

DISTRICT COURT ARAPAHOE COUNTY, COLORADO Arapahoe County Justice Center 7325 S. Potomac Street Centennial, CO 80112	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2008cv2659</p> <p style="text-align: center;">CTRM/DIV: 404</p>
<p>Plaintiff:</p> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Defendants:</p> <p>COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual.</p>	
<p>ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF CERTAIN ASSETS OF COLORADO HUMANE SOCIETY & S.P.C.A., INC., THROUGH A JUDICIAL SALE, (II) APPROVING PROTECTIONS FOR PROSPECTIVE PURCHASERS, AND (III) SCHEDULING AN AUCTION</p>	

This matter coming before the Court on the motion (the "Motion") of Waverton Group, LLC, acting in its capacity as the duly-appointed Receiver in this case (in its capacity as Receiver, "Waverton"), seeking an order (i) authorizing and approving the procedures that are attached hereto as Exhibit A (the "Bidding Procedures") for the sale of certain assets and ownership interests (the "Assets") of Colorado Humane Society & S.P.C.A., Inc. ("CHS") upon the terms and subject to the conditions set forth in that certain Asset Purchase Agreement dated February 3, 2010 (the "APA"), between Waverton and Colorado Anti-Cruelty Society ("Buyer"), a Colorado nonprofit corporation, a copy of which APA is attached as an Exhibit to the Motion, or to any other purchaser submitting a higher dollar-value bid for the Assets in conformity with the APA, the Bidding Procedures and this Order (an "Potential Bidder"), (ii) approving certain protections for the Buyer and any Potential Bidder in conjunction with the proposed sale of the Assets (the "Sale"), and (iii) approving the manner of notice of the potential Auction for the Sale of the Assets and scheduling the Auction; the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein (the "Bidding Procedures Hearing"), the Court having considered the statements of counsel and the evidence presented at the Bidding Procedures Hearing, the Court being duly informed as to all relevant matters to the extent deemed necessary by the Court, and with all capitalized terms not otherwise defined having the meanings ascribed to those terms in the Motion or in the Bidding Procedures, now therefore,

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PASCAL-Seymour, N. J.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Waverton has articulated good and sufficient reasons for, and the best interests of the CHS Estate will be served by, this Court granting the relief requested in the Motion, including approval of (i) the Bidding Procedures, attached hereto as Exhibit A, (ii) the protections to Buyer and Potential Bidders afforded by the terms set forth in this Order, and (iii) the manner of notice for the Auction set forth herein.

B. The proposed notice of the Sale, the Motion and the Bidding Procedures, as set forth in the Motion, is good, appropriate, adequate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auction and the Bidding Procedures, and no other or further notice is required with respect to the Bidding Procedures, except as set forth herein and in the Motion.

C. Waverton has articulated good and sufficient reasons for, and the best interests of its estate will be served by, a Sale of the Assets and, toward that end, this Court scheduling an Auction.

D. The Credit Bid by Buyer in the amount of \$20,000 is reasonable and proper as a component of the Purchase Price for the Assets, since the amount of the Credit Bid is the reasonably probable amount of the liability to which the CHS Estate would otherwise be subject, on a first-priority administrative expense basis, for the costs of Waverton's spay/neuter obligations to the CHS Animals, which were all adopted after the inception of the Custodianship Action, sufficient to justify submission, and the Court's acceptance, of the Credit Bid as a portion of the Purchase Price.

E. The preclusions, injunctions and other protections to the Buyer and Potential Bidders set forth in this Order are necessary to prevent irreparable loss and damage to the CHS Estate through interference with the Sale and resulting harm to the creditors of the CHS Estate. Any delay in conducting the Sale would constitute a breach of the APA and result in a loss to the CHS Estate of the Purchase Price, and require the CHS Estate and Waverton to incur further administrative expenses, in order to comply with Waverton's duties set forth in previous orders of this Court, that the CHS Estate might not have the financial resources to satisfy. Moreover, the protections set forth herein are essential inducements and conditions relating to the Buyer's entry into, and continuing obligations under, the APA. The protections set forth herein induced the Buyer to submit a bid for the Assets that will serve as a minimum or floor bid on which Waverton, creditors of the CHS Estate and Potential Bidders can rely. In reliance on the protective terms and conditions set forth in this Order, Buyer has entered into the APA and thereby provided a material benefit to the CHS Estate and its creditors by increasing the likelihood that the best possible price for the Assets will be received. Accordingly, the protections set forth in this Order are reasonable and necessary to maximize the value received for the Assets, for the benefit of the CHS Estate and its creditors.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.

2. The Bidding Procedures are hereby approved, are incorporated herein by reference as an Order of this Court, and shall govern all bids and all proceedings relating to the Sale of the Assets. Waverton is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

3. The deadline for submitting a Qualified Bid (as such term is defined in the Bidding Procedures) shall be _____ [21 calendar days following the date of this Order] (the "Bid Deadline").

4. To the extent at least one Qualified Bid, other than Buyer's bid, is timely received, the Court shall conduct the Auction on _____ beginning at _____ a.m./p.m. Mountain Standard Time [30 days after the date of this Order].

5. The APA is a Qualified Bid, and the Buyer is a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that Potential Bidders must satisfy to be a Qualified Bidder. Additionally, having deposited the full amount of the Purchase Price into escrow with the Escrow Agent, the Buyer shall not be required to post a Good Faith Deposit.

6. If Waverton does not receive any Qualified Bids other than the APA, the Court will not hold the Auction, the APA will be the Successful Bid, the Buyer will be named the Successful Bidder and the Auction hearing set forth above will be converted to a Confirmation Hearing for the Court to enter the Confirmation Order confirming the Sale of the Assets to the Buyer according to the terms of the APA and subject to the Confirmation Order. All parties in interest have received reasonable notice of the proposed Confirmation Order, through service of a copy of the Confirmation Order as an exhibit to the Motion.

7. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Assets.

8. The Sale of the Assets shall be free and clear of any and all claims or liens against CHS, Waverton or the CHS Estate, or any of each of its respective past or present insiders, affiliates, representatives, officers and directors whatsoever arising from any transaction, event or occurrence before the Court's Confirmation Order, including any claims made by any former directors or officers, or any affiliates thereof, of CHS, and all claims and liens against CHS, Waverton or the CHS Estate shall attach to the sale proceeds in the valid amount and priority afforded those claims and liens under applicable law, and the amounts of any valid liens of record shall be paid out of such proceeds to the extent possible, as determined by the Court upon notice to parties in interest.

9. Any and all legal challenges to Waverton's full and complete authority and legal right to sell the Assets to Buyer or to an Potential Bidder, to Waverton's, Buyer's, or any affiliate of Buyer's actions in accordance with the APA or this Order, to any entity's actions in accordance with this Order, or to any entity's acquisition of the Assets under the procedures set forth in this Order are overruled, invalid, null and void, and of no legal effect.

10. All third-parties are enjoined from interfering with Waverton's efforts to sell the Assets under the APA and this Order, or with the actions of any third-parties, including without limitation Buyer or any affiliate of Buyer, in accordance with the APA and this Order.

11. The Credit Bid is accepted by the Court as a valid component of the Purchase Price for the Assets.

12. This Order and the Bidding Procedures shall constitute good and sufficient notice of the Auction for all purposes. Waverton shall serve a copy of this Order, the Bidding Procedures and the Motion on all creditors and parties in interest of the CHS Estate, and on all entities that expressed an interest in purchasing the Assets since the inception of this case within two (2) business days following the entry of this Order. Within 3 business days following entry of this Order, Waverton shall publish an abbreviated notice of the proposed Auction in the Denver Business Journal and shall thereafter file an affidavit of publication of that notice with this Court.

13. All Potential Bidders and all Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of this Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale, the APA, or any proposed form of agreement that any Potential Bidder or any Qualified Bidder submits in support of any bid for the Assets.

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

Dated this _____ day of _____, 2010

By the Court:

District Court Judge

**BIDDING PROCEDURES ORDER
EXHIBIT "A"**

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the Sale (herein so called) of certain Assets (herein so called) of Colorado Humane Society & S.P.C.A., Inc. ("CHS"), by Waverton Group, LLC, acting in its capacity as the duly-appointed Receiver for CHS (in its capacity as Receiver, "Waverton"). The Assets, and the terms and conditions upon which Waverton contemplates consummating the Sale of those Assets, are further described in that certain Asset Purchase Agreement dated February 3, 2010 (the "APA"), between Waverton and Colorado Anti-Cruelty Society ("Buyer"), a Colorado nonprofit corporation, a copy of which APA is attached as an Exhibit to Waverton's Motion for Order (I) Approving Bidding Procedures for the Sale of Certain Assets of Colorado Humane Society & S.P.C.A., Inc., Through a Judicial Sale, (II) Approving Protections for Prospective Purchasers, and (III) Scheduling an Auction (the "Motion"), filed with the Arapahoe County District Court (the "Court") in Case No. 2008cv2659 on February 3, 2010. Copies of the APA may be obtained by sending a written request to Waverton, c/o Richard A. Block, Waverton Group, LLC, 4101 East Louisiana Avenue, Suite 300, Denver, Colorado 80246, email: rblock@xpn.com. The Sale of the Assets pursuant to the APA is subject to competitive bidding only as set forth herein, as approved by the Court, and in the Order by the Court granting the Motion (the "Sale Procedures Order"), a copy of which Sale Procedures Order is attached to these Bidding Procedures.

I. The Confirmation Hearing

In connection with the confirmation of the Sale, and subject to the potential Auction procedure described below, Waverton will seek approval from the Court, at a hearing that Waverton has requested be held on _____, 2010 [**approximately 30 days after entry of the Sale Procedures Order**], at the District Court, Arapahoe County, Colorado, Arapahoe County Justice Center, 7325 S. Potomac Street, Centennial, Colorado 80112, Courtroom/Division 404 (the "Confirmation Hearing"), for an Order authorizing the Sale to the Successful Bidder (as defined below) on terms and conditions consistent with the APA.

II. Participation Requirements

To participate in the Bidding Process (as defined below), each person or entity must deliver (unless previously delivered) to Waverton, the following materials:

- (a) An executed confidentiality agreement in form and substance satisfactory to Waverton; and
- (b) A statement demonstrating to Waverton's satisfaction a *bona fide* interest in purchasing and the financial ability to purchase the Assets of CHS.

Each person or entity that timely delivers such materials to Waverton in a form reasonably acceptable to Waverton is hereinafter referred to as a "Potential Bidder." Waverton will deliver, upon its receipt, a copy of all confidentiality agreements and statements of interest to Buyer.

In accordance with these Bidding Procedures, after a Potential Bidder delivers all of the materials required by subparagraphs (a) and (b) above, Waverton shall provide the Potential Bidder access to due diligence materials and documents related to the Assets, to the same extent made available to Buyer.

III. Determination by Waverton

Waverton shall (a) coordinate the efforts of Potential Bidders in conducting their respective due diligence, (b) evaluate bids from Potential Bidders, (c) negotiate any bid made to acquire the Assets, and (d) make such other determinations as are provided in these Bidding Procedures. Waverton shall not be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity who is not a Potential Bidder.

IV. Bid Deadline

A Potential Bidder that desires to make a bid shall deliver copies of its bid by overnight express mail and email to (a) Waverton Group, LLC, c/o Richard A. Block, 4101 East Louisiana Avenue, Suite 300, Denver, Colorado 80246, email: rblock@xpn.com; and (b) counsel to Buyer, Holme Roberts & Owen LLP, 1700 Lincoln, Suite 4100, Denver, Colorado 80203 (attn. Eric E. Johnson), email eric.johnson@hro.com, by no later than _____, 2010 [21 days following the date of the Sale Procedures Order] at 5:00 p.m. Mountain Standard Time (the "Bid Deadline").

V. Qualified Bids and Deposit

To be considered a qualified bid (herein so called), a bid must include:

- (a) an offer to acquire the Assets in substantially the form of the APA subject only to entry of the Confirmation Order, marked to show any proposed amendments and modifications to the APA (the "Marked Agreement");
- (b) an agreement that the Potential Bidder's offer is binding and irrevocable until forty-eight (48) hours after the earlier of (i) consummation of the closing of the Sale of the Assets, (ii) the withdrawal of the Assets from the Auction by Waverton, or (iii) thirty (30) days after the Confirmation Hearing;
- (c) aggregate cash consideration of at least \$250,000 (the "Qualifying Overbid Amount"), to be deposited into escrow with the same Escrow Agent, and subject to the same Escrow Agreement and same terms, as Buyer's deposit of the Purchase Price into escrow under the APA; and
- (d) such other evidence of ability to consummate the Sale transaction as Waverton may reasonably request.

Waverton will review each bid received from a Potential Bidder to ensure that it meets the requirements set forth above. A bid received from a Potential Bidder that meets the above requirements will be considered a "Qualified Bid" and each Potential Bidder that submits a

Qualified Bid will be considered a "Qualified Bidder." Waverton will determine whether each bid meets the requirements of a Qualified Bid. In determining whether a bid is a Qualified Bid, the only relevant variable is the amount of cash consideration offered as a bid for the Assets. The APA shall be deemed a Qualified Bid automatically, including the Credit Bid component of the Purchase Price set forth in the APA, and Buyer shall be deemed a Qualified Bidder, for all purposes and requirements of the Bidding Procedures, in the full amount of the Purchase Price set forth in the APA.

The sole criterion for valuing a Qualified Bid will be the amount of cash consideration offered for the Sale of the Assets.

Waverton, in its sole discretion, reserves the right to reject any bid if such bid:

- (a) is on terms that differ materially from, or are more burdensome or conditional than, the terms of the APA;
- (b) does not include all of the Assets;
- (c) is not received by the Bid Deadline;
- (d) includes non-cash consideration;
- (e) is subject to any due diligence, financing condition, or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the Assets other than entry of the Confirmation Order; or
- (f) does not meet the requirements for a Qualified Bid as set forth herein above.

Any bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid.

VI. Auction

If at least one Qualified Bid other than Buyer's APA is received by the Bid Deadline, the Court will conduct an Auction (herein so called) for the Sale of the Assets. If an Auction is conducted, the Auction shall take place at _____ a.m./p.m. (**Mountain Standard Time**) on _____, 2010 [**approximately 30 days after the date of the Sale Procedures Order**], at the District Court, Arapahoe County, Colorado, Arapahoe County Justice Center, 7325 S. Potomac Street, Centennial, Colorado 80112, Courtroom/Division 404, or such later time or such other place as Waverton shall designate and provide notice to all Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder who has submitted a Qualified Bid will be eligible to participate at the Auction.

At the Auction, participants will be permitted to increase their bids in an "open outcry" auction. The bidding shall start at the amount offered in the highest Qualifying Bid, plus \$10,000 and will continue in increments of at least \$10,000 in cash until the bidding ceases. In

each bidding round, Buyer shall be entitled to bid in the amount of the Purchase Price, including the Credit Bid, set forth in the APA.

Immediately prior to the conclusion of the Auction, Waverton shall (a) identify the highest or best bid (the "Successful Bid") for the Assets of CHS at the Auction; and (b) notify all Potential Bidders and the Court, at the Auction and prior to its conclusion, of the name of the person or entity making the Successful Bid (the "Successful Bidder"), and the amount of the Successful Bid.

All bidders at the Auction will be deemed to have consented to the Court's jurisdiction and waived any right to jury trial in connection with any disputes relating to the Auction, the Bidding Procedures or the Sale of the Assets.

VII. Implementation of Successful Bid

Immediately following the conclusion of the Auction, Waverton and the Successful Bidder, which may be Buyer, either with or without any other Qualifying Bids, shall proceed to conclude the Confirmation Hearing with the entry of the Confirmation Order, in substantially the form attached to the Motion, confirming the sale of the Assets to the Successful Bidder. Waverton and the Successful Bidder shall use reasonable efforts to consummate the Sale within ten days following entry of the Confirmation Order, unless a later date is agreed to by Waverton and the Successful Bidder.

VIII. Return of Good Faith Deposit

All amounts paid into escrow with the Escrow Agent by the Successful Bidder shall be retained by Waverton. All other deposits into escrow shall be returned within two business days after the conclusion of the Auction. In connection with consummation of the Sale, the Successful Bidder will be entitled to a credit for the amount of its deposit into escrow. If the Successful Bidder defaults in its obligations to Waverton pursuant to its bid, then Waverton shall retain the deposit into escrow, in its full amount, as liquidated damages.

IX. Retention of Sale Proceeds by Waverton

Following closing of the Sale transaction with the Successful Bidder, Waverton shall retain all cash proceeds of the Sale as part of the CHS Estate, for distribution according to further Order of the Court.