diagrams, training manuals, safety and environmental reports and documents, maintenance schedules, inventory records, fixed asset lists,

business plans and marketing and all other studies, documents and records regardless of location;

- vi. all deposits, credits, allowances, refunds, prepaid assets, or charges, rebates, setoffs, prepaid expenses, loss carry-forwards, and other prepaid items related to the Purchased Assets;
- vii. all goodwill of the business of the Debtor;
- viii. all Receivables for services provided after the Closing (anticipated to occur on or about May 31, 2014; and
- ix. all rights, claims or causes of action of the Debtor arising out of or relating to the Acquired Assets against third parties arising out of events occurring prior to the closing date, including, for the avoidance of doubt, arising out of events occurring prior to the bankruptcy petition date, and including: (i) any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers, and contractors relating to products sold, or services provided, to Debtor; and (ii) causes of action, rights of recovery, rights of setoff and rights of recoupment in favor of Debtor, including any such rights of Debtor under any insurance policy, any insurance proceeds or condemnation award payable to Debtor or any transferable or assignable claim therefor; provided, however, not including any Bankruptcy Estate Claims, as defined in section 1.2(m) of the Asset Purchase Agreement

2. Free of Liabilities and Liens. The Purchased Assets shall be sold without assumption of liabilities and free of liens. The Purchased Assets shall be sold pursuant to, and to the fullest extent permitted by, 11 U.S.C. § 363(f) and all other applicable laws free and clear of any and all liens, security interests, encumbrances and claims (including, but not limited to, any “claims” as defined in 11 U.S.C. § 101(5)), reclamation claims, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, causes of action, instruments, contracts, leases, licenses, options, rights of first refusal, offsets, recoupment, rights of recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, claims for reimbursement, successor liability, contribution, indemnity or exoneration, assignment, preferences, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities, causes of action and claims, and in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, notice or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the “Liens and Claims”), with any Liens and Claims to attach only to the proceeds of sale of the Acquired Assets with the same priority, validity, force and effect as they existed with respect to the Acquired Assets before the Closing Date. Any party holding a secured claim and electing to exercise its right to credit bid

pursuant to 11 U.S.C. § 363(k), must make such credit bid in the context of a bid on all of the Assets.

3. Sale Means. The Auction Sale shall be an absolute auction subject only to confirmation by the Court at the Final Hearing that the Auction and Sales Procedures Order was followed and that an Acceptable Bidder was the Highest Bidder.

4. Time and Date of Auction. The Auction Sale shall commence at 12:00 Noon on May 28, 2014.

5. Location of Auction. The Auction Sale shall take place in the Section 341 creditor room of the United States Bankruptcy Court for the Middle District of North Carolina located at 101 South Edgeworth Street, Greensboro, North Carolina, or such other place as may be ordered by the Court.

6. Purchase Price. The Purchase Price offered by Hover in the Asset Purchase Agreement is Two Hundred Twenty Thousand Dollars and No Cents (\$220,000.00).

7. Breakup Fee. A fee (the "Breakup Fee") shall be paid to Hover at closing as a breakup fee in the amount of \$13,200.00 in the event the Acquired Assets as set forth are sold at the Auction Sale and Hover is not the Highest Bidder. The Breakup Fee is to be deemed earned and shall be paid in consideration of the substantial cost and expense incurred by Hover to move forward with the negotiation and preparation of the Asset Purchase Agreement and other definitive agreements and with all other pleadings and hearings necessary to obtain Court approval of the Asset Purchase Agreement, the Auction and Sales Procedures Order and the conduct of the Auction Sale; and in recognition of the benefit gained by the Debtor in allowing Hover's offer, as set forth herein, to be subject to a higher bid pursuant to the requested Auction Procedures.

8. No Financing Contingency. The Auction Sale is not subject to Hover or any Acceptable Bidder obtaining financing.

9. No Due Diligence Contingency. The proposed sale to Hover under the Asset Purchase Agreement shall be subject to the completion of Hover's due diligence investigation of Debtor. Hover and any other Acceptable Bidders shall complete any and all due diligence prior to the Auction Sale.

10. Acceptable Bidder.

(1) An Acceptable Bidder is a party who has provided all of the following to Debtor on or before 4:00 p.m. on May 21, 2014:

(a) A bid (an "Acceptable Qualifying Bid") for all the Acquired Assets shall be in the minimum amount of \$253,500, as adjusted pursuant to the terms of the Asset Purchase Agreement prior to the commencement of the Auction, which is equal to the Hover bid of \$220,000.00 plus the sum of (i) the Breakup Fee of \$13,200.00; and (ii) \$20,000. An Acceptable Qualifying Bid may be in excess of \$253,500.

(b) A cash deposit in the amount of \$22,000 (the “Acceptable Bidder Deposit”). The Debtor’s attorney shall deposit said funds in a separate bank account maintained at Branch Banking & Trust Company, which bank is FDIC insured and a bank that is approved as a designated depository in bankruptcy matters. Because it is possible that the Highest Bidder (as defined infra) may default and fail to close, any deposit paid by an Acceptable Bidder shall not be returned to such Acceptable Bidder until the sale of the Debtor’s assets is closed. The deposit shall be returned by first-class mail to the address and entity which the Acceptable Bidder in writing has instructed the attorney for the Debtor to return the deposit. If an Acceptable Bidder desires that the deposit be returned by wire transfer, then said instructions for said wire transfer shall be provided to Debtor’s attorney upon submission of the deposit. Failure of the Acceptable Bidder to provide proper instructions for the return of deposit will authorize Debtor’s attorney to hold said deposit pending written instructions.

(c) An executed asset purchase agreement including terms that are substantially similar to, and no less favorable to the Debtor than, those terms as outlined in the Asset Purchase Agreement and is a firm offer not containing any contingencies to the validity, effectiveness or binding nature of the offer, including, without limitation, contingencies for financing, due diligence past the Auction Sale, or inspection.

(d) Evidence establishing, to the Debtor’s satisfaction, such prospective bidder’s financial ability to consummate the sale in a timely manner if such bidder becomes the Highest Bidder at the Auction Sale.

(e) A signed confidentiality agreement.

(2) Upon timely receipt by the Debtor of a signed confidentiality agreement from a prospective Acceptable Bidder, the Debtor shall promptly provide to such person such financial information as the Debtor believes to be reasonably appropriate, but not less that such financial information that has been provided to Hover Networks, Inc.

(3) The Debtor shall promptly, and in no event no later than one business day after receipt of all of the documents and the deposit described in paragraph 10(1) above, provide Hover, the Unsecured Creditors’ Committee and its counsel, if appointed, the Bankruptcy Administrator, and any secured creditor who has requested notification in writing (or their counsel if they have appeared through counsel), the name of each Acceptable Bidder and a copy of its bid.

(4) The Debtor shall promptly, but no later than three (3) business days after receipt of all of the documents and the deposit listed in paragraph 10 (1) above, inform the prospective Acceptable Bidder whether the Debtor designates the prospective Acceptable Bidder as an Acceptable Bidder or takes the position, based upon evidence presented, that said party should not be so designated.

(5) Hover shall be deemed to be an Acceptable Bidder based upon its execution of the Asset Purchase Agreement.

11. No Auction if No Acceptable Bidder Other than Hover. If there is no Acceptable Bidder other than Hover, then the bid/offer by Hover as outlined in the Asset Purchase Agreement shall be deemed the highest and best offer for the Purchased Assets and there shall be no Auction Sale. In such event, Hover shall be deemed the Highest Bidder as defined infra.

12. Opening Bid. The Opening Bid shall be deemed to be the highest Acceptable Qualifying Bid. To the extent that two Acceptable Qualifying Bids are identical in amount, then the first in time, determined by the receipt of the Acceptable Bid Deposit, shall be deemed the Opening Bid at the Auction Sale.

13. Acceptable Upset Bids. At the Auction Sale, an Acceptable Upset Bid may be made by any Acceptable Bidder. The first Acceptable Upset Bid must be in an amount equal to or greater than \$20,000 in excess of Opening Bid. Thereafter, Acceptable Upset Bids must exceed the previous Acceptable Upset Bid by an amount equal to or greater than \$20,000. The ultimate highest bidder shall be referred to herein as the "Highest Bidder" and its bid the "Highest Upset Bid."

14. Acceptable Bidder Dispute Resolution. The Court shall hold a hearing on May 27, 2014, to hear and resolve any dispute which may exist between a prospective Acceptable Bidder and the Debtor as to whether said prospective Acceptable Bidder should be designated an Acceptable Bidder. The Court retains the jurisdiction to determine such other times and dates as it deems appropriate to hear any dispute relative to a prospective Acceptable Bidder, and said hearing may be held upon an emergency notice as deemed appropriate in the sole discretion of the Court.

15. How to Make an Upset Bid. A valid Acceptable Upset Bid may be made only by a person who satisfies the conditions set forth in these Auction and Sales Procedures to qualify as an Acceptable Bidder.

16. Irrevocable Nature of Bids. The Acceptable Upset Bid made by the Highest Bidder shall remain open and be irrevocable through the Final Hearing and, if the Highest Bid is determined at such hearing to be approved as the final Acceptable Bid, the Highest Bid shall remain open and be irrevocable through the Closing Date.

17. Finality of Auction Process. The Highest Upset Bid of the Highest Bidder is not subject to any upset bid after the close of the Auction Sale or at the Final Hearing.

18. Highest Bidder Deposit. The Highest Bidder shall cause to be deposited with the Debtor an amount in addition to its Acceptable Bidder Deposit such that the total amount of such deposit is equal to ten percent (10%) of the Highest Bid (the "Highest Bidder Deposit") The Highest Bidder Deposit shall be submitted to and shall represent good funds on deposit with the Debtor on or before Noon of the first business day following the Auction Sale.

19. Final Hearing. A final hearing will be held on May 29, 2014 at 9:30 a.m. (the "Final Hearing"). It shall be the purpose of the Final Hearing to confirm that the procedures as set forth in the Auction and Sales Procedures Order have been followed by the Debtor and the Auction Sale conducted in accordance with the same, to approve the sale of the Acquired Assets, and to make such findings as are necessary to provide the purchaser with proper title in accordance with the terms and conditions of the Asset Purchase Agreement and the Sale Procedures Order.

20. Closing Date. The Closing Date shall be deemed to be the date upon which the consideration is paid and all closing documents are signed. This may take place immediately after the Final Hearing but must occur within five (5) business days of the entry of the Sale Approval Order, unless the Sale Approval Order is subject to a stay, in which case, closing shall occur within five (5) business days after such stay is terminated and the Sale Approval Order remains effective.

21. Failure of Highest Bidder to Close. In the event that there is an Auction Sale and the Highest Bidder defaults or fails to close the sale transaction, then the Acceptable Upset Bid that is the prior high bid for the Acquired Assets shall be deemed to be the new Highest Bidder and the purchase price shall be the amount of such prior high bid. The new Highest Bidder shall be required to comply with the deposit requirements outlined in paragraph 19 and shall be bound thru closing at its prior high bid, with the deposit to remain on hand.

22. Payment of Breakup Fee. If the Acquired Assets are sold to an Acceptable Bidder other than Hover, then at the closing of such sale, the Debtor shall pay, or cause to be paid, to Hover the Breakup Fee in immediately available funds.

23. Absolute Sale. The Court, pursuant to Bankruptcy Rule 6004(h), will authorize the Debtor to close the sale of the Acquired Assets immediately upon entry of the Sale Approval Order following the Final Hearing.

24. Necessary Findings for Purchaser. A sale conducted pursuant to the procedures set forth herein shall result in the Acquired Assets being sold to the Highest Bidder as a good-faith purchaser. Said purchaser shall acquire all rights as can be conveyed pursuant to 11 U.S.C. § 363 including, but not limited to, the rights of a good faith purchaser pursuant to 11 U.S.C. § 363(m), and a finding, based upon the sworn representation of the Highest Bidder that the bidding was not pursuant to any improper collusive bidding practices, which would not allow for the sale to be avoided for reasons which would include 11 U.S.C. § 363(n).

25. Dispute Resolution. The Court shall retain exclusive jurisdiction to resolve any disputes which may arise concerning these Auction and Sales Procedures or other issues relevant to the Debtor's sale of the Acquired Assets as set forth herein.

26. Business Judgment. The Debtor may exercise its reasonable business judgment in conducting the Auction Sale and in allowing a reasonable time for bids by Acceptable Bidders once the Auction Sale has commenced; however, it is intended that once commenced, the Auction Sale shall proceed to its conclusion without being continued to a subsequent day, and the Debtor may determine in its business judgment when to close the Auction Sale, declare the Highest Bid, and preclude further bids. The Debtor may exercise its reasonable business judgment to recommend to the Court the Highest Bid.

27. Emergency Court Hearing with Notice Thereof. The Court may hold emergency hearings to resolve any disputes that may rise prior to the Auction Sale. These emergency hearings would include, but not be limited to, any hearing as to whether a party should be designated as an Acceptable Bidder. All such emergency hearings shall be held on Notice and Hearing as determined by the Court to be necessary under the circumstances and may include limited notice and/or telephonic notice to the designated parties. Where deemed necessary, the Court may issue ex parte orders to aid and assist in the consummation of the Auction Sale.

28. Executory Contracts. The Assigned Contracts, as defined in the Asset Purchase Agreement and set forth in the schedules thereto as applicable, shall be assumed by the Debtor and assigned to Hover, or such other Highest Bidder, at closing pursuant to order of the Court, with Hover, or such other Highest Bidder, to pay all cure amounts. The Debtor shall file an appropriate motion to be authorized to assume and assign the Assumed Contracts to Hover or such other Highest Bidder.

29. No Representations or Warranties. The Purchased Assets are being sold “as is” and “where is” and Hover, or any ultimate Highest Bidder, hereby acknowledges and agrees that, except as otherwise expressly provided in the Asset Purchase Agreement, the Debtor makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets. Without in any way limiting the foregoing, the Debtor hereby disclaims any warranty, expressed or implied, of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets. Hover and/or any ultimate Highest Bidder further acknowledges that said party has conducted (or will have conducted prior to the Auction Date) an independent inspection and investigation of the physical condition of the Purchased Assets and all such matters relating to or affecting the Purchased Assets as said party deems necessary or appropriate to the extent that they desire such. Hover or the Highest Bidder will accept the Purchased Assets at closing “as is” and “where is.”