

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:

Debtor.

)
)
) Case No.:
)
) Chapter

**MOTION TO SELL PROPERTY
AND NOTICE OF UPSET BID PROCEDURES**

_____ (hereinafter, “_____”) respectfully submits this Motion to Sell Property pursuant to 11 U.S.C. § 363(b) and (f), and Fed. R. Bankr. P. 6004, and hereby provides Notice of Upset Bid Procedures to interested parties consistent with the Court’s pre-approved Auction and Bid Procedures as set forth in General Order 21-03 of the Bankruptcy Court for the Northern District of West Virginia.

A. BACKGROUND

1. The Debtor filed a petition under Chapter _____ of the Bankruptcy Code on _____ (the “Petition Date”).
2. An asset of the bankruptcy estate is certain property (the “Property”) commonly described as:
3. In the absence of any secured debts, the Debtor’s ownership interest in the Property is:

the Debtor is the 100% owner
the Debtor is a co-owner and the Debtor’s interest is ____%. The other co-owners of the property are listed below:
Other, explain:

4. As of the Petition Date, the Debtor valued the Debtor's interest in Property at \$_____.

5. Secured claims against the property are as follows:

___ There are no secured claims against the Property

___ In order of priority, senior to junior, the Property secures the following debts, including under-secured debts, to the following entities. The amount owned is estimated as of the date of the filing of this Motion:

Priority	Creditor	Estimated Amount	Type of Debt
1			
2			
3			
4			
5			
6			
7			
		Total Estimated Secured and Under-Secured Debt:	

7. Before the filing of this Motion, the Property was marketed as follows:

B. THE SALE

8. Subject to the Court's adjudication of any objection to the Motion to Sell, and subject to the Auction and Bid Procedures set forth herein, the sale of the Property, as more fully described in the purchase agreement attached hereto, will be made to the following entity (the Stalking Horse Bidder) as follows:

Sales Price:

Stalking Horse Bidder:

Anticipating Closing Date:

The proposed sales price is fair and reasonable considering the following:

- ___ the value assigned to the Property by the Debtor as set forth in Paragraph 4
- ___ the efforts to market the property as set forth in Paragraph 7
- ___ other: explain:

9. The Stalking Horse Bidder is not an insider of the Debtor, and the sale represents an arms-length transaction between the parties, made without fraud, collusion, and no attempt has been made by either party to take any unfair advantage of the other. The Staking Horse Bidder is seeking to purchase the Property in good faith pursuant to 11 U.S.C. § 363(m).

10. After the Anticipated Closing Date, the following expenses of sale, debts, and/or exemptions will be paid and the remaining proceeds, if any, will be property of the Debtor's Bankruptcy Estate:

Priority in Payment	Expense, Claim Holder, or Exemption	Estimated Amount of Claim	Estimated % To Be Paid
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
Total Estimated Expenses, Claims and Exemptions to be Paid at Closing			
Sales Price			
Estimated Surplus Paid to Estate, if any			

10a. The sale of the Property is being made free and clear of any interest in the Property held by an entity other than the estate pursuant to 11 U.S.C. § 363(f) because either: (1) applicable non-bankruptcy law permits the sale of the Property free and clear of such interests; (2) such entity consents to the sale; (3) such interest is a lien and the price at which the Property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceedings, to accept

a money satisfaction of such interest. More specifically, the sale of the Property is proper under § 363(f) because:

10b. As set forth in Paragraph 3, the Property is co-owned. The sale of the Property is proper pursuant to 11 U.S.C. § 363(h) because: (1) partition in kind of such property among the estate and such co-owners is impracticable; (2) the sale of the estate's undivided interest in the Property would realize significantly less for the estate than a sale of the Property free and clear of the interest of co-owners; (3) the benefit to the estate of a sale of the Property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and (4) the Property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

___ All co-owners have consented to the sale of the Property

___ All co-owners have not consented to the sale of the Property, but the sale is appropriate under 11 U.S.C. § 363(h) as more fully set forth below:

C. HOW TO OBJECT TO THE MOTION TO SELL

11. Any party that objects to this Motion to Sell who does not have an electronic filing account with the U.S. Bankruptcy Court, must file a written objection with the Clerk of the United States Bankruptcy Court at the following address:

United States Bankruptcy Court
Northern District of West Virginia
PO Box 70
Wheeling, WV 26003
304-233-1655

Filing an objection to the Motion to Sell with the Clerk of the Bankruptcy Court constitutes electronic service of the objection on all e-filing attorneys that have made an appearance in the case, including, the Regional Office of the United States Trustee, and the Debtor's attorney. In addition to filing your objection with the Clerk of Court, you must also serve your objection on the following parties by U.S. first class mail, postage pre-paid:

- Not applicable
- Upon the following parties:

12. Unless the Court orders otherwise, or unless you receive a Notice of Sale from the Bankruptcy Clerk's Office that establishes a different objection deadline, Fed. R. Bankr. P. 2002(a)(2) allows 21-days' notice by mail to parties in interest to object to a proposed use, sale of lease of property outside of the Debtor's ordinary course of business. To be timely, an objection must be received by the Bankruptcy Clerk by the Objection Deadline, not post-marked by the Objection Deadline. The deadlines set forth in an Order of the Court, or in a Notice issued by the Bankruptcy Clerk overrules the deadline provided in Fed. R. Bankr.P. 6004(b). In the absence of a timely filed objection to this Motion to Sell, or, in the absence of a timely submitted Upset Bid (as detailed below) the Court may enter an order approving this Motion to Sell without further notice or hearing. In the event the Court receives a timely written objection to the Motion to Sell, the Court may adjudicate the objection on the submitted papers or may hold a further hearing on notice to the objecting party.

D. UPSET BID PROCEDURES – These Upset Bid Procedures conform to General Order 21-03 of the Bankruptcy Court for the Northern District of West Virginia.

13. Any party interested in purchasing the Property (an "Upset Bidder") must submit a written bid to the address listed below on or before:

Address for the Written Submission of Upset Bids:

14. The Upset Bidder must submit an alternative bid to purchase the Property. The alternative bid must equal or exceed the Alternative Minimum Bid:

The Alternative Minimum Bid is \$ _____.

15. An Upset Bidder must submit information at or before the time of the auction demonstrating the financial wherewithal of the Upset Bidder to consummate the proposed transaction. Upset Bidders may not substantially deviate from the terms of the proposed sale to the Stalking Horse Bidder. The representative of the Bankruptcy Estate will determine if the Upset Bidder has submitted a qualified bid based on the terms of the bid, and the Upset Bidder's financial ability to consummate the proposed purchase at the alternative bid price.

16. If a qualified Upset Bid is timely received, a Notice of Auction must be filed with the Bankruptcy Clerk that details the time place and manner of the auction. At the auction, the party representing the Debtor's Bankruptcy Estate will select the bid, or combination of bids, that represent the highest or best value for the Property (the "Winning Bidder"). The representative of the Bankruptcy Estate has the right to select the best bid, even if not the highest bid.

17. The Winning Bidder must complete and sign all agreements or other documents within ___ days of the auction, or within ___ days of any Court order following a contested auction, whichever is later. In the event the Winning Bidder is different from the Stalking Horse Bidder, the representative of the Debtor's Bankruptcy Estate shall assess whether the Winning Bidder is an insider of the Debtor, whether the sale represents an arms-length transaction between the parties, made without fraud or collusion, and whether there has been any attempt by either party to take any unfair advantage of the other such that the Winning Bidder may be deemed to be purchasing the Property in good faith pursuant to 11 U.S.C. § 363(m). These representations must be made in any proposed order approving the Motion to Sell that also requests that the sale be approved under § 363(m).

18. If a bidder at the auction objects to the selection of the Winning Bidder, then that bidder may submit a bid under protest at the auction. The Debtor's representative shall file a Notice of Contested Auction with the Bankruptcy Clerk and the Court may hold a hearing or take such other action as it deems appropriate to determine if the Debtor's representative executed sound business judgment in selecting the Winning Bidder.

19. If for any reason the Winning Bidder fails to consummate the sale of the Property, the offeror of the second highest or best bid (subject to the same reservations) will automatically be deemed to have submitted the highest and best bid, and the representative of the Debtor's Estate is authorized to effect the sale of the Property to such offeror without further order from the Court. If the failure to consummate the purchase of the Property is the fault of the Winning Bidder, the Winning Bidder's deposit, if any, shall be forfeited to the Bankruptcy Estate and the Bankruptcy Estate has the right to seek all available damages from the defaulting bidder.

E. RELIEF REQUESTED

WHEREFORE, the undersigned requests:

A. That the Clerk's Office issue a notice to all interested parties of the filing of the Motion to Sell and the Notice of Auction and Bid Procedures pursuant to Fed. R. Bankr. P. 2002(a)(2), (c)(1), (k) and 6004(a). A proposed notice is attached hereto for use by the Bankruptcy Clerk.

B. That, in the absence of any objection to the Motion to Sell, and in the absence of any Notice of Upset Bid filed with the Clerk, the Court enter the Proposed Order, attached hereto, which:

1. Authorizes the sale of the Property consistent with the attached purchase agreement;
2. Approves the sale of the Property pursuant to 11 U.S.C. § 363(b), (f), (h), (m) and Fed. R. Bankr. P. 6004;
3. Declares that all liens against the Property attach to the proceeds of the sale;
4. Approves the payment of sale proceeds to: (1) the costs of sale; (2) the satisfaction of liens on the Property in order of priority; (3) the satisfaction of any co-owner's interest; (4) the satisfaction of the Debtor's exemptible interest in the property; and (5) to the Bankruptcy Estate.
5. Approves the sale to the Stalking Horse Bidder, or the Winning Bidder, as being in good faith pursuant to 11 U.S.C. § 363(m).
6. Waives the 10-day stay of the order approving the sale under Fed. R. Bankr. P. 6004(h);
7. Grants such other relief that the court deems just and proper.

Respectfully submitted,

Address

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above-referenced Motion was served on the parties that receive electronic notification in these proceedings. The Motion was also served on the parties listed below via U.S. Mail, postage prepaid, on _____.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)
)
) Case No.:
)
 Debtor.) Chapter

NOTICE OF SALE AND UPSET BID PROCEDURES

A motion sell property is on file with the United States Bankruptcy Court for the Northern District of West Virginia. The motion is viewable electronically by using a pacer.gov account, by visiting the Office of the Bankruptcy Clerk, or by contacting the moving party

You are HEREBY NOTIFIED that the Debtor's Bankruptcy Estate is seeking to sell certain Property, commonly described as:

Sales Price:

Identity of Prospective Purchaser:

Minimum Alternative Bid:\$

Deadline for Submitting an Upset Bid:

Your rights may be affected by the sale of the listed property. If you do not want the court to approve the sale of the property, potentially free and clear of any interest in the Property, then you or your attorney must file with the Court a written objection with the Clerk of this Court on or before twenty-three (23) days from the date of this Notice. If you object, you should provide an explanation for the basis of your objection. If you are a business entity, any objection must be filed by an attorney. The Court, in its discretion, may grant or deny the relief sought based on the written contents of the motion to sell and any filed objection, or, if an objection is filed, may set the matter for hearing upon further notice by the Clerk to affected parties. A failure to timely file a written objection may result in the entry of an order that grants the relief sought in the document without further notice or hearing.

Date of Issuance:

Clerk of Court
U.S. Bankruptcy Court
Post Office Box 70
Wheeling, WV 26003
304-233-1655