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Proposal for Financing Procedures in the United States Bankruptcy Courts for the Southern District of Texas

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1. CASH COLLATERAL USE/DIP LENDING

A. When a Complex Case is filed on Day 1, a hearing will automatically be set to consider either cash collateral use and/or interim DIP financing on the afternoon on Day 3 (the "Initial Finance Hearing").

B. At the Initial Finance Hearing, the debtor will be expected to offer into evidence a cash flow projection showing sources and uses of cash necessary for the debtor's operations on a weekly basis for the first 5 weeks of the case (a "First Budget").

1. The First Budget shall be served on opposing parties no later than noon on Day 2.

C. The Court will consider at the Initial Finance Hearing the use of cash collateral and/or an interim DIP loan for cash needs shown in the First Budget (the "Initial Financing") pursuant to Code Sections 363, 364 and Rule 4001.

1. The Court can consider at the Initial Finance Hearing additional use of cash collateral and/or DIP lending if cause is shown under Code Sections 363, 364 and Rule 4001 for such extraordinary additional financing.

2. At the Initial Finance Hearing, the Court will consider Initial Financing, presumptively granting replacement liens on post-petition collateral to secure interim cash collateral used or interim DIP financing advanced on the same types of collateral and to the same extent as the pre-petition lender has on pre-petition collateral, substantially in the form of the Standard Initial Cash Collateral/DIP Loan Order attached hereto as Exhibit A ("Standard Terms").

a. The Court will consider terms in addition to Standard Terms if cause is shown under Code Sections 363, 364 and Rule 4001 for such additional terms.

D. At the Initial Finance Hearing, the Court will set a hearing to consider permanent financing through use of cash collateral and/or DIP lending in accordance with Code Sections 363, 364 and Rule 4001 (a "Permanent Finance Hearing").

1. In keeping with Rule 4001, a Permanent Finance Hearing shall be set no earlier than Day 15 and will presumptively be set on about Day 30.

2. At the Permanent Finance Hearing, the debtor will be expected to introduce into a evidence a cash flow projection for sources and uses of cash for the period of cash collateral use or DIP lending that is proposed (a "Permanent Financing Budget"). Regardless of the specific request made by the debtor, the Court will consider at the Permanent Finance Hearing whether it is appropriate to order either long term use of cash collateral or long term DIP lending pursuant to the Permanent Financing Budget in accordance with Sections 363, 364 and Rule 4001.

3. The Permanent Finance Budget shall be served on opposing parties 5 business days before the Permanent Finance Hearing.

4. If a motion to approve Permanent Financing under Section 363 and/or 364 seeks to include any of the terms listed in Exhibit B hereto ("Significant Provisions"), the motion shall list all such provisions in a separate section and shall give reasons why each such provision should be approved in this case. The Court will consider each of these Significant Provisions based on Sections 363, 364, Rule 4001 and the facts and circumstances of the case.

2. SALES OF SUBSTANTIALLY ALL ASSETS

A. If a debtor proposes to sell all, or substantially all, of its assets pursuant to Section 363 during the case (a "Substantial Asset Sale"), it will be expected to use the following procedures in order to demonstrate its compliance with Section 363, 1129, Rule 6004 and applicable circuit court precedent concerning such sales.

B. Such a sale shall not be heard on less than 30 days notice unless a showing is made of extraordinary emergency.

C. Such a sale shall be for cash or readily marketable securities that can easily be distributed to creditors under a plan of reorganization ("Complying Proceeds"); unless the proponent establishes through credible evidence that Complying Proceed are unavailable and the consideration obtained is in the best interest of the estate.

D. Such proceeds shall be placed into segregated account to be used only (i) pursuant to court order during the case or (ii) distributed to creditors pursuant to a confirmed plan of reorganization.

E. Any creditor opposing such a sale solely on the basis that it constitutes a sub rosa plan must identify in its objection with specificity what rights under Sections 1121-1129 it contends are being violated.

F. At the Substantial Asset Sale Hearing, the debtor will be expected to respond to any objection asserting that the proposed sale of substantially all assets pursuant to Section 363 will, under the facts of the case, allegedly materially adversely affect the rights of creditors under Sections 1121 - 1129 concerning confirmation of a plan of reorganization. The debtor will be expected to introduce evidence that it is proposing to segregate Complying Proceeds or establish why Complying Proceeds are unavailable and may, but is not required to, submit a copy of a plan of reorganization complying with Section 1129 (a) and/or (b) (a "Complying Plan"). The debtor will be expected to demonstrate that all valid, perfected and unavoidable liens will be protected pursuant to section 363(f).

G. At the Substantial Asset Sale Hearing, the Court will consider the evidence of Complying Proceeds and any Complying Plan as part of its consideration of whether to approve the sale pursuant to Sections 363 and Rule 6004.

H. If a debtor files a Substantial Asset Sale Motion on Day 1, then at the Initial Finance Hearing the Court shall schedule the hearing on the Substantial Asset Sale Motion and consider any bid procedures proposed in connection with such sale.

I. If a debtor files a Substantial Asset Sale Motion before the Permanent Finance Hearing, then, unless it shall have been done previously, at the Permanent Finance Hearing, the Court shall schedule the hearing on the Substantial Asset Sale Motion and consider any bid procedures proposed in connection with such sale.

J. For sale of substantially all assets, and for sales of assets generally, the Court endorses the Guidelines for the Conduct of Asset Sales that are attached hereto as Exhibit C.

3. PLAN CONFIRMATION

A. If a debtor files a plan of reorganization and disclosure statement before the Initial Finance Hearing, then at the Initial Finance Hearing the Court will set the date for the disclosure statement hearing and related objection deadlines, and consider setting a date for the plan confirmation hearing and related voting and objection deadlines. Likewise, if a debtor files a plan and disclosure statement before the Permanent Finance Hearing, then at the Permanent Finance Hearing the Court will set the date for the disclosure statement hearing and related objection deadlines, and consider setting a date for the plan confirmation hearing and related voting and objection deadlines.

B. In deciding scheduling for disclosure statement and plan confirmation hearings, the Court will consider arguments for and against shortening the time for notice of such hearings and whether any such notice periods should run simultaneously. In making that determination, the Court will take the following into account:

1. Whether there is evidence that it is important to the success of the reorganization that the case move expeditiously.

2. Whether the plan proposes to distribute cash proceeds of assets pursuant to the priorities of Section 726.

3. Whether there is evidence that all classes are likely to vote for the plan.

4. If a class is expected to be crammed down under § 1129(b), a showing will need to be made why such class is receiving due process if it is not given 25 days notice of a disclosure statement hearing and subsequent 25 days notice of a plan confirmation hearing.

C. If any sale of assets or auction of rights, including rights to provide financing in connection with the Plan, is proposed in connection with a plan, and the plan proponent proposes procedures for such, then an order to set procedures for such sale or auction shall be considered at the hearing at which the date for the disclosure statement hearing is set, or the Plan may propose to sell assets without the need for such sale or auction procedures if permitted under applicable law.

EXHIBIT A

STANDARD FINANCING ORDER

_________________ ("Debtor") filed a Chapter 11 case on ____________ ("Day 1"), and also filed a motion for use of cash collateral and/or to obtain debtor-in-possession borrowing (the "Motion"). Before noon on Day 2, the Debtor filed a budget for use of cash collateral and/or debtor-in-possession borrowing for the first ___ days of its case (the "Initial Budget").

The Financing Motion and the Initial Budget have been served on all parties required to be served pursuant to the Bankruptcy Code and Bankruptcy Rules 4001 (b)(1)(c) and (c)(1)(C), including a parties known to the Debtor to assert a security interest in Debtor's cash ("Secured Creditors"). Secured Creditors include: ____________________. A hearing was held on ______________ to consider the Motion and financing pursuant to the Initial Budget.

The Court finds that Debtor has shown that it can provide adequate protection for use of cash collateral by granting to each Secured Creditor a security interest in the Debtor's post-petition assets with the same description, validity and priority as the pre-petition security interest claimed by that Secured Creditor.

Accordingly, it is hereby Ordered that:

1. The Debtor is permitted to use cash collateral pursuant to the Initial Budget which is attached hereto as Exhibit A.

2. Each Secured Creditor shall have a security interest in Debtor's post-petition assets with the same description, validity and priority as the pre-petition security interest claimed by that Secured Creditor.

3. Debtor shall report concerning its use of cash collateral as set forth in Exhibit B hereto.

4. Hearing on continued use of cash collateral and/or debtor in possession borrowing shall be conducted at ________________ (the "Permanent Finance Hearing").

5. Five business days before the Permanent Finance Hearing, Debtor shall serve on Secured Creditors and any Committee appointed and such other parties as required by Bankruptcy Rules 4001 (b)(1)(c) and (c)(1)(C) the budget to be considered at the Permanent Finance Hearing.

EXHIBIT B

Controversial Provisions are those that:

1. Grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (*i.e.*, clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

2. Deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);

3. Bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditor;

4. Waive or limits the estate's rights under 11 U.S.C. § 506(c);

5. Grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, or 549;

6. Others to be discussed.

EXHIBIT C

GUIDELINES FOR THE CONDUCT OF ASSET SALES

The United States Bankruptcy Court for the Southern District of New York (the "Court") has established the following guidelines (the "Guidelines") for the conduct of asset sales under section 363(b) of 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). The Guidelines are designed to help practitioners identify issues that typically are of concern to parties and the Court, so that, among other things, determinations can be made, if necessary, on an expedited basis.

By offering the Guidelines, this Court does not address the circumstances under which an asset sale or asset sale process is appropriate or express a preference for asset sales under section 363(b) of the Bankruptcy Code as opposed to those conducted in the context of confirming a chapter 11 plan, address other substantive legal issues, or establish any substantive rules. However, the Guidelines do require disclosure of the "Extraordinary Provisions," discussed below, pertaining to the conduct of asset sales, which ordinarily will not be approved without good cause shown for such Extraordinary Provisions, or compelling circumstances, and reasonable notice.

The Guidelines are intended to supplement the requirements of section 363(b) and 365 of the Bankruptcy Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6004-1 and 6005-1 of the Court's Local Rules.

1. MOTIONS

A. Motion Content. When an auction is contemplated, the debtor[1] should file a single motion seeking the entry of two orders to be considered at two separate hearings. The first order

[1] The term "debtor" includes "debtor in possession" and "trustee," as appropriate under the particular circumstances.

(the "Sale Procedures Order") will approve procedures for the sale process, including any protections for an initial bidder, or stalking horse buyer, and the second order (the "Sale Order") will approve the sale to the successful bidder at the auction. If no auction procedures or stalking horse buyer protection provisions are contemplated, only one order (the Sale Order) and one hearing is required. If no auction is contemplated or the debtor has not actively solicited or will not actively solicit higher and better offers, the motion seeking approval of the sale should explain why the debtor proposes to structure the sale in such manner.[2]

1. The proposed purchase agreement, or a form of proposed agreement acceptable to the debtor if the debtor has not yet entered into an agreement with a proposed buyer, should be attached to the motion.

2. The motion also should include a copy of the proposed order(s), particularly if the order(s) include any Extraordinary Provisions.

3. The motion must comply in form with the Local Rules.

4. If a hearing is required under section 363(b) of the Bankruptcy Code in connection with the sale of personally identifiable information subject to a privacy policy of the debtor, the motion should request appointment of a consumer privacy ombudsman under section 332 of the Bankruptcy Code.

B. Bidding Procedures. Generally, the Court will entertain a motion for approval, in a Sale Procedures Order, of proposed bidding procedures if such procedures are, as a matter of reasonable business judgment, likely to maximize the sale price. Such procedures must not chill the receipt of higher and better offers and must be consistent with the seller's fiduciary duties. It is recommended that such procedures include the following:[3]

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[2] With the exception of providing for such disclosure, these Guidelines do not express a preference for public over private sales as a means to maximize the sale price.

[3] When multiple asset sales over time are expected, a debtor should consider seeking Court approval of global bidding procedures to avoid the need to obtain Court approval of procedures for each such sale. Similarly, the debtor should consider seeking Court approval of global notice and other appropriate procedures to facilitate sales of assets of limited value or de minimis sales that do not warrant an auction or a separate motion for each sale. What constitutes a de minimis sale will depend on the facts of each case. See Local Rule 6004-1.

1. Qualification of Bidders. An entity that is seeking to become a qualified bidder will deliver financial information by a stated deadline to the debtor and other key parties (ordinarily excluding other bidders)[4] reasonably demonstrating such bidder's ability to consummate a sale on the terms proposed. Such financial information, which may be provided confidentially, if appropriate, may include current audited or verified financial statements of, or verified financial commitments obtained by, the potential bidder (or, if the potential bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach). To be qualified, a prospective bidder also may be required by a stated deadline to make a non-binding expression of interest and execute a reasonable form of non-disclosure agreement before being provided due diligence access to non-public information.

2. Qualification of Bids Prior to Auction.

   a. The bidding procedures should state the criteria for a qualifying bid and any deadlines for (i) submitting such a bid and (ii) notification whether the bid constitutes a qualifying bid.

   b. The bidding procedures may require each qualified bid to be marked against the form of a stalking horse agreement or a template of the debtor's preferred sale terms, showing amendments and other modifications (including price and other terms) proposed by the qualified bidder. The proposed bidding procedures may, but are not required to, limit bidding to the terms of a stalking horse agreement or preferred form of agreement; for example, bidding on less than all of the assets proposed to be acquired by an initial, or stalking horse, bidder normally should be permitted, unless such bidding is inconsistent with the purpose of the sale.

   c. A qualified bid should clearly identify all conditions to the qualified bidder's obligation to consummate the purchase.

   d. A qualified bid should include a good faith deposit, which will be non-refundable if the bidder is selected as the successful bidder and fails to consummate the purchase (other than as a result of a breach by the seller) and refundable if it is not selected as the successful bidder (other than as a result of its own breach). The amount of, and precise rules governing, the good faith deposit will be determined on a case-by-case basis, but generally each qualified bidder, including any initial, or stalking horse, bidder, should be required to make the same form of deposit.

[4] It is expected that the debtor will also share its evaluation of bids with key parties-in-interest, such as representatives of official committees, and that it will in its reasonable judgment identify the winning bidder only after consultation with such parties.

3. Backup Buyer. The Sale Procedures Order may provide that the debtor in the reasonable exercise of its judgment may accept and close on the second highest qualified bid received if the winning bidder fails to close the transaction within a specified period. In such case, the debtor would retain the second highest bidder's good faith deposit until such bidder was relieved of its obligation to be a back-up buyer.

4. Stalking Horse or Initial Bidder Protections/Bidding Increments.

   a. No-Shop or No-Solicitation Provisions. Limited no-shop or no-solicitation provisions may be permissible, in unusual circumstances, if they are necessary to obtain a sale, they are consistent with the debtor's fiduciary duties and they do not chill the receipt of higher or better offers. Such provisions must be prominently disclosed in the motion, with particularity. If the relevant documents do not include a "fiduciary out" provision, the debtor must disclose the fact of and the reason for the exclusion of the provision.

   b. Break-Up/Topping Fees and Expense Reimbursement. The propriety of any break-up or topping fees and other bidding protections (such as the estate's proposed payment of out-of-pocket expenses incurred by a bidder in connection with the proposed transaction or the compensation of a bidder for lost opportunity costs) will be determined on a case-by-case basis. Generally such obligations should be payable only from the proceeds of a higher or better transaction entered into with a third party within a reasonable time of the closing of the sale. Such provisions must be set forth with particularity, and conspicuously disclosed in the motion.

   c. Bidding Increments. If a proposed sale contemplates the granting of a break-up or topping fee or expense reimbursement, the initial bidding increment must be more than sufficient to pay the maximum amount payable thereunder. Additional bidding increments should not be so high that they chill further bids, or so low that they provide insubstantial consideration to the estate.

   d. Rebidding. If a break-up or topping fee is requested, the Sale Procedures Order should state whether the stalking horse will be deemed to waive the break-up or topping fee by rebidding. In the absence of a waiver, the Sales Procedure Order should state whether the stalking horse will receive a "credit" equal to the break-up or topping fee when bidding at the auction.

5. Auction Procedures.

a. If an auction is proposed, the Sale Procedures Order generally should provide that the auction will be conducted openly, and that each bidder will be informed of the terms of the previous bid. The motion should explain the rationale for proposing a different auction format in the Sale Procedures Order.

b. If a professional auctioneer will conduct the auction, the parties should refer to the statutory provisions and rules governing the conduct of professional auctioneers. See Bankruptcy Rule 6004 and Rules 6004-1 and 6005-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

c. If the auction is sufficiently complex or disputes can reasonably be expected to arise, it is advisable at the sale procedures hearing to ask the Court whether it will consider conducting the auction in open court, or otherwise be available to resolve disputes. If the debtor proposes to conduct the auction outside the presence of the judge, the actual bidding should be transcribed or videotaped to ensure a record, or the motion should explain why this is not advisable.

d. Each bidder is expected to confirm at the auction that it has not engaged in any collusion with respect to the bidding or the sale.

e. The Sale Procedures Order should provide that, absent irregularities in the conduct of the auction, or reasonable and material confusion during the bidding, the Court will not consider bids made after the auction has been closed, or the motion should explain why this is not advisable.

C. Sale Motion. With regard to the proposed sale, the motion and the evidence presented or proffered at any sale hearing should be sufficient to enable the Court to make the following findings: (1) a sound business reason exists for the transaction; (2) the property has been adequately marketed, the purchase price constitutes the highest or otherwise best offer and provides fair and reasonable consideration; (3) the proposed transaction is in the best interests of the debtor's estate, its creditors, and where relevant, its interest holders; (4) the transaction has been proposed and negotiated in good faith; (5) adequate and reasonable notice has been provided; (6) the "free and clear" requirements of section 363(f) of the Bankruptcy Code, if applicable, have been met; (7) if applicable, the sale is consistent with the debtor's privacy

policy concerning personally identifiable information, or, after appointment of a consumer ombudsman in accordance with section 332 of the Bankruptcy Code and notice and a hearing, no showing was made that such sale would violate applicable non-bankruptcy law; (8) the requirements of section 365 of the Bankruptcy Code have been met in respect of the proposed assumption and assignment or rejection of any executory contracts and unexpired leases; (9) where necessary, the debtor's board of directors or other governing body has authorized the proposed transaction; and (10) the debtor and the purchaser have entered into the transaction without collusion, in good faith, and from arm's-length bargaining positions, and neither party has engaged in any conduct that would cause or permit the agreement to be avoided under section 363(n) of the Bankruptcy Code.

1. Sound Business Purpose. A debtor must demonstrate the facts that support a finding that a sound business reason exists for the sale.

2. Marketing Efforts. A debtor must demonstrate facts that support a finding that the property to be sold has been marketed adequately.

3. Purchase Price. A debtor must demonstrate that fair and reasonable value will be received and that the proffered purchase price is the highest or best under the circumstances. If a bid includes deferred payments or any equity component, a debtor should discuss its assessment of the creditworthiness of competing bidders, if any, and the proposed buyer's ability to realize the projected earnings upon which future payments or other forms of consideration to the estate are based. Any material purchase price adjustment provisions should be identified.

4. Assumption and Assignment of Contracts and Leases. A debtor must demonstrate at a minimum: (a) that it or the assignee/acquiror has cured or will promptly cure all existing defaults under the agreement(s), and (b) that the assignee/acquiror can provide adequate assurance that it will perform under the terms of the agreement(s) to be assumed and assigned under section 365 of the Bankruptcy Code. Additional notice and opportunity for a hearing may be required, if the offer sought to be approved at the sale hearing is submitted by a different entity than the initial, stalking horse bidder or the winning bid identifies different contracts or leases for assumption and assignment, or rejection, than the initial bid that was noticed for approval. If this possibility exists, the sale

motion should acknowledge the debtor will provide such additional notice and opportunity to object under such circumstances.

D. Extraordinary Provisions. The following provisions must be disclosed conspicuously in a separate section of the sale motion and, where applicable, in the related proposed Sale Procedures Order or Sale Order, and the motion must provide substantial justification therefor:[5]

1. Sale to Insider. If the motion proposes a sale to an insider, as defined in the Bankruptcy Code, the motion must disclose what measures have been taken to ensure the fairness of the sale process and the proposed transaction.

2. Agreements with Management. The sale motion must disclose whether the proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the material terms of any such agreements, and what measures have been taken to ensure the fairness of the sale and the proposed transaction in the light of any such agreements.

3. Private Sale/No Competitive Bidding. If no auction is contemplated, the debtor has agreed to a limited no-shop or no-solicitation provision, or the debtor has otherwise not sought or is not actively seeking higher or better offers, the sale motion must so state and explain why such sale is likely to maximize the sale price.

4. Deadlines that Effectively Limit Notice. If the proposed transaction includes deadlines for the closing or Court approval of the Sale Procedures Order or the Sale Order that have the effect of limiting notice to less than that discussed in II, below, the sale motion must provide an explanation.

5. No Good Faith Deposit. If any qualified bidder, including a stalking horse, is excused from submitting a good faith deposit, the sale motion must provide an explanation.

6. Interim Arrangements with Proposed Buyer. If a debtor is entering into any interim agreements or arrangements with the proposed purchaser, such as interim management arrangements (which, if out of the ordinary course, also must be subject to notice and a hearing under section 363(b) of the Bankruptcy Code), the sale motion must disclose the terms of such agreements.

[5] The fact that a similar provision was included in an order entered in a different case does not constitute a justification.

7. Use of Proceeds. If a debtor proposes to release sale proceeds on or after the closing without further Court order, or to provide for a definitive allocation of sale proceeds between or among various sellers or collateral, the sale motion must describe the intended disposition of such amounts and the rationale therefor.

8. Tax Exemption. If the debtor is seeking to have the sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code, the sale motion must prominently disclose the type of tax (e.g., recording tax, stamp tax, use tax, capital gains tax) for which the exemption is sought. It is not sufficient to refer simply to "transfer" taxes. In addition, the debtor must identify the state or states in which the affected property is located.

9. Record Retention. If the debtor proposes to sell substantially all of its assets, the sale motion must confirm that the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case.

10. Sale of Avoidance Actions. If the debtor seeks to sell its rights to pursue avoidance claims under chapter 5 of the Bankruptcy Code, the sale motion must so state and provide an explanation of the basis therefor.

11. Requested Findings as to Successor Liability. If the debtor seeks findings limiting the purchaser's successor liability, the sale motion must disclose the adequacy of the debtor's proposed notice of such requested relief and the basis for such relief. Generally, the proposed Sale Order should not contain voluminous findings with respect to successor liability, or injunctive provisions except as provided in III, below.

12. Future Conduct. If the debtor seeks a determination regarding the effect of conduct or actions that may or will be taken after the date of the Sale Order, the sale motion must set forth the legal authority for such a determination.

13. Requested Findings as to Fraudulent Conveyance. If debtor seeks a finding to the effect that the sale does not constitute a fraudulent conveyance, it must explain why a finding that the purchase price is fair and reasonable is not sufficient.

14. Sale Free and Clear of Unexpired Leases. If the debtor seeks to sell property free and clear of a possessory leasehold interest, license or other right, the debtor must identify the non-debtor parties whose interests will be affected, and explain what adequate protection will be provided for those interests.

15. Relief from Bankruptcy Rule 6004(h). If the debtor seeks relief from the ten-day stay imposed by Bankruptcy Rule 6004(h), the sale motion must disclose the business or other basis for such request.

2. NOTICE

A. General. Notice is always required under section 363(b); however, a hearing is required only if there are timely objections or the Court otherwise schedules a hearing.

B. Notice of Proposed Sale Procedures.

1. Notice Parties. Notice should be limited to those parties-in-interest best situated to articulate an objection to the limited relief sought at this stage, including: (a) counsel for official and informal committees of creditors, equity holders, retirees, etc.;

   a. office of the United States Trustee;

   b. postpetition lenders;

   c. indenture trustees;

   d. agent for prepetition lenders;

   e. entities who have requested notice under Bankruptcy Rule 2002;

   f. all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the assets offered for sale; and

   g. parties to executory contracts and unexpired leases proposed to be assumed and assigned, or rejected as part of the proposed transaction.

To provide additional marketing of the assets, the debtor also should send a copy of the motion to entities known or reasonably believed to have expressed an interest in acquiring any of the assets offered for sale. Nothing herein is meant to imply that prospective bidders have standing to be heard with respect to the Sales Procedures.

2. Notice Period. As a general matter, the minimum 20-day notice period set forth in Bankruptcy Rule 2002(a) can be shortened with respect to the request for approval of a proposed Sale Procedures Order, that does not involve Extraordinary Provisions and complies with these Guidelines, without compromising the finality of the proposed transaction. The 10-day notice period provided for in Local Rule 9006-1(b) should provide sufficient time, under most circumstances, to enable any parties-in-interest to file an objection to proposed sale procedures.

3. Contents of Notice. Notice should comport with Bankruptcy Rules 2002 and 6004.

C. Notice of Sale.

1. Notice Parties. Generally the proposed sale requires more expansive notice than proposed sale procedures. (But see footnote 2, above, regarding omnibus procedures for de minimis sales.) Notice should ordinarily be given to: [6]

   a. counsel for official and informal committees of creditors, equity holders, retirees, etc.;

   b. office of the United States Trustee;

   c. entities who have requested notice under Bankruptcy Rule 2002[7] (and, if the proposed sale is of substantially all of the debtor's assets, all known creditors of the debtor);

   d. postpetition lenders;

   e. indenture trustees;

   f. agent for prepetition lenders;

   g. all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the assets offered for sale;

   h. all parties to executory contracts or unexpired leases to be assumed and assigned, or rejected as part of the transaction;

   i. all affected federal, state and local regulatory (including, for example, environmental agencies) and taxing authorities,[8] including the Internal Revenue Service;

   j. if applicable, a consumer privacy ombudsman appointed under section 332 of the Bankruptcy Code; and

   k. the Securities and Exchange Commission (if appropriate).

[6] In larger cases, a sale of significant assets may also require notice of the proposed sale in publications of national circulation or other appropriate publications.

[7] In the case of publicly traded debt securities, notice to indenture trustees and record holders may be sufficient to the extent that the identity of beneficial holders is not known.

[8] Notice must be given to applicable taxing authorities, including the state attorney general or other appropriate legal officer, affected by the relief requested under section 1146(a) of the Bankruptcy Code.

If the contemplated sale implicates the anti-trust laws of the United States, or a debt (other than for taxes) is owed by the debtor to the United States government, notice also should be given to:

l. the Federal Trade Commission;

m. the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice; and

n. the United States Attorney's Office.

To provide additional marketing of the assets, notice also should be sent to any entities known or reasonably believed to have expressed an interest in acquiring any of the assets.

See I.C.4, above for circumstances in which it may be required, based on changes in the proposed transaction that had originally been noticed, to give additional notice to parties to executory contracts and unexpired leases proposed to be assumed and assigned or rejected under section 365 of the Bankruptcy Code.

2. Notice Period. The statutory 20-day notice period should not be shortened for notice of the actual sale without a showing of good cause. The service of a prior notice or order, that discloses an intention to conduct a sale but does not state a specific sale date, does not affect the 20-day notice period.

3. Contents of Notice. Proper notice should comport with Bankruptcy Rules 2002 and 6004 and should include:

a. the Sale Procedures Order (including the date, time and place of any auction, the bidding procedures related thereto, the objection deadline for the sale motion and the date and time of the sale hearing);

b. reasonably specific identification of the assets to be sold;

c. the proposed form of asset purchase agreement, or instructions for promptly obtaining a copy;

d. if appropriate, representations describing the sale as being free and clear of liens, claims, interests and other encumbrances (other than any claims and defenses of a consumer under any consumer credit transaction that is subject to the Truth in Lending Act or a consumer credit contract (as defined in 16 C.F.R. § 433.1, as

amended), with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds;

e. any commitment by the buyer to assume liabilities of the debtor; and

f. notice of proposed cure amounts and the right and deadline to object thereto and otherwise to object to the proposed assumption and assignment, or rejection of executory contracts and unexpired leases (see I.C.4, above for additional notice that debtor may need to acknowledge may be required).[9]

3. SALE ORDER

The Court discourages unduly long sale orders that contain unnecessary and redundant provisions. In the typical case, the findings should be limited to those set out in I.C, supra, tailored to the particular case. The decretal paragraphs should also be limited, and if more than one decretal paragraph deals with the same subject matter or form of relief, the proponent of the Sale Order should explain the reason in a separate pleading. Finally, if the order contains a decretal paragraph that approves the purchase agreement or authorizes the debtor to execute the purchase agreement, it should not also contain separate decretal paragraphs that approve specific provisions of the purchase agreement or declare their legal effect.

With these admonitions, the Court may enter a Sale Order containing the following, if substantiated through evidence presented or proffered in the motion or at the sale hearing:

A. Approval of Sale and Purchase Agreement. The order should authorize the debtor to (1) execute the purchase agreement, along with any additional instruments or documents that may be necessary to implement the purchase agreement, provided that such additional documents do not materially change its terms; (2) consummate the sale in accordance with the

[9] This notice may be provided in a separate schedule sent only to the parties to such agreements.

terms and conditions of the purchase agreement and the instruments and agreements contemplated thereby; and (3) take all further actions as may reasonably be requested by the purchaser for the purpose of transferring the assets.[10]

B. Transfer of Assets. The assets will be transferred free and clear of all liens, claims, encumbrances and interests in such property, other than any claims and defenses of a consumer under any consumer credit transaction subject to the Truth in Lending Act or a consumer credit contract, as defined in 16 C.F.R. § 433.1 (and as may be amended), with all such interests attaching to the sale proceeds with the same validity and priority, and the same defenses, as existed immediately prior to the sale,[11]11 and persons and entities holding any such interests will be enjoined from asserting such interests against the purchaser, its successors or assigns, or the purchased assets, unless the purchaser has otherwise agreed.

C. Assumption and Assignment of Executory Contracts and Leases to Purchaser. The debtor will be authorized and directed to assume and assign to the purchaser executory contracts and leases free and clear of all liens, claims, encumbrances and interests, with all such interests attaching to the sale proceeds with the same validity and priority as they had in the assets being sold (provided, however, that in certain circumstances additional notice may be

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[10] Each and every federal, state and local government agency or department may be directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the purchase agreement.

[11] If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents evidencing interests in the assets has not delivered to the debtor prior to the closing date termination statements, instruments of satisfaction, and/or releases of all such interests, the debtor may be authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of such person or entity.

The debtor should try to anticipate whether there are any complex allocation issues presented by the proposed "free and clear" relief.

required before assumption and assignment or rejection of executory contracts and leases can be granted. See I.C.4, above.)

D. Statutory Provisions. The proposed order should specify those sections of the Bankruptcy Code and Bankruptcy Rules that are being relied on, and identify those sections, such as Bankruptcy Rule 6004(h), that are, to the extent permitted by law, proposed to be limited or abridged.

E. Good Faith/No Collusion. The transaction has been proposed and entered into by the debtors and the purchaser without collusion, in good faith, and from arm's-length bargaining positions. The proposed Sale Order should also specify that neither the debtor nor the purchaser have engaged in any conduct that would cause or permit the transaction to be avoided under Bankruptcy Code section 363(n).