

APPENDIX G

GUIDELINES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER 11 U.S.C. § 363

These guidelines recognize that parties in interest may sometimes perceive the need to act expeditiously on seeking authorization for the sale of substantially all estate assets. These guidelines are intended to provide a framework for such requests and to provide procedural protection to the parties in interest. The Court will consider requests to modify these guidelines to fit the circumstances of a particular case.

OVERBIDS AND BREAK UP/TOPPING FEES

1. Break-up/Topping Fees. Any request for the approval of a break up/topping fee shall be supported by a statement of the conditions under which the break-up/topping fee would be payable and the factual basis on which the seller determined the provision was reasonable.

Break-up fees/Topping fees, overbid amounts and other similar provisions will be reviewed on a case by case basis and approved if supported by evidence and case law.

SECTION 363 SALES WITHIN 60 DAYS OF THE FILING OF THE PETITION

1. The Motion to Sell. A Motion to approve the sale of substantially all assets at any time before 60 days after the filing of the petition shall include the following information:
 - a. Creditors' Committee. Indicate the date any committee was formed, as well as the identity of the members of the committee and the companies with which they are affiliated.
 - b. Counsel for Committee. If the pre-petition creditors' committee retained counsel, indicate the date counsel was engaged and the selection process, as well as the identity of committee counsel.
 - c. Sale Contingencies. Statement of all contingencies to the sale agreement, together with a copy of the agreement.
 - d. Creditor Contact List. If no committee has been formed, a list of contact persons, together with fax and phone numbers for each of the largest 20 unsecured creditors.
 - e. Administrative Expenses. Assuming the sale is approved, an itemization and an estimate of administrative expenses relating to the sale to be incurred prior to closing and the source of payment for those expenses.

- f. Proceeds of Sale. An estimate of the gross proceeds anticipated from the sale, together with an estimate of sale proceeds coming into the estate. Itemize all deductions that are to be made from gross sale proceeds and include a brief description of the basis for any such deductions.
 - g. Debt Structure of Debtor. A brief description of the Debtor's debt structure, including the amount of the Debtor's secured debt, priority claims and general unsecured claims.
 - h. Need for Quick Sale. A description of why the assets of the estate must be sold on an expedited basis. Include a discussion of alternatives to the sale.
 - i. Negotiations. A description of the length of time spent in negotiating the sale, and which parties in interest were involved in the negotiation, along with a description of the details of any other offers to purchase, including, without limitation, the potential purchaser's plans in connection with retention of the Debtor's employees.
 - j. Marketing of Assets. A description of the manner in which the assets were marketed for sale, including the period of time involved and the results achieved.
 - k. Decision to Sell. The date on which the Debtor accepted the offer to purchase the assets.
 - l. Relationship of Buyer. A statement identifying the buyer and setting forth all of the buyer's (including its officers, directors and shareholders) connections with the Debtor, creditors, any other party in interest, their respective attorneys, accountants, the U.S. Trustee or any person employed in the office of the U.S. Trustee.
 - m. Post Sale Relationship with Debtor. A statement setting forth any relationship or connection the Debtor (including its officers, directors, shareholders and employees) will have with the buyer after the consummation of the sale, assuming it is approved.
 - n. Relationship with Secured Creditors. If the sale involves the payment of all or a portion of secured debt(s), a statement of all connections between Debtor's officers, directors, employees or other insiders and each secured creditor involved (for example, release of insider's guaranty).
 - o. Insider Compensation. Disclosure of current compensation received by officers, directors, key employees or other insiders pending approval of the sale.
2. Proposed Order Approving Sale. A proposed order approving the sale shall be included with the motion.

3. **Good Faith Finding.** There must be an evidentiary basis for a finding of good faith under 11 U.S.C §363(m).
4. **Financial Ability to Close.** Unless the court orders otherwise, any bidder must be prepared to demonstrate to the satisfaction of the court, through an evidentiary hearing, its ability to consummate the transaction if it is the successful bidder, along with evidence regarding any financial contingencies to closing the transaction.