



Entered on Docket
October 05, 2010

A handwritten signature in black ink, appearing to read "Mike Nakagawa".

Hon. Mike K. Nakagawa
United States Bankruptcy Judge

ROBERT E. ATKINSON, ESQ.
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Reorganization Counsel for Debtor

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

In re:

KRAVE ENTERTAINMENT, LLC

Debtor

Case No. 10-10672-mkn
Chapter 11

Hearing Date: September 8, 2010
Hearing Time: 9:30 a.m.

**ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE
OF ASSETS; (II) AUTHORIZING AND SCHEDULING AN AUCTION ON OCTOBER 29,
2010 IN CONNECTION WITH THE SALE; (III) CONFIRMING NOVEMBER 3, 2010
HEARING FOR FINAL APPROVAL OF SALE; AND (IV) APPROVING NOTICE OF
AUCTION AND SALE HEARING**

This matter came before the Court for hearing on September 8, 15, and 22, 2010, upon the motion (the "Sale Procedures Motion")¹ of Debtor in the above-captioned case (the "Debtor"), for an order (this "Sale Procedures Order"): (i) approving the bidding procedures set forth as Exhibit

¹ All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Sale Procedures Motion.

1 A hereto (the "Bidding Procedures") in connection with the proposed sale (the "Proposed Sale") of
2 substantially all of the assets of the Debtor, as shown in Schedule 1 of the related Asset Purchase
3 Agreement (the "Purchased Assets"), which bidding procedures shall govern the auction; (ii)
4 authorizing and scheduling an auction (the "Auction") in connection with such Proposed Sale, at
5 which auction the Debtor will solicit higher or better offers for the Purchased Assets, in
6 accordance with the Bidding Procedures; (iii) approving the form and manner of notice of the
7 Proposed Sale to the Stalking Horse Bidder (or such other Prevailing Bidder as may be determined
8 at the Auction in accordance with the Bidding Procedures), the Bidding Procedures, the Auction
9 and the hearing for final approval of the sale (the "Sale Hearing"), substantially in the form
10 attached hereto as Exhibit B (the "Notice of Auction and Sale Hearing"); and (iv) scheduling the
11 Sale Hearing.

12 The Court having considering the submissions and arguments of counsel and the files and
13 records herein; and now being fully advised of the premises; and after due deliberation thereon and
14 sufficient cause appearing therefore, FINDS THAT:

15
16 1. This Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§ 157 and
17 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding
18 pursuant to 28 U.S.C. § 157(b)(2).

19 2. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 105, 363 and
20 365.

21 3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
22 Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

23 4. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

24 5. Findings of fact shall be construed as conclusions of law and conclusions of law
25 shall be construed as findings of fact when appropriate.

26 6. Good and sufficient notice of the Sale Procedures Motion and the relief sought
27 therein has been given and no other or further notice is required. A reasonable opportunity to
28 object or be heard regarding the relief requested in the Sale Procedures Motion has been afforded

1 to parties in interest, including the following: (i) the Office of the United States Trustee (the "U.S.
2 Trustee"); (ii) those parties which have expressed an interest in bidding on the Purchased Assets;
3 (iii) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of
4 Bankruptcy Procedure (the "Bankruptcy Rules"); and (iv) the Stalking Horse Bidder (collectively,
5 the "Initial Notice Parties").

6 7. The form of Notice of Auction and Sale Hearing attached hereto as Exhibit B is
7 good, appropriate, adequate and sufficient, and is reasonably calculated to provide all interested
8 parties with timely and proper notice of the Proposed Sale, the Auction, the Bidding Procedures
9 and the Sale Hearing.

10 8. Entry of this Sales Procedures Order is in the best interests of the estate, its creditors
11 and other parties in interest, as the Debtor will, among other things, retain for the benefit of its
12 estate the prospect of a successful sale to the Stalking Horse Bidder, while enabling the Debtor to
13 solicit competing bids. A prompt sale of the Purchased Assets will maximize the amount that the
14 estate and its creditors and interest holders will realize for such Purchased Assets.

15 9. The terms and conditions of the Auction and Bidding Procedures were proposed by
16 the Debtor in good faith with the goal of maximizing the value of the Purchased Assets, are fair
17 and reasonable and in the best interests of the estate and its creditors and interest holders,
18 represent an exercise of the Debtor's sound business judgment, and will facilitate an orderly sale
19 process.

20 NOW THEREFORE, IT IS HEREBY ORDERED THAT:

21 The relief requested in the Sale Procedures Motion is hereby granted in all respects.

22 Any objections to the entry of this Sale Procedures Order that have not been withdrawn,
23 waived, resolved or settled are overruled.

24
25 A. Bidding Procedures

26 10. The Bidding Procedures, as set forth in Exhibit A hereto, are hereby approved in
27 their entirety. All proceedings relating to (i) the submission, consideration, qualification and
28 acceptance of Qualified Overbids submitted to the Debtor, (ii) the Auction, and (iii) the

1 identification and determination of the Prevailing Bid shall be governed by and conducted in
2 accordance with the Bidding Procedures. The failure in this Sale Procedures Order to include
3 specifically or reference any particular provision, section or article of the Bidding Procedures
4 shall not diminish or impair the effectiveness of the Bidding Procedures, it being the intent of this
5 Court that the Bidding Procedures be authorized and approved in their entirety and are
6 incorporated herein by reference.

7
8 B. The Auction

9 11. The Debtor may conduct the Auction in accordance with the Bidding Procedures.
10 The Auction, if required, will commence **at 10:00 a.m. (Prevailing Pacific Time) on October**
11 **29, 2010** at the offices of Kupperlin Law, or at such later time and at such other place as the
12 Debtor shall notify all Qualifying Bidders who have submitted Qualified Overbids and all other
13 Persons entitled to attend the Auction.

14
15 C. The Sale Hearing

16 12. A hearing to approve the Proposed Sale to the Stalking Horse Bidder or,
17 alternatively, the transaction that is the subject of the Prevailing Bid to the Prevailing Bidder, as
18 the case may require, shall be conducted **at 9:30 a.m. (prevailing Pacific Time) on November**
19 **3, 2010**, or at such later time as determined by this Court.

20
21 D. Notice of Auction and Proposed Sale

22 13. The notice of, among other things, (i) the Proposed Sale, (ii) entry of this Sale
23 Procedures Order, (iii) the Bidding Procedures, (iv) the Auction and (v) the Sale Hearing,
24 substantially in the form of the Notice of Auction and Sale Hearing attached hereto as Exhibit B,
25 is approved in all respects.
26

27
28 E. Objections to Relief Sought at Sale Hearing

1 14. At the Sale Hearing, the Debtor may seek entry of an order authorizing and
2 approving: (i) if no Qualified Overbid is received other than that of the Stalking Horse Bidder, the
3 transaction contemplated by the Stalking Horse Bid, or (ii) if another Qualified Overbid is
4 received by the Sellers, such other transaction contemplated by the Prevailing Bid (in either case,
5 the "Proposed Approval Order").

6 15. Any objections to the entry of the Proposed Approval Order must be filed with the
7 Court, and served so that it is RECEIVED by counsel for the Debtor, and also by the Stalking
8 Horse Bidder, by **no later than 5:00 p.m. (prevailing Pacific Time) on October 27, 2010** (the
9 "Objection Deadline"). Any party filing an objection to the motion seeking entry of the Proposed
10 Approval Order must attend the Sale Hearing and advocate its objection at such hearing. The
11 failure of any person or entity to timely file, serve and/or advocate its objection in accordance
12 with this paragraph shall be a bar to the assertion, at the Sale Hearing or thereafter, of any
13 objection to the Proposed Approval Order, and such objection shall be deemed waived.

14 16. The Sale Hearing may be adjourned, from time to time, without further notice to
15 creditors or parties in interest other than by announcement of said adjournment in Court or on this
16 Court's calendar on the date scheduled for such hearing.

17
18 F. Additional Provisions

19 17. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the Debtor
20 is not subject to any stay in the implementation, enforcement or realization of the relief granted in
21 this Sale Procedures Order, and the Debtor may, in its discretion and without further delay, take
22 any action and perform any act authorized under this Sale Procedures Order. Pursuant to Rules
23 6004(h) and 6006(d) of the Bankruptcy Rules, this Sale Procedures Order shall be effective and
24 enforceable immediately upon entry.

25 18. The terms and provisions of this Sale Procedures Order shall be binding in all
26 respects upon the Debtor, the Stalking Horse Bidder, and their respective affiliates, successors
27 and assigns (if any), including, without limitation, any trustee appointed under chapter 7 of the
28 Bankruptcy Code to which this chapter 11 case may be converted, and any affected third parties.

1 19. Service of the notices described herein on the parties entitled to receive such notices
2 pursuant to this Sale Procedures Order shall constitute proper, timely, adequate and sufficient
3 notice thereof and satisfies the requirements of sections 105, 363 and 365 of the Bankruptcy Code
4 and of the Bankruptcy Rules and Local Bankruptcy Rules, and no other or further notice is or
5 shall be required.

6 20. This Court shall retain jurisdiction over any matter or dispute arising from or
7 relating to the implementation of this Sale Procedures Order.
8

9 SUBMITTED BY:

10 **KUPPERLIN LAW**

11 By: /s/ Robert E. Atkinson
12 ROBERT E. ATKINSON, ESQ.
13 Nevada Bar No. 9958
14 *Attorney for Debtor*

15 **APPROVED** / DISAPPROVED:

16 **CATHERINE CORTEZ MASTO**
17 **Attorney General**

18 By: /s/ David J. Pope
19 DAVID J. POPE, ESQ.
20 Sr. Deputy Attorney General
21 Nevada Bar No. 8617
22 *Attorneys for the Nevada Department of Taxation*
23
24
25
26
27
28

Exhibit A to Sale Procedures Order

Bidding Procedures

A. Bids. Any third party (other than Phantom) that is interested in being a participant in the Auction (defined below) and acquiring the Purchased Assets (each a "Bidder") must submit a "Bid" as provided herein prior to **3:00 p.m. prevailing Pacific time on Wednesday, October 27, 2010** (the "Bid Deadline"). Any such Bid must:

- (1) Contain a signed definitive asset purchase agreement in substantially the form of the Purchase Agreement (marked to show changes from the Purchase Agreement) with, at a minimum, the following requirements: (i) designating the Purchased Assets or other assets of the Debtor to be acquired and having similar terms and conditions as the Purchase Agreement; (ii) provide for a purchase price with respect to the Purchased Assets in an amount which is at least \$10,000 more than the initial bid offered by Phantom under the Purchase Agreement; (iii) not be subject to any (a) financing contingency, (b) contingency relating to the completion of unperformed due diligence, (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or consents, or (d) any conditions precedent to the Bidder's obligation to purchase the Purchased Assets other than those included in the Purchase Agreement; and (iv) no Bid shall provide for the payment to the Bidder of any breakup fee, topping fee, expense reimbursement or other similar arrangement.
- (2) Include a deposit (the "Sale Deposit") in the form of either a wire transfer to an account specified by the Debtor or a certified check in the amount of \$50,000 and such deposit shall be held in escrow in Debtor's attorney's trust account pending the closing of the asset sale;
- (3) Be accompanied by evidence satisfactory to the Debtor in its commercially reasonable discretion that Bidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under the Purchase Agreement in the event that it submits the Prevailing Bid (defined below) at the Auction; and
- (4) Be submitted to counsel for the Debtor so as to be received not later than the Bid Deadline. Debtor's counsel shall, as soon as practicable, send a copy of each Bid received, if any, to the following parties: (i) Phantom; and (ii) either counsel to each Bidder submitting a bid, or if a Bidder does not have counsel, to any other Bidder.

B. Auction. In the event that the Debtor determines, in its sole reasonable discretion, that a qualifying Bid has been received from a prospective purchaser other than Phantom (a "Qualified Bidder"), then the Debtor will conduct the Auction among Phantom and all

Qualified Bidders on **Friday, October 29, 2010 at 10:00 a.m.** with respect to the sale of the Purchased Assets at the offices of Kupperlin Law, 10120 South Eastern Ave Suite 200, Henderson, NV 89052 or at such other location as may be designated by the Debtor. The Debtor will provide no less than 24 hours' notice to Phantom and to all Qualified Bidders that the Auction will be held. All bids must be for cash or cash equivalents acceptable to the Debtor. The Debtor shall determine the highest and best bid in its sole discretion. The "Purchaser" shall be the party that submits the highest and best bid at the Auction. No bids may be received after the announced conclusion of the Auction. At the Auction, Phantom and Qualified Bidders may submit successive bids in increments of at least \$10,000 greater than the prior bid (the "Incremental Bid Amount") for the purchase of all or substantially all of the Purchased Assets until there is only one bid that the Debtor determines, in its sole discretion, and subject to Bankruptcy Court approval, is the highest and best bid (the "Prevailing Bid"). If no conforming Bid from a Qualified Bidder shall have been received at or prior to the Bid Deadline, no Auction will be held, and the Phantom Bid shall be deemed the Prevailing Bid. In the event that the Purchaser defaults or fails to close the proposed transactions, then the party who, in the determination of the Debtor, submitted the prior high bid for the Purchased Assets shall be deemed to be the Purchaser, and the purchase price shall be the amount of such prior high bid. Notwithstanding the foregoing, the Debtor may impose such other timing, terms and conditions as he may determine to be in the best interest of the estate, its creditors and other parties in interest (e.g., a mixture of up-front and monthly payments); provided such terms and conditions shall not be materially inconsistent with the terms of the Purchase Agreement.

C. Bankruptcy Court Approval of Sale. The Debtor and the Purchaser, once the Purchaser has been determined, shall each use their commercially reasonable efforts, and shall cooperate, assist and consult with each other, to secure the entry of an order (the "Sale Approval Order"), which is reasonably acceptable to the Debtor and the Purchaser (it being understood that, pursuant to the Purchase Agreement, the Sale Approval Order will not have required any change to the terms and conditions of the Purchase Agreement other than changes consented to in writing by the Purchaser), of the Bankruptcy Court (i) approving the Purchase Agreement, and (ii) authorizing the sale of the Purchased Assets pursuant to section 363 of the Bankruptcy Code, free and clear of all liens, claims, interests and encumbrances. The Purchaser shall take all reasonable actions required to provide "adequate assurance of future performance" by the Purchaser after the closing of such sale. If for any reason the Purchaser is unable or unwilling to consummate an approved sale because of breach or failure to perform on the part of the Purchaser, the Bidder making the next highest or otherwise best bid shall be deemed to be the Purchaser, the purchase price shall be the amount of such Qualified Bidder's last bid, and the Debtor shall be authorized to effectuate the sale without further order of the Bankruptcy Court.

D. Hearing on Sale Under Section 363. The Debtor will present a Sale Approval Order for entry at an evidentiary hearing on **November 3, 2010, commencing at 9:30 a.m.**

Exhibit B to Sale Procedures Order

Form of Notice of Auction and Sale Hearing

ROBERT E. ATKINSON, ESQ.
Nevada Bar No. 9958
Email: robert@kupperlin.com
KUPPERLIN LAW GROUP, LLC
10120 S Eastern Ave, Suite 202
Henderson, NV 89052
Telephone: (702) 614-0600
Facsimile: (702) 614-0647
Attorney for Debtor

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

In re:

KRAVE ENTERTAINMENT, LLC

Debtor

Case No. 10-10672-mkn
Chapter 11

**NOTICE OF (1) AUCTION AND BIDDING PROCEDURES FOR SALE OF
SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS,
INTERESTS AND ENCUMBRANCES; (2) MOTION TO APPROVE SALE TO
PHANTOM ENTERTAINMENT, LLC OR OTHER PREVAILING BIDDER AT
AUCTION; AND (3) SALE APPROVAL HEARING ON NOVEMBER 3, 2010**

PLEASE TAKE NOTICE that on September 22, 2010, the Court granted the Debtor's Motion to Sell Free and Clear of Liens, as found on Docket Entry #59 in this case, and as subsequently supplemented. The Court has entered, or will soon enter, an order specifying the procedures for the sale and other relevant matters (the "Sale Procedures Order"). Pursuant to the Sale Procedures Order, the Debtor will conduct an auction at which it will sell, subject to the Court's approval, substantially all assets of Debtor free and clear of liens, interests and encumbrances. The auction is scheduled for Friday, October 29, 2010 at 10:00 a.m. Pacific Time at the offices of Kupperlin Law, located at 10120 South Eastern Avenue, Suite 200, Henderson, NV 89052. The Sale Procedures Order also establishes bidding procedures in connection with the auction. Additional information regarding the auction and the bidding procedures may be obtained by

1 contacting Debtor's attorney Robert Atkinson ("Debtor's Attorney") at telephone number (702)
2 614-0600, or by email at robert@kupperlin.com. A complete list of the Debtor's assets to be
3 purchased (the "Purchased Assets") can be found in Schedule 1 to the Purchase Agreement, a
4 copy of which can be obtained from the Debtor's Attorney. Competing bidders are required to
5 submit competing bids and otherwise qualify as bidders in accordance with the approved bidding
6 procedures no later than October 27, 2010, at 3:00 p.m. Pacific Time. Additional information
7 about the contemplated sale transaction is set forth in the attached Exhibit 1.

8 PLEASE TAKE FURTHER NOTICE that, if there are no higher and better offers from qualified
9 bidders at auction, the Debtor has requested approval to sell substantially all of the Debtor's
10 assets to Phantom Entertainment, LLC ("Phantom"), on the terms and subject to the conditions
11 set forth in an Asset Purchase Agreement dated July 31, 2010, as amended (the "Purchase
12 Agreement"), which is subject to Court approval. Under the Purchase Agreement, Phantom has
13 agreed to purchase the Purchased Assets for \$150,000.

14 PLEASE TAKE FURTHER NOTICE that a hearing on the proposed sale to Phantom or any
15 higher and better bidder will be held on November 3, 2010, at 9:30 a.m. Pacific Time at the U.S.
16 Bankruptcy Court for the District of Nevada, 300 Las Vegas Blvd South, 3rd Floor, Las Vegas,
17 NV 89101. Any objections to the proposed sale must be filed on or before 5:00 p.m. Pacific
18 Time on October 27, 2010.

19 DATED: September 23, 2010

KUPPERLIN LAW GROUP, LLC

20 By: /s/ Robert E. Atkinson
21 ROBERT E. ATKINSON, ESQ.
22 Nevada Bar No. 9958
23 *Attorney for Debtor*
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EXHIBIT 1

- 1
2 • *Property Sold.* The property to be sold generally includes the Debtor's nightclub
3 inventory, nightclub equipment and furnishings, office equipment, and its wholly-owned
4 subsidiary IRALP, Inc. The Debtor's schedules value these assets at approximately
5 \$120,450. No other valuation has been conducted. Certain of Debtor's assets are excluded
6 from the sale. In particular, the Purchased Assets exclude (a) credit card receivables that
7 exist on the day of transfer; (b) proceeds (if any) of the lawsuit against Liberty Mutual; and
8 (c) any avoidance claims. A description of the property to be sold (the "Purchased
9 Assets") and the excluded assets can be obtained by contacting Debtor's attorney Robert
10 Atkinson ("Debtor's Attorney") at telephone number (702) 614-0600, or by email at
11 robert@kupperlin.com. The Purchased Assets will be sold free and clear of all liens,
12 claims, and encumbrances.
- 13 • *Sale method and location.* The proposed method of sale is by auction. The auction is
14 scheduled for **Friday, October 29, 2010 at 10 a.m.** at the offices of Kupperlin Law
15 located at 10120 South Eastern Avenue, Suite 200, Henderson, NV 89052. Only Qualified
16 Bidders may attend the auction. Any person or entity may become a Qualified Bidder by
17 fulfilling the conditions to do so (including a \$50,000 earnest money deposit, and a
18 minimum opening bid of \$160,000), as described in the Bidding Procedures. The Bidding
19 Procedures have been set forth in the Sale Procedures Order, a copy of which can be
20 obtained from Debtor's Attorney.
- 21 • *Initial Bidder.* In the absence of any higher and better bids at the auction, the assets will be
22 sold to Phantom Entertainment, LLC for a purchase price of \$150,000. Phantom
23 Entertainment, LLC is controlled by individuals, namely, Sia Amira and Kelly Murphy,
24 who are insiders and principals of the Debtor. A copy of that proposed Purchase
25 Agreement, which is subject to Court approval, can be obtained from Debtor's Attorney.
- 26 • *Time fixed for filing objections.* The proposed time fixed for filing objections (to be
27 confirmed by Court order) is **October 27, 2010 at 5:00 p.m.** (the "Objection Deadline").
28 Any objections to the entry of the related Proposed Approval Order must be filed with the

1 Court, and served so that it is received by counsel for the Debtor, by no later than the
2 Objection Deadline. Any party filing an objection to the motion seeking entry of the
3 Proposed Approval Order must attend the Sale Hearing and advocate its objection at such
4 hearing. The failure of any person or entity to timely file, serve and/or advocate its
5 objection in accordance with this paragraph shall be a bar to the assertion, at the Sale
6 Hearing or thereafter, of any objection to the Proposed Approval Order, and such objection
7 shall be deemed waived.

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