

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----X
In re : CHAPTER 11
: :
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, : :
: :
Debtor. : :
-----X

**NOTICE OF HEARING ON
DEBTOR'S MOTION FOR ORDER (A) PRESCRIBING THE FORM AND
MANNER OF NOTICE OF HEARING AND SCHEDULING HEARING ON
MOTION TO SELL DEBTOR'S HOSPITAL FACILITY AND OF AUCTION
SALE IN CONNECTION THEREWITH, (B) APPROVING COMPETITIVE
BIDDING PROCEDURES RESPECTING AUCTION SALE OF THE
HOSPITAL FACILITY AND (C) APPROVING TOPPING FEE
PROVISIONS OF AGREEMENT IN FAVOR OF PROPOSED PURCHASER**

PLEASE TAKE NOTICE that, on March 29, 2001, Youngstown Osteopathic Hospital Association (the "Debtor"), debtor and debtor in possession, filed its motion (the "Sale Procedures Motion") for the entry of an Order (i) prescribing the form and manner of notice of hearing and scheduling the hearing on the Debtor's motion, also filed on March 29, 2001 (the "Sale Motion"), for authority to sell the Debtor's land and building(s) constituting its former hospital facility and of the auction sale proposed to be conducted in connection therewith, (ii) approving competitive bidding procedures to be utilized by all parties in connection with the proposed auction sale of the hospital facility and (iii) approving a \$15,000 Topping Fee in favor of Mahoning County Chemical Dependency Programs, Inc., the proposed purchaser of the hospital facility. A copy of the Sale Procedures Motion is annexed hereto;

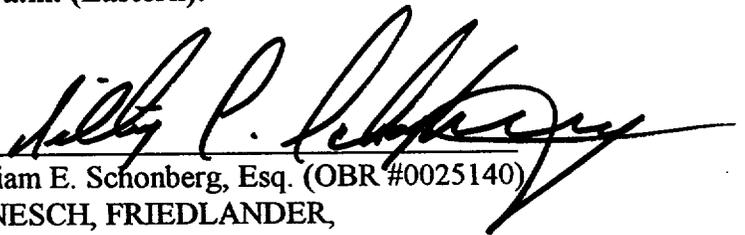
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PLEASE TAKE FURTHER NOTICE that any objection or other response to the Sale Procedures Motion must be filed with the Clerk of the Court at the United States Bankruptcy Court, 125 Market Street, United States Courthouse, Youngstown, Ohio 44503 and simultaneously served on William E. Schonberg, Benesch, Friedlander, Coplan & Aronoff LLP, 2300 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2378, so as to be filed and received no later than April 6, 2001; and

PLEASE TAKE FURTHER NOTICE that a **HEARING** to consider approval of only the Sale Procedures Motion will be held before the Honorable William T. Bodoh in the United States Bankruptcy Court, 125 Market Street, United States Courthouse, Youngstown, Ohio 44503, on **April 10, 2001 commencing at 10:00 a.m. (Eastern).**

Dated: Cleveland, Ohio
March 28, 2001



William E. Schonberg, Esq. (OBR #0025140)
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**Attorneys for Youngstown Osteopathic Hospital
Association, Debtor and Debtor in Possession**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----X
In re : CHAPTER 11
: :
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, : :
: : CASE NO. 99-40663
Debtor. : :
-----X

DEBTOR'S MOTION FOR ORDER (A) PRESCRIBING THE FORM AND MANNER OF NOTICE OF HEARING AND SCHEDULING HEARING ON MOTION TO SELL DEBTOR'S HOSPITAL FACILITY AND OF AUCTION SALE IN CONNECTION THEREWITH, (B) APPROVING COMPETITIVE BIDDING PROCEDURES RESPECTING AUCTION SALE OF THE HOSPITAL FACILITY AND (C) APPROVING TOPPING FEE PROVISIONS OF AGREEMENT IN FAVOR OF PROPOSED PURCHASER

Youngstown Osteopathic Hospital Association, debtor and debtor in possession (the "Debtor"), pursuant to sections 102, 105, 363(b), and 363(f) of Title 11 (the "Bankruptcy Code") of the United States Code and Rules 2002(a)(2), (c)(1), (k) and (m) and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby moves (the "Motion") for entry of an order (A) fixing hearing, objection, and other relevant dates on, and designating the form and manner of notice (the "Sale Notice") of (i) the Debtor's motion (the "Sale Motion"), filed simultaneous herewith, for an order authorizing the sale of the land and building(s) comprising its former hospital facility in Youngstown, Ohio (the "Premises"), to Mahoning County Chemical Dependency Programs, Inc. ("MCCD" or the "Purchaser"), pursuant to the Agreement (defined below) and (ii) the competitive bidding sale (the "Auction Sale") of the Premises to be conducted as contemplated by the Sale Motion pursuant to the Competitive Bidding Procedures (as defined below); (B) approving the Competitive Bidding Procedures proposed to be utilized in connection with the Auction Sale; and (C) approving the \$15,000 topping fee (the "Topping Fee") in favor of

MCCD as contained in the Agreement. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Sections 102, 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 provide the statutory predicates for the relief requested herein.

BACKGROUND

2. On March 11, 1999 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to section 1107 of the Bankruptcy Code, the Debtor continues to manage its property and assets as a debtor in possession.

3. The Debtor is a not-for-profit hospital association which operated a major osteopathic hospital in Youngstown, Ohio. The Premises, located about two miles from downtown Youngstown, consist of approximately 22 parcels of real property and several connecting buildings, ranging from two to five stories, containing, altogether, more than 200,000 square feet of floor space.

4. Although the Debtor continued operating its business for a period of time immediately following the Petition Date, it was compelled to cease operations as a consequence of the significant decline in patient admissions following a strike by the International Brotherhood of Teamsters Local Union No. 377. Accordingly, following the discharge of all of its patients, the Debtor ceased operations on March 25, 2000.

RELIEF REQUESTED

5. Subsequent to the cessation of operations, the Debtor commenced an orderly liquidation of its assets. In connection therewith, the Debtor retained a real estate broker, Kutlick Platz Realty, L.L.C. ("KPR"), for purposes of marketing the Premises. As a consequence of KPR's marketing efforts, the Debtor has received an offer (the "Agreement") to purchase the Premises from MCCD. A copy of the Agreement is attached hereto as Exhibit "A."

6. Subject to the terms of the Agreement, MCCD has agreed to pay the Debtor \$700,000 (the "Purchase Price") for all of the Debtor's rights, title, and interest in the Premises, free and clear of all liens, claims, and encumbrances, provided, however, that the Debtor's sale of the Premises to MCCD is subject to the receipt of higher and better bids submitted in accordance with Competitive Bidding Procedures as approved by the Bankruptcy Court. The Agreement further provides that the Debtor and MCCD have agreed that, subject to the Court's approval, MCCD is to be paid a Topping Fee in an amount not to exceed \$15,000.00 from the proceeds of any higher or better offer accepted by the Debtor and approved by the Court so long as the Successful Competing Bidder submits a bid at least \$20,000.00 higher than the Purchase Price and actually closes its transaction with the Debtor.

7. Under the Agreement, MCCD's obligation to purchase the Premises is subject to a 55-day due diligence period during which MCCD will enter the Premises to make an investigation of its environmental and structural condition. Should MCCD, acting reasonably and in good faith, determine that the cost to remedy any such unsatisfactory condition is prohibitive, then MCCD shall have the right within the 55-day due diligence period to terminate the Agreement by delivering written notice thereof to the Debtor on or before the expiration of the due diligence period.

8. As a further result of KPR's marketing efforts, entities other than Purchaser have either entered into negotiations with the Debtor relative to the sale of or have expressed an interest in purchasing the Premises. As a result of this interest, the Debtor has determined that establishing the following Competitive Bidding Procedures and subjecting Purchaser's Agreement to the receipt of higher and better bids to be submitted in accordance with such Competitive Bidding Procedures is appropriate.

9. The Debtor recognizes that from its creditors' perspective the sale of the Premises is a very significant event in the Debtor's case. Thus, the Agreement provides that consummation of the sale of the Premises to the Purchaser is subject to the receipt and approval of competing bids to be made pursuant to Competitive Bidding Procedures approved by the Court. As part of the Competitive Bidding Procedures, the Debtor proposes the use of the Auction Sale (defined below). To facilitate the Auction Sale, the Debtor has formulated and recommends for approval the proposed Sale Notice annexed hereto as Exhibit "B", which describes the Premises, the salient terms of the Agreement, the Competitive Bidding Procedures, and, when scheduled, all relevant hearing and objection dates in connection with the Auction Sale and the Sale Motion.

Competitive Bidding Procedures for Sale of Premises

10. The Debtor believes that adherence to the competitive bidding procedures by competitive bidders – including any such competitive bidder whose competitive bid is accepted by the Debtor and approved by the Court – is in the best interests of all parties in interest. Additionally, an orderly process for the receipt of competing bids enables the Debtor to protect the interests of the Purchaser and thereby preserve the benefit of the Agreement, while remaining free to accept higher and better offers should such offers prove forthcoming. Accordingly, the Debtor requests that this Court approve the following competitive bidding procedures

(collectively, the "Competitive Bidding Procedures") in connection with the proposed sale of the Premises:

(a) Only pre-qualified bidders and PNC Bank National Association ("PNC Bank"), the Debtor's secured creditor entitled to make a credit bid (a "Qualified Bidder" or collectively, "Qualified Bidders"), shall be entitled to bid and submit a competitive bid to purchase the Premises at the Auction Sale, which shall be conducted in the Bankruptcy Court immediately prior to the hearing (the "Sale Hearing") on approval of the sale of the Premises to Purchaser. To be a Qualified Bidder, a competitive bidder must comply with all of the following procedures and, on or before 5:00 p.m. E.S.T. on May 11, 2001:

- (i) submit to the Debtor's counsel a written competing offer to purchase the Premises for a cash purchase price that is an amount at least \$20,000 (the "Minimum Overbid") greater than the Purchase Price (as defined in the Agreement), and stating that the offeror is prepared to execute, upon the entry of an order approving the sale (the "Sale Approval Order"), an agreement substantially in the form as executed by Purchaser, except for the aggregate amount of the Purchase Price and the omission of any contingencies or due diligence periods. This agreement is to be executed by the Debtor and will be filed with the Court thereafter;
- (ii) submit to the Debtor's counsel a deposit (the "Bidder Deposit"), by cashier's check or wire transfer, in an amount equal to ten percent (10%) of the aggregate purchase price offered by the Qualified Bidder, to be deposited in a segregated interest earning account maintained by PNC Bank, with such deposit to be non-refundable, unless the competing offer of such Qualified Bidder is not approved by the Court; and
- (iii) provide evidence satisfactory to the Debtor, PNC Bank N.A. and the Debtor's Unsecured Creditors' Committee (the "Committee"), of its financial ability to consummate its acquisition of the Premises under and upon the terms and conditions of an agreement substantially in the form of the Agreement (also known as the "Agreement").

(b) No prospective bidder will be permitted to bid unless such prospective bidder is a Qualified Bidder. A copy of all written competing offers received by the Debtor's counsel shall be immediately provided to respective counsel for Purchaser, PNC Bank and the Committee;

(c) The Auction Sale of the Premises shall be on an “as is” and “where is” basis and without representations or warranties of any kind or nature whatsoever, except as contained in the Agreement. Each Qualified Bidder will be deemed to have conducted its own due diligence in connection with the Auction Sale and purchase of the Premises and to be relying on its own review and independent investigations, or to have waived its right to conduct due diligence, whether or not such Qualified Bidder did, in fact, conduct any due diligence;

(d) Except for PNC Bank making a credit bid (which credit bid is subject to these Competitive Bidding Procedures, exclusive of the obligation to make a Bidder Deposit), the terms of the Auction Sale shall be for “cash” in accordance with the terms of the Agreement. Further, the competing bid of any Qualified Bidder shall not be subject to any due diligence or any other contingency whatsoever, except for Court approval, and any such competing offer must be fully financed and may not have a financing contingency. All competing offers must include a detailed description of the sources and relevant amounts of equity or debt financing. If financing will be provided by external sources, a competing offer must include copies of relevant commitment letters and identify the individuals (and their phone numbers) at the institutions involved so the Debtor may contact them;

(e) A competing offer must state that (i) it constitutes a binding offer and will remain in effect through 5:00 p.m. E.S.T. on the fifteenth (15th) day following the date of entry of the Sale Approval Order and (ii) the Qualified Bidder is prepared conclude the Closing (as defined in the Agreement) within eleven (11) days after the entry of the Sale Approval Order approving the competing offer;

(f) In the event that one or more competing offers acceptable to the Debtor are timely submitted, the Debtor (under the direction and supervision of the Court) will conduct an auction (the “Auction Sale”) immediately prior to the Sale Hearing. The Auction Sale shall take place by open bidding and will be presided over by the Debtor’s counsel pursuant to these Competitive Bidding Procedures. Bidding at the Auction Sale will be limited to those persons or entities who constitute a Qualified Bidder. Commencing with the highest competitive bid submitted by a Qualified Bidder to purchase the Premises (i.e., the Purchase Price plus Minimum Overbid and any additional amount bid in addition thereto) as determined by the Debtor, PNC Bank and the Committee, competitive bidding among Purchaser and any Qualified Bidder(s) shall proceed in minimum increments of \$5,000 in excess of the highest competitive bid, with such competitive bidding to continue until the highest and best bid to purchase the Premises in accordance with the Agreement is received by the Debtor and recommended to the Court for approval;

(g) At the conclusion of the Auction Sale, the Debtor, in consultation with PNC Bank and the Committee, shall determine the highest and best offer and shall

announce the name of the successful Qualified Bidder (as such, the "Successful Competing Bidder"). Thereafter, subject to the Court's docket, the Sale Hearing will commence, at which the Debtor will seek approval of the sale of the Premises to, as the case may be, the Purchaser or other Successful Competing Bidder;

(h) The Bidder Deposit submitted by a Qualified Bidder that is not the Successful Competing Bidder will be returned to such Qualified Bidder within two (2) days after the date of the closing of the sale of the Premises to the Successful Competing Bidder. In the event the Successful Competing Bidder whose competitive bid is approved by the Court fails to close its purchase of the Premises as required by the Agreement and the Sale Approval Order, the Bidder Deposit of such Successful Competing Bidder shall immediately thereafter become property of the Debtor's estate;

(i) In the event the Successful Competing Bidder as approved by the Court fails to close its purchase of the Premises as required by the Agreement and the Sale Approval Order, the Qualifying Bidder submitting the second highest competing bid at the Auction Sale, as approved by the Debtor, PNC Bank and the Committee, shall be deemed to be the Successful Competing Bidder and shall close its proposed purchase of the Premises at its last bid;

(j) The closing of the sale of the Premises to the Purchaser or the Successful Competing Bidder shall take place on the eleventh (11th) day after entry of the Sale Approval Order. If a timely appeal is filed, the Successful Competing Bidder, in its discretion, may proceed with the closing as authorized by section 363(m) of the Bankruptcy Code;

(k) All prospective bidders may contact Kutlick Platz Realty, L.L.C., 730 Bev Road, Suite 1, Boardman, Ohio 44512, Phone: (330) 965-6700 Fax: (330) 965-6900 to obtain information respecting the Premises and the Agreement. All prospective bidders shall have an opportunity prior to May 11, 2001, to inspect the Premises at mutually convenient times and places upon request to Mr. William Kutlick. In addition, prospective bidders shall be given access to the Premises for the purpose of investigation and conducting such tests and studies as the prospective bidder shall reasonably deem necessary. The Debtor will provide all prospective bidders with other appropriate and pertinent information they may request regarding the Debtor;

(l) Pursuant to section 363(f) of the Bankruptcy Code, the Auction Sale of the Premises to the Purchaser or to the Successful Competing Bidder shall be free and clear of all liens, encumbrances, charges, and other similar adverse rights, liabilities, interests, and claims of every nature and description, including, without limitation, federal, state, or local taxes of any kind or nature, including workers' compensation or unemployment taxes, assessments, or charges (collectively, the "Interests"), except as otherwise provided in the Agreement. All Interests shall

attach to the proceeds of the sale of the Premises to the same extent, and having the same validity, perfection, priority and enforceability as such Interests had with respect to the Premises immediately prior to the Auction Sale. Any disputes regarding the extent, validity, perfection, priority or enforceability of such Interests with respect to the proceeds of the Premises shall be determined by the Court or a court of competent jurisdiction upon appropriate motion or other request therefor; and

(m) The reversal or modification on appeal of the Sale Approval Order and the sale of the Premises to the Purchaser or the Successful Competing Bidder shall not affect the validity of the sale of the Premises to the Purchaser or the Successful Competing Bidder that purchased the Premises in good faith, whether or not such entity knew of the pendency of the appeal, unless the Sale Approval Order is stayed pending an appeal.

11. The Debtor has determined that sale of the Premises pursuant to the terms of the Agreement and the Auction Sale provide the best means for maximizing the value of the Premises to the Debtor's estate.

Topping Fee

12. MCCD has invested and will continue to invest considerable time, effort, and expense in performing due diligence, preparing its bid, securing financial backing, and negotiating with the Debtor regarding the terms of the Agreement. The Debtor has therefore agreed that, subject to this Court's approval, MCCD shall be entitled to payment of liquidated damages in the form of the Topping Fee in the amount of \$15,000.00, payable to MCCD in the event that the Debtor accepts and the Court approves a competing bid from a bidder other than MCCD and the sale of the Premises to such Successful Competing Bidder is consummated. Specifically, the Topping Fee is payable to MCCD upon the closing of the sale of the Premises to a Successful Competing Bidder and is payable out of and solely from the proceeds of any sufficiently higher or better offer accepted by the Debtor and approved by the Bankruptcy Court. If, however, the Court declines to approve the sale of the Premises to MCCD or any other Successful Competing

Bidder, the Debtor shall not be obligated to pay the Topping Fee. No bidder in the Auction Sale, other than MCCD, shall be entitled to payment of the Topping Fee.

Approval of Competitive Bidding Procedures and Topping Fee

13. Pursuant to sections 105 and 363(b) and (f) of the Bankruptcy Code, the Debtor requests that this Court enter an order (the “Sales Procedures Order”) approving (i) the Competitive Bidding Procedures, (ii) the Topping Fee and (iii) the form of the Sale Notice, which includes the Competitive Bidding Procedures, and thereupon set the date and time of the Sale Hearing.

14. Generally, to obtain approval of a proposed sale of assets, the debtor must demonstrate that the “proffered purchase price is the highest and best offer” under the circumstances of the case.¹ The implementation of competitive bidding procedures to facilitate the sale of a debtor’s assets outside of the ordinary course of a debtor’s business is routinely approved by bankruptcy courts as a means of ensuring that such sale will generate the highest and best return for a debtor’s estate.²

15. Similarly, the use of bid protections, such as a Topping Fee, has become an established practice in chapter 11 asset sales involving the sale of significant assets because such

¹ See *In re Integrated Resources Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y.), *aff’d* 147 B.R. 650 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2nd Cir. 1993). See also *In re Atlanta Packaging Products, Inc.* 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (the debtor’s duty with respect to sales is to obtain the highest price or greatest overall benefit for the estate); *In re Wilson Freight Co.*, 30 B.R. 971, 975 (Bankr. S.D.N.Y. 1983) (the debtor’s paramount duty in connection with a sale is to obtain the best price).

² See *In re Gould*, 977 F.2d 1038, 1041-42 (7th Cir. 1992) (requirements that sale be publicly advertised, that bidders supply a ten percent earnest money deposit, and that a purchaser pay the balance of the sale price at closing are routine competitive bidding procedures in bankruptcy sales). See also *In re Summit Corp.*, 891 F.2d 1, 5 (1st Cir. 1989) (bankruptcy courts have plenary power to provide for competitive bidding); *In re Big Rivers Elec. Corp.*, 213 B.R. 962 (Bankr. W.D. Ky. 1997) (bankruptcy court has broad discretion with regard to ordering bidding procedure on sale of estate property other than in the ordinary course of the debtor’s business).

bid protections enable a debtor to ensure a sale to a contractually committed bidder at a price the debtor believes is fair, while providing the debtor with the potential of obtaining an enhanced recovery through an auction process.³

16. In *In re Hupp Industries, Inc.*,⁴ the bankruptcy court set forth the following factors to be considered in determining the propriety of proposed Topping fee provisions:

- a. Whether the fee requested correlates with a maximization of value to the debtor's estate;
- b. Whether the underlying negotiated agreement is an arms-length transaction between the debtor's estate and the negotiating acquirer;
- c. Whether the principal secured creditors and the official creditors' committee are supportive of the concessions;
- d. Whether the subject break-up fee constitutes a fair and reasonable percentage of the proposed purchase price;
- e. Whether the dollar amount of the break-up fee is so substantial that it provides a "chilling effect" on other potential bidders;
- f. The existence of available safeguards beneficial to the debtor's estate; and
- g. Whether there exists a substantial adverse impact upon unsecured creditors, where such creditors are in opposition to the break

17. Here, the Topping Fee satisfies most, if not all, of the factors outlined above. The Agreement was negotiated at arms-length and in good faith between the Debtor and MCCD. The proposed \$15,000 Topping Fee constitutes a fair and reasonable percentage of the proposed

³ See *Cottle v. Storer Communications*, 849 F.2d 570, 578-79 (11th Cir. 1988); *CRTF Corp. v. Federated Dep't. Stores (In re Federated Dep't Stores)*, 683 F.Supp. 422, 440 (S.D.N.Y. 1988); *Samjens Partners I v. Burlington Indus., Inc. (In re Burlington Indus., Inc.)*, 663 F.Supp. 614, 624-25 (S.D.N.Y. 1987); *In re 995 Fifth Avenue Assoc., L.P.*, 96 B.R. 24 (Bankr. S.D.N.Y. 1989).

⁴ *In re Hupp Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992).

Purchase Price.⁵ Indeed, MCCD requires approval of the Topping Fee as a condition to proceeding with its acquisition of the Premises. Finally, sufficient safeguards exist to protect the Debtor in the event the transaction is not consummated. Here, MCCD has paid a \$10,000 earnest money deposit under the Agreement which will, under specified circumstances, be non-refundable if the deal is not consummated. Further, the Topping Fee will be paid solely from the proceeds of any higher or better offer accepted by the Debtor and approved by the Bankruptcy Court achieved through the Auction Sale. Since the purpose of the Auction Sale and the Topping Fee is to maximize consideration for the estate, protect the rights of creditors and other interested parties and induce MCCD to proceed in its "stalking horse" role, approval of the Competitive Bidding Procedures and Topping Fee is appropriate.

18. For all of the foregoing reasons, the Debtor, in its business judgment, believes that the Competitive Bidding Procedures, including the payment of the Topping Fee, are in the best interest of its estate and creditors and are necessary to maximize the value of its estate.

Notice of Auction Sale and Sale Hearing

19. The Debtor has previously engaged KPR as real estate broker to market the Premises. As part of its marketing efforts, KPR placed an advertisement in Ohio Commercial Com, a circular specializing in the listing of commercial properties for sale in Ohio.

20. In addition to all parties responding to advertising and the marketing efforts of KPR, all creditors appearing on the Debtor's matrix, the United States Trustee, and all parties who have requested notice shall receive, *via* First Class U.S. Mail, a copy of the Sale Notice, in

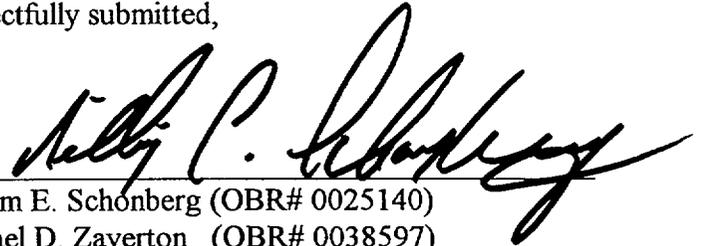
⁵ See, e.g., *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 657-63 (S.D.N.Y. 1992) (approving \$6 million break-up fee which was approximately 1.6% of transaction value).

the form and manner as approved by this Court, thereby satisfying the requirements of sections 102 and 363(b) and (f) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004 and all local rules. Adequate notice of the Sale Motion and of the Auction Sale shall thus have been given to all creditors and parties in interest in the Debtor's reorganization case.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) approving the Competitive Bidding Procedures, (ii) approving the Topping Fee, (iii) setting the Auction Sale and Sale Hearing dates, and dates for the filing of any objection thereto and (iv) approving the Sale Notice in connection therewith; and granting such other and further relief as the Court may deem proper.

Dated: March 28, 2001

Respectfully submitted,



William E. Schönberg (OBR# 0025140)

Michael D. Zaverton (OBR# 0038597)

David M. Neumann (OBR #0069283)

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**Attorneys for Youngstown Osteopathic Hospital
Association, Debtor and Debtor in Possession**

REAL ESTATE PURCHASE AGREEMENT

for 15 THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is dated as of March X 2001 between YOUNGSTOWN OSTEOPATHIC HOSPITAL ASSOCIATION, an Ohio not-for-profit association, as debtor and debtor-in-possession (the "Seller"), and MAHONING COUNTY CHEMICAL DEPENDENCY PROGRAMS, INC., an Ohio non-profit corporation (the "Purchaser").

WHEREAS, the Seller is a not-for-profit hospital association, which operated a major general hospital in Youngstown, Ohio, and debtor-in-possession in a reorganization case under Chapter 11 of Title 11 (the "Bankruptcy Code") of the United States Code pending in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (the "Bankruptcy Court"); and

WHEREAS, the Seller is the owner of certain hereinafter described real property which the Seller desires to sell, or cause to be sold, and the Purchaser desires to buy upon the terms, conditions and provisions set forth.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **The Premises.** Upon the terms and subject to the conditions set forth in this Agreement, the Seller agrees to sell and the Purchaser agrees to purchase all of the Seller's right, title and interest in and to the real property and all related improvements, easements, hereditaments, appurtenances relating thereto, but specifically excluding those certain furniture, fixtures, and equipment ("FF&E") purchased by International Asset Recovery, Inc. ("IAR") and Sealand (General Exporters) Ltd. (together with IAR the "Asset Purchasers"), located at 1319 Florencedale Avenue and 83 Bissell Avenue, Youngstown, Ohio, and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Premises").
2. **Purchase Price.** The purchase price which the Purchaser agrees to pay and the Seller agrees to accept as full compensation for the Premises is Seven Hundred Thousand and No/100 Dollars (\$700,000.00) ("Purchase Price"), subject to paragraph 3 below. The Purchaser shall, immediately following execution of this Agreement by the Seller, deposit Ten Thousand Dollars (\$10,000) with Commonwealth Land Title Company, at 35 South Champion Street, Youngstown, Ohio, as an earnest money deposit ("Earnest Deposit"). At the Closing, the Earnest Deposit shall be applied to payment of the Purchase Price. The remainder of the Purchase Price shall be paid to the Seller prior to, or at the Closing in immediately available funds.
3. **Bankruptcy Court Approval and Competitive Bidding.** The Seller shall within a reasonable time after execution of this Agreement by the Purchaser file the appropriate motion or motions (singularly or collectively, the "Motion") with the Bankruptcy Court seeking authority for the Seller to enter into and perform under this Agreement, for approval of the Agreement and sale of the Seller's rights, title and interest in the Premises to the Purchaser, for approval of Topping Fee, for approval of Competitive Bidding Procedures, and for approval of the notice of hearing(s) respecting the same (the "Notice"). The Purchaser acknowledges that:

(a) the sale of the Premises is subject to competitive bids ("Competitive Bidding") from third-parties. The Motion will seek approval of procedures for Competitive Bidding which will offer third-parties an opportunity to submit higher and better competitive bids than that of the Purchaser to purchase the Premises. The Purchaser shall have the right to match any bids received.

(b) The Seller's obligations under this Agreement are subject to entry of the Sale Order (hereinafter defined);

(c) In the case that the Bankruptcy Court does not enter the Sale Order, as described in paragraph 5(a) below, for reasons other than the Purchaser's breach of this Agreement, or because a third-party other than the Purchaser is the successful bidder in the Competitive Bidding, the Earnest Money shall be returned to the Purchaser and the Purchaser shall have no claim against the Seller, or its bankruptcy estate, excepting that the Purchaser may be reimbursed by Seller, or the bankruptcy estate, in an amount not to exceed Fifteen Thousand Dollars (\$15,000), for costs, expenses and attorney fees incurred by Purchaser to perform its due diligence (the "Topping Fee"), if a third-party submits a bid at the Auction Sale (part of the Competitive Bidding process) at least \$15,000 higher than the Purchase Price, and the third-party actually closes its transaction with the Seller.

(d) The Seller has entered into a prior agreement whereby the Seller sold FF&E to the Asset Purchasers, including any extensions and modifications thereto, and that the FF&E is not included as part of this Agreement; and

(e) Kutlick Platz Realty, L.L.C. represents the interests of the Seller in this transaction. The Purchaser represents and warrants that no real estate broker or salesman has been involved in this transaction or has shown the Premises to the Purchaser, other than Kutlick Platz Realty LLC. The Purchaser hereby agrees to indemnify, defend and hold the Seller harmless from and against any claims for commissions by any real estate broker or salesman claiming to have dealt with the Purchaser in this transaction.

4. Transactions After the Closing. Any and all obligations and liabilities arising on or after the Closing related to the Purchaser's operations or use of the Premises shall be solely for the account of the Purchaser without liability of any kind to the Seller.

5. The Closing.

(a) Subject to the terms and conditions set forth in this Agreement, the closing of this transaction (the "Closing") shall take place at the office of Commonwealth Land Title Company on the first business day immediately following the tenth day following the entry of a final non-appealable order by the Bankruptcy Court approving the sale of the Seller's right, title and interest in the Premises to the Purchaser (the "Sale Order"), provided that the Sale Order is neither stayed, vacated or otherwise rendered ineffective as of the date of the Closing. A condition of the Closing is that the Seller be authorized by the Sale Order, in accordance with section 363(f) of the Bankruptcy Code, to sell its right, title and interest in the Premises to the Purchaser free and clear of liens, claims and encumbrances, except for taxes and assessments,

general and special, which are a lien on the Premises but not yet due and payable as of the date of transfer of title; covenants, conditions, reservations and restrictions of record; zoning ordinances; easements and rights of way, if any;

(b) At the Closing, and on the condition that the Seller has received the Purchase Price, the Seller shall deliver or cause to be delivered to the Purchaser all documents and instruments necessary to transfer to the Purchaser all of the Seller's rights, title and interest in the Premises, including without limitation:

- (i) a quitclaim deed (the "Deed"), conveying the Premises to the Purchaser in the condition required under paragraph 5(a) hereof;
- (ii) a true and accurate copy of the of the Sale Order;
- (iii) such other documents as may be reasonably requested by the Purchaser in connection with the transaction contemplated hereby which do not materially increase the burdens or costs imposed upon the Seller by the other provisions of the Agreement.

(c) Possession of the Premises in its "AS IS", "WHERE IS" condition shall be delivered to the Purchaser at the Closing. If, in connection with the sale of the Premises, and prior to the expiration of the Due Diligence Period defined herein, any governmental agency or authority requests or requires that substantial repairs or replacements be made to the Premises, then the Purchaser shall have the option, in its sole discretion, to complete the purchase of the Premises or declare this Agreement null and void and receive a return of all monies paid to the Seller or in escrow. Whereupon both parties shall be released of obligations and liabilities arising hereunder, except as provided in Section 6 herein. The Purchaser shall give written notice to Seller of its intention within ten (10) days of receipt of written notice by such governmental authority of the need for any such substantial and material repairs or replacements. The Seller is responsible for the costs of the transfer tax required by law to be paid at the time of filing of the Deed and the cost of a preliminary title commitment. The Purchaser is responsible for all recording fees, title insurance premiums, and any costs or expenses incurred in connection with the issuance of any title insurance policy ordered by the Purchaser.

6. Structural and Environmental Inspections and Tests.

(a) The Purchaser, its agents and representatives, shall have the right for a period of fifty-five (55) days from the date of this Agreement (the "Diligence Period") to enter upon the Premises to make any investigations of the structural and environmental conditions of the Premises, provided, however, that the Purchaser shall not conduct any drilling, soil borings or other invasive tests without the Seller's prior written consent which shall not be unreasonably withheld or unduly delayed. The Purchaser shall indemnify, protect, defend and hold the Seller harmless from and against all damages, claims, actions, liabilities, liens and expense suffered or incurred by the Seller related to or arising out of the Purchaser's entry onto the Premises or the Purchaser's actions in conducting any of the foregoing structural and environmental inspections and tests. If there is any material damage to the Premises as a result of the foregoing actions by

the Purchaser, then the Purchaser shall promptly remedy such damage and shall fully restore the Premises at the Purchaser's expense. If the Purchaser, acting reasonably and in good faith, determines that the structural and environmental condition of the Premises materially and adversely affects the use of the Premises, or should the Purchaser, acting reasonably and in good faith, determine that the cost to remedy such condition is prohibitive, then the Purchaser shall have the right within the 55-day Due Diligence Period to terminate this Agreement by delivering written notice thereof to the Seller on or before the expiration of the Due Diligence Period. Upon such termination, the Earnest Money shall be delivered to the Purchaser and thereafter neither party shall have any further obligation or liability hereunder to the other party except as otherwise expressly provided herein.

7. **Title Examination.** Within ten (10) days following execution of this Agreement by the Seller, the Seller shall provide the Purchaser with a preliminary title commitment from Commonwealth Land Title Company. The Purchaser shall have ten (10) days after receipt of such commitment to advise the Seller of any title conditions which the Purchaser, acting reasonably and in good faith, believes materially and adversely affects the Purchaser's use of the Premises (hereinafter "Title Defects"). Thereafter, the Seller shall have thirty (30) days to cure the Title Defects or advise the Purchaser in writing that it refuses, or is unable, to do so. Should the Seller not cure the Title Defects within the thirty (30) day period, the Purchaser, in its sole discretion, shall have the option to: (i) complete the transaction and waive the Title Defects, without a reduction in the Purchase Price or (ii) terminate this Agreement by delivering written notice to the Seller within ten (10) days following receipt of notice from the Seller that it will not cure the Title Defects. Upon such termination, the Earnest Money shall be delivered to the Purchaser and thereafter neither party shall have any further obligation or liability hereunder to the other except as otherwise expressly provided herein.

8. **Financing Contingency.** As a further contingency to the Purchaser's obligation under this Agreement, the Purchaser shall obtain financing from a lending institution, or government funding, sufficient to enable it to close this transaction. The Purchaser shall act reasonably and in good faith in seeking such financing. Should the Purchaser be unable to obtain financing, on terms currently prevailing, within fifty-five (55) days from the date of this Agreement, then the Purchaser shall have the right within the fifty-five (55) day period to terminate this Agreement by delivering written notice thereof to the Seller on or before the expiration of the fifty-five (55) day period. Upon such termination, the Earnest Money shall be delivered to the Purchaser and thereafter neither party shall have any further obligation to the other except as otherwise as expressly provided herein.

9. **Acknowledgment.** Subject to the contingencies set forth herein, the Purchaser acknowledges that the Purchaser has inspected the Premises, that the Purchaser is relying completely on its own investigation of the Premises and all matters related thereto and that the Seller has made no warranties or representations of any kind or nature, either oral or written, directly or indirectly, express, implied, statutory or otherwise, with respect to the Premises including, without limitation, with respect to the applicability of any laws, rules or regulations concerning zoning, building, environmental, health or safety matters, and that the Purchaser is purchasing the Premises from the Seller in its "AS IS", "WHERE IS" condition. Without limiting the generality of the foregoing, the Seller makes no representations or warranties as to the presence or absence of any hazardous or toxic waste, substance or material or pollutants or

contaminants, including petroleum, petroleum-containing products and asbestos (as such terms are defined in any federal, state or municipal law, rule or regulation).

10. **Condemnation.** In the event that any condemnation or eminent domain proceedings of any kind are commenced against the Premises, the Seller shall give notice to the Purchaser of any such proceedings within ten (10) days after the Seller becomes aware thereof. If prior to the Closing: (a) a material part of the Premises is taken by condemnation or eminent domain proceedings of any kind, (b) condemnation or eminent domain proceedings of any kind are instituted against a material portion of the Premises or (c) a voluntary conveyance is made by the Seller in connection with any of the foregoing, then, in any such event, the Purchaser may elect, by notice to the Seller within five (5) days after receipt of notice thereof from the Seller, to: (x) declare this Agreement null and void and receive a return of all money paid to the Seller or into escrow or (y) complete the purchase of the Premises, less the portion of the Premises taken by eminent domain or condemnation or voluntarily conveyed in connection therewith and all awards or payments paid to the Seller under such proceedings or in connection therewith shall be credited against the Purchase Price or, if subsequent to the Closing, assigned to the Purchaser. If the Purchaser fails to notify the Seller of its election pursuant to the previous sentence, then the Purchaser shall be deemed to have elected the option set forth in clause (y) of this Section 10.

11. **Damage and Destruction.** If after the execution of this Agreement, and prior to the Closing, all or any part of the Premises is damaged by fire or natural elements or other causes, and which costs in excess of twenty-five percent (25%) of the Purchase Price to repair, then the Seller shall immediately notify the Purchaser of such occurrence, and either the Seller or the Purchaser may terminate this Agreement by written notice to the other within twenty (20) days after the date of such notice of such damage. If neither party elects to terminate this Agreement, then there shall be no reduction in the Purchase Price and at the Closing the Seller shall assign to the Purchaser whatever rights the Seller may have with respect to any insurance proceeds attributable to such damage and shall credit the Purchaser with the amount of any deductible under such insurance.

10. **Default.** If the Seller fails to perform any of the Seller's obligations under this Agreement and such failure shall continue for a period of fifteen (15) days after written notice from the Purchaser, then the Purchaser shall have all rights and remedies available at law. Irrespective of any other remedies available to the Seller, if the Purchaser fails to perform any of the Purchaser's obligations under this Agreement, then the Seller may retain the Earnest Money, as minimum stipulated damages, which shall not preclude the Seller from suing for and recovering further damages, if any.

11. **Notice.** Any written notification provided for herein to the Seller or the Purchaser shall be deemed to have been given when mailed postpaid by certified mail, return receipt requested, or sent by a nationally-recognized overnight courier company (provided a receipt is given therefor) as follows:

To the Seller: Youngstown Osteopathic Hospital Association
1319 Florencedale Avenue
Youngstown, Ohio 44505
Attn: Joe Mortellaro, Controller

With a copy to: Benesch, Friedlander, Coplan & Aronoff LLP
2300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2378
Attn: William E. Schonberg

To the Purchaser: Mahoning County Chemical Dependency
Programs, Inc.
ATTN: Mr. Martin Gaudiose
527 N. Meridian Road
Youngstown, OH 44509

With copy to: Michael P. Marando
Pfau, Pfau & Marando
P.O. Box 9070
Youngstown, OH 44513

To the Official Committee
of Unsecured Creditors: Nadler Nadler & Burdman Co., LPA
20 Federal Plaza West, Suite 600
Youngstown, Ohio 44503-1423
Attn: Timothy M. Reardon

To PNC Bank,
National Association: c/o Meyer, Unkovic & Scott, LLP
1300 Oliver Building
Pittsburgh, Pennsylvania 15222-2304
Attn: Joel M. Helmrich

12. Miscellaneous.

(a) Each person signing this Agreement in a representative capacity warrants his or her authority to do so.

(b) The Seller hereby certifies that the Seller is not a "non-resident alien," "foreign person" or "foreign entity" within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and the Seller agrees to provide the Purchaser on the Closing Date with an appropriate affidavit in the form required by the Internal Revenue Service.

(c) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and they shall not be bound by any terms, warranties or representations, oral or written, express or implied, not herein contained. This Agreement shall not be changed or modified, except by written instrument executed by the Purchaser and the Seller. Time is of the essence for all purposes of this Agreement.

(d) This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio and the United States Bankruptcy Code, notwithstanding the application of any principles of conflicts of laws.

(e) This Agreement may be executed in multiple identical counterparts, all of which, when taken together, shall constitute one document.

(f) The Seller and the Purchaser hereby select and subject themselves solely to the jurisdiction of the United States Bankruptcy Court for the Northern District of Ohio to resolve any and all claims, controversies, or disputes relating in any way to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth beneath their respective signatures.

Seller:

YOUNGSTOWN OSTEOPATHIC HOSPITAL
ASSOCIATION

By:

Joseph R. Mortellaro, Jr.
Name: *Joseph R. Mortellaro, Jr.*
Title: *Controller*

Date: *3/15/01*

Witness: *William D. Kutler*
3/15/01

Purchaser:

MAHONING COUNTY CHEMICAL
DEPENDENCY PROGRAMS, INC.

By: *Martin K. Gaudiose*
Name: *Martin K. Gaudiose*
Title: *CEO*

Date: *3/15/01*

Witness: *William D. Kutler*
3/15/01

"Exhibit A"

PARCEL NO. 1:

Situated in the City of Youngstown, County of Mahoning and State of Ohio and known as being Youngstown City Lot No. 61342 according to the latest enumeration of lots in said City, in a Replat of Youngstown City Lot Nos. 10569 through 10578 inclusive, 13596 through 13601 inclusive, and 14075 through 14079 inclusive, as recorded in Volume 64 of Plats, Page 126 of Mahoning County Records, and being more particularly bounded and described as follows:

BEGINNING at a point on the south line of Bissell Avenue, said point being the northeasterly corner of Youngstown City Lot No. 17733; thence easterly along the southerly line of Bissell Avenue, a distance of 95 feet to a point on the westerly line of Bryson Street; thence southerly along the westerly line of Bryson Street, a distance of 614 feet to a point on the north line of Broadway Avenue; thence west along the north line of Broadway Avenue, a distance of 268.84 feet to a point on the east line of Florencedale Avenue; thence north along the east line of Florencedale Avenue, a distance of 444 feet but to the southwest corner of Lot No. 10568; thence east along the south line of Lot No. 10568, a distance of 134.42 feet to the southeast corner of Lot No. 10568; thence north along the easterly line of Lot Nos. 10568 and 10567, a distance of 85 feet but to the southeasterly corner of Lot No. 10566; thence east along the south line of Lot No. 17733,

*** Continued on Exhibit "A" attached hereto and made a part hereof ***

a distance of 39.42 feet to the southeasterly corner thereof; thence north along the east line of Lot No. 17733, a distance of 85 feet to the place of beginning, be the same more or less.

PARCEL NO. 2:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 10565, 10566, 10567 and 10568 according to the latest enumeration of lots in said City, in Cynthia D. Bissel's First Addition to Windamere Plat, a Subdivision of a part of Original Youngstown City Out Lot 244, as shown by the recorded plat of said Subdivision in Volume 7 of Plats, Page 57, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 170 feet on the easterly side of Florencedale Avenue, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 170 feet, as appears by said plat.

PARCEL NO. 3:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot No. 17733 according to the latest enumeration of lots in said City, in a replat of Youngstown City Lot Nos. 14075 & 14076, as shown by the recorded plat of said Subdivision in Volume 12 of Plats, Page 223, of Mahoning County Records.

Said City Lot No. 17733 has a frontage of 39.42 feet on the southerly side of Bissell Avenue, and extends back 85 feet on the easterly line, 85 feet on the westerly line and has a rear line of 39.42 feet, as appears by said plat.

PARCEL NO. 4:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 13602 through 13607 inclusive, according to the latest enumeration of lots in said City, in Executors of Cynthia D. Bissell's Second Addition to Windamere, a Subdivision of a part of Original Youngstown City Out Lot 236, as shown by the recorded plat of said Subdivision in Volume 8 of Plats, Page 210, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 249 feet on the easterly side of Bryson Street, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 249 feet, as appears by said plat.

PARCEL NO. 5:

Situated in the City of Youngstown, County of Mahoning and State of Ohio and known as being Youngstown City Lot Nos. 13608, 13609 and 19775 according to the latest enumeration of lots in said City, in Replat of Youngstown City Lot Nos. 13608 and 13609, as shown by the recorded plat of said Subdivision in Volume 15 of Plats, Page 58, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 90 feet on the northerly side of Broadway Avenue, and extends back 150 feet on the easterly line, 150 feet on the westerly line, which is also the easterly line of Bryson Street, and having a rear line of 90 feet, as appears by said plat.

*** Continued on Exhibit "A" attached hereto and made a part hereof ***

EXHIBIT A

PARCEL NO. 6:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 13610 according to the latest enumeration of lots in said City, in Executors of Cynthia D. Bissell's Second Addition to Windamere, a Subdivision of a part of Original Youngstown City Out Lot 236, as shown by the recorded plat of said Subdivision in Volume 8 of Plats, Page 210, of Mahoning County Records.

Said City Lot has a frontage of 44.42 feet on the northerly line of Broadway Avenue, and extends back 150 feet on the easterly line, 150 feet on the westerly line and has a rear line of 44.42 feet, as appears by said plat.

PARCEL NO. 7:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 14276, 14277 and 28815, according to the latest enumeration of lots in said City, in Replat of Youngstown City Lot Nos. 14276 and 14277, as shown by the recorded plat of said Subdivision in Volume 16 of Plats, Page 47, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 90 feet on the northerly side of Broadway Avenue, and extends back 150 feet on the easterly line, which is also the westerly side of Kensington Avenue, 150 feet on the westerly line and having a rear line of 90 feet, as appears by said plat.

PARCEL NO. 8:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot No. 14275 according to the latest enumeration of lots in said City, in Windamere Allotment, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

Said City Lot No. 14275 has a frontage of 44.42 feet on the northerly side of Broadway Avenue, and extends back 150 feet on the easterly line, 150 feet on the westerly line and has a rear line of 44.42 feet, as appears by said plat.

PARCEL NO. 9:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 15302, 15303, 15304 and 15305 according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

Said City Lot Nos. 15302, 15303, 15304 and 15305 together form a parcel having a frontage of 164 feet on the westerly side of Kensington Avenue, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 164 feet, as appears by said plat.

PARCEL NO. 10:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 15308, 15309 and 15310, according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

*** Continued on Exhibit "A" attached hereto and made a part hereof ***

EXHIBIT A

Said City Lot Nos. 15308, 15309 and 15310 together form a parcel having a frontage of 125 feet on the westerly side of Kensington Avenue, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 125 feet, as appears by said plat.

PARCEL NO. 11:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 15315, 15316 and 15317 according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

Said City Lot Nos. 15315, 15316 and 15317 together form a parcel having a frontage of 130 feet on the easterly side of Bryson Street, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 130 feet, as appears by said plat.

PARCEL NO. 12:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot No. 15314 according to the latest enumeration of lots in said City, in Replat of Youngstown City Lot Nos. 15311, 15312, 15313 and 15314 as shown by the recorded plat of said Subdivision in Volume 12 of Plats, Page 151, of Mahoning County Records.

Said City Lot No. 15314 has a frontage of 38.41 feet on the southerly side of Bissell Avenue, and extends back 85 feet on the easterly line, 85 feet on the westerly line, which is also the easterly line of Florencedale Avenue, and has a rear line of 38.41 feet, as appears by said plat.

PARCEL NO. 13:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being the southerly 40' of Youngstown City Lot No. 12390 according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 8 of Plats, Page 149, of Mahoning County Records.

Said southerly 40' of Youngstown City Lot No. 12390 has a frontage of 40 feet on the westerly side of Bryson Street, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and has a rear line of 40 feet, as appears by said plat.

PARCEL NO. 14:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being the north four (4) feet of Youngstown City Lot No. 10556 and the south thirty-six (36) feet of Youngstown City Lot No. 10557 according to the latest enumeration of lots in said City, as recorded in Volume 7 of Plats, Page 57, Mahoning County Records.

Said lots together have a frontage of Forty (40) feet on the west line of Florencedale Avenue and extends back on its north line One Hundred-Thirty-four Feet and Five Inches (134' 5") and on its south line One Hundred Thirty-four Feet and Five Inches (134' 5"), having a combined rear line of Forty (40) feet, as appears by said plat.

*** Continued on Exhibit "A" attached hereto and made a part hereof ***

EXHIBIT A

PARCEL NO. 15:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and being known as the southerly 40 feet from front to rear of Youngstown City Lot Number 10556, according to the latest enumeration of lots in said City in Cynthia D. Bissels First Addition to Windamere Plat, a subdivision of a part of Youngstown Township Great Lot Number 42 and part of Youngstown City Out Lot Number 236, as shown by the recorded plat of said subdivision in Volume 7 of Plats, Page 57, Mahoning County Records.

Said southerly 40 feet of Youngstown City Lot Number 10556 has a frontage of 40 feet on the westerly line of Florencedale Avenue and extends back therefrom, a distance of 134 feet 5 inches on its northerly line, 135 feet 5 inches on its southerly line, and has a rear line of 40 feet, as appears by said plat.

PARCEL NO. 16:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being the north nine (9) feet from front to rear of Youngstown City Lot Number Ten Thousand Five Hundred Fifty-eight (10558) and the south thirty-five (35) feet from front to rear of Lot Number Ten Thousand Five Hundred Fifty-nine (10559) according to the latest enumeration of lots in said City, as recorded in Volume 7 of Plats, Page 57, Mahoning County Records.

Said parts of said lots have a combined frontage of Forty-four (44) feet on the west line of Florencedale Avenue and extends back on its north line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, and on its south line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, having a combined rear line of Forty-four (44) feet, as appears by said plat.

PARCEL NO. 17:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Youngstown City Lot Number Fifteen Thousand Three Hundred Seven (15307) according to the latest enumeration of lots in said City.

Said lot has a frontage of Forty (40) feet on the west line of Kensington Avenue, and extends back on its south line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, and on its north line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, having a rear line of Forty (40) feet.

PARCEL NO. 18:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Lot No. 15306 according to the latest enumeration of lots in said city, as recorded in Volume 10 of Plats, Page 163, Mahoning County Records.

Said lot has a frontage of 45 feet on the westerly line of Kensington Avenue and extends back on its northerly line 134.5 feet, and on its southerly line 134.5 feet, having a rear line of 45 feet, as appears by said plat.

*** Continued on Exhibit "A" attached hereto and made a part hereof ***

EXHIBIT A

PARCEL NO. 19:

Situated in the City of Youngstown, County of Mahoning, and State of Ohio, and known as being Youngstown City Lot No. 56737 according to the latest enumeration of lots in said City, formerly part of Youngstown City Lot Numbers 10563 and 10564 in the Bissell Realty Company Replat, a subdivision of a part of Original Youngstown City Great Lot No. 42 as shown by the recorded plat of said subdivision in Volume 30 of Plats, Page 53, of Mahoning County Records.

Said Youngstown City Lot Number 56737 has a frontage of 85 feet on the westerly side of Florencedale Avenue and extends back between parallel lines 83.14 feet on the northerly line, 83.14 feet on the southerly line, and has a rear line of 85 feet, as appears by said plat.

PARCEL NO. 20:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Lot No. 16551 according to the latest enumeration of lots in said City, as recorded in Volume 12 of Plats, Page 151, Mahoning County Records.

Said lot has a frontage of 38.4 feet on the southerly line of Bissell Avenue and extends back on its easterly line 85 feet, and on its westerly line 85 feet, having a rear line of 38.4 feet, as appears by said plat.

PARCEL NO. 21:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Lot Number Sixteen Thousand Five Hundred Fifty (16550) according to the latest enumeration of lots in said City, as recorded in Volume 12 of Plats, Page 151, Mahoning County Records.

Said lot has a frontage of Thirty-eight and Four Tenths (38.4) feet on the south line of Bissell Avenue and extends back on its east line Eighty-five (85) feet, and on its west line Eighty-five (85) feet, having a rear line of Thirty-eight and Four Tenths (38.4) feet, as appears by said plat.

PARCEL NO. 22:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Number 15313 according to the latest enumeration of lots in said City.

Said Lot Number 15313 has a frontage of 38.14 feet on the south line of Bissell Avenue and extends back between parallel lines a distance of 85 feet.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----X
In re : CHAPTER 11
: :
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH
HOSPITAL ASSOCIATION, : :
: :
Debtor. : CASE NO. 99-40663
: :
-----X

**NOTICE OF
(i) HEARING ON DEBTOR'S MOTION FOR
APPROVAL OF SALE OF DEBTOR'S HOSPITAL FACILITY BUILDING
TO PROPOSED PURCHASER OR SUCCESSFUL COMPETITIVE BIDDER
FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES AND (ii)
OPPORTUNITY TO BID TO PURCHASE HOSPITAL BUILDING IN ACCORDANCE
WITH COMPETITIVE BIDDING PROCEDURES AND OF AUCTION SALE**

TO ALL CREDITORS, OTHER PARTIES IN INTEREST AND INTERESTED BIDDERS:

Youngstown Osteopathic Hospital Association ("Debtor"), debtor and debtor in possession, has filed the following motions in the United States Bankruptcy Court for the Northern District of Ohio:

1. A motion (the "Sale Motion") seeking approval, pursuant to Sections 363(b) and (f) of the Bankruptcy Code, of the sale of all of the Debtor's right, title and interest in the land and buildings comprising its former hospital facility located at 1319 Florencedale Avenue, Youngstown, Ohio 44505 (the "Premises"), to Mahoning County Chemical Dependency Programs, Inc. (the "Purchaser") or to a competitive bidder in accordance with the Competitive Bidding Procedures (described below), free and clear of liens, claims and encumbrances; and
2. A motion (the "Sales Procedures Motion") seeking (i) approval of the form and manner of notice of the hearing on approval of the proposed sale of the Premises, including the setting of hearing and objection dates in connection with the Sale Motion, (ii) approval of the Competitive Bidding Procedures and (iii) approval of a Topping Fee in favor of the Purchaser in connection with the sale of the Premises.

By its order (the "Sale Procedures Order"), the Bankruptcy Court, inter alia., granted the Sales Procedure Motion and approved this notice.

THE DEBTOR

On March 11, 1999, the Debtor commenced its reorganization case under chapter 11 of the Bankruptcy Code. The Debtor is a not-for-profit hospital association which operated an osteopathic hospital at the Premises in Youngstown, Ohio. The Premises, located about two miles from downtown Youngstown, consists of approximately 22 parcels of real property and several connecting buildings, ranging from two to five stories, containing, altogether, more than 200,000 square feet of floor space. The Debtor ceased operations on March 25, 2000, following a labor strike that resulted in a substantial decline in patient admissions. Since that date, the Debtor has commenced a liquidation of its estate assets.

ASSETS TO BE SOLD AND PURCHASE PRICE

Subsequent to the cessation of operations, the Debtor retained a real estate broker, Kutlick Platz Realty, L.L.C. ("KPR"), to market the Premises. As a consequence of KPR's marketing efforts, the Debtor has received an offer to purchase the Premises from the Purchaser. Under the offer, the Purchaser has agreed to pay the Debtor \$700,000 (the "Purchase Price") for all of the Debtor's right, title and interest in the Premises and all related improvements, easements, hereditaments, and appurtenances relating thereto, free and clear of all liens, claims and encumbrances. The Purchaser has paid a \$10,000 earnest money deposit in connection with its proposed purchase of the Premises. However, the Debtor's sale of the Premises to the Purchaser is subject to the receipt of higher and better bids to be submitted in accordance with the Competitive Bidding Procedures.

The Sale Motion and a copy of the Real Estate Purchase Agreement dated as of March 15, 2001 (the "Agreement") between the Debtor and the Purchaser are on file with and may be viewed at the offices of the Clerk of the United States Bankruptcy Court for the Northern District of Ohio, United States Courthouse, 125 Market Street, Youngstown, OH 44503; or may be obtained, upon written request and at such requesting party's expense, from the undersigned Debtor's counsel.

SALE FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES

Pursuant to sections 363(b) and (f) of the Bankruptcy Code and in accordance with the Sales Procedure Order, the Debtor will seek authority to sell the Premises to the Purchaser, or to the Qualified Bidder (defined below) submitting the highest and best competing bid in accordance with the Competitive Bidding Procedures, free and clear of any interests other than those of the estate, with all liens, claims, and encumbrances to attach to the proceeds of such sale.

COMPETITIVE BIDDING PROCEDURES, AUCTION SALE, AND HEARING ON APPROVAL OF SALE

The Sales Procedures Order approved the competitive bidding procedures applicable to and to be utilized in connection with the Debtor's proposed sale of the Premises to the Purchaser,

including a minimum competitive overbid and other procedures (the "Competitive Bidding Procedures"). The Competitive Bidding Procedures are set forth below.

In the event that one or more competing bids or combination of bids are timely received, an auction sale (the "Auction Sale") of the Premises will take place. The Auction Sale shall take place by open bidding and will be presided over by the Debtor's counsel, with the Premises to be sold to the Purchaser or to the Qualified Bidder submitting the highest and best competitive bid as approved pursuant to the Competitive Bidding Procedures described below. **The Auction Sale shall commence promptly on May 18, 2001, at 9:00 o'clock A. M., in the Bankruptcy Judge's usual courtroom in the United States Bankruptcy Court for the Northern District of Ohio, United States Courthouse, 125 Market Street, Youngstown, OH 44503, and shall continue until concluded. The HEARING to consider approval of the Sale Motion and the sale of the Premises to the Purchaser or to the Qualified Bidder submitting the highest and best competitive bid therefor at the Auction Sale shall be held in the Bankruptcy Court immediately following the conclusion of the Auction Sale, on May 18, 2001, at 11:00 o'clock A.M. (the "Sale Hearing").**

COMPETITIVE BIDDING PROCEDURES

The Bankruptcy Court has approved procedures for submitting competing or upset bids for the purchase of the Premises. Competitive bidders may submit bids to purchase the Premises only in accordance with the following Competitive Bidding Procedures:

(a) Only pre-qualified bidders and PNC Bank, National Association ("PNC Bank"), the Debtor's secured creditor entitled to make a credit bid (a "Qualified Bidder" or collectively, "Qualified Bidders"), shall be entitled to bid and submit a competitive bid to purchase the Premises at the Auction Sale, which shall be conducted in the Bankruptcy Court immediately prior to the Sale Hearing on approval of the sale of the Premises to Purchaser. To be a Qualified Bidder, a competitive bidder must comply with all of the following procedures and, on or before 5:00 p.m. E.S.T. on May 11, 2001:

- (i) submit to the Debtor's counsel a written competing offer to purchase the Premises for a cash purchase price that is an amount at least \$20,000 (the "Minimum Overbid") greater than the Purchase Price (as defined in the Agreement), and stating that the offeror is prepared to execute, upon the entry of an order approving the sale (the "Sale Approval Order"), an agreement substantially in the form as executed by Purchaser, except for the aggregate amount of the Purchase Price and the omission of any contingencies or due diligence periods. This agreement is to be executed by the Debtor and will be filed with the Court thereafter;
- (ii) submit to the Debtor's counsel a deposit (the "Bidder Deposit"), by cashier's check or wire transfer, in an amount equal to ten percent (10%) of the aggregate purchase price offered by the Qualified Bidder, to be deposited in a segregated interest earning account maintained by PNC Bank, with such deposit to be non-refundable, unless the competing offer of such Qualified Bidder is not approved by the Court; and

- (iii) provide evidence satisfactory to the Debtor, PNC Bank and the Debtor's Unsecured Creditors' Committee (the "Committee"), of its financial ability to consummate its acquisition of the Premises under and upon the terms and conditions of an agreement substantially in the form of the Agreement (also known as the "Agreement");
- (b) No prospective bidder will be permitted to bid unless such prospective bidder is a Qualified Bidder. A copy of all written competing offers received by the Debtor's counsel shall be immediately provided to respective counsel for Purchaser, PNC Bank and the Committee;
- (c) The Auction Sale of the Premises shall be on an "as is" and "where is" basis and without representations or warranties of any kind or nature whatsoever, except as contained in the Agreement. Each Qualified Bidder will be deemed to have conducted its own due diligence in connection with the Auction Sale and purchase of the Premises and to be relying on its own review and independent investigations, or to have waived its right to conduct due diligence, whether or not such Qualified Bidder did, in fact, conduct any due diligence;
- (d) Except for PNC Bank making a credit bid (which credit bid is subject to these Competitive Bidding Procedures, exclusive of the obligation to make a Bidder Deposit), the terms of the Auction Sale shall be for "cash" in accordance with the terms of the Agreement. Further, the competing bid of any Qualified Bidder shall not be subject to any due diligence or any other contingency whatsoever, except for Court approval, and any such competing offer must be fully financed and may not have a financing contingency. All competing offers must include a detailed description of the sources and relevant amounts of equity or debt financing. If financing will be provided by external sources, a competing offer must include copies of relevant commitment letters and identify the individuals (and their phone numbers) at the institutions involved so the Debtor may contact them;
- (e) A competing offer must state that (i) it constitutes a binding offer and will remain in effect through 5:00 p.m. E.S.T. on the fifteenth (15th) day following the date of entry of the Sale Approval Order and (ii) the Qualified Bidder is prepared to conclude the Closing (as defined in the Agreement) within eleven (11) days after the entry of the Sale Approval Order approving the competing offer;
- (f) In the event that one or more competing offers acceptable to the Debtor are timely submitted, the Debtor (under the direction and supervision of the Court) will conduct an auction (the "Auction Sale") immediately prior to the Sale Hearing. The Auction Sale shall take place by open bidding and will be presided over by the Debtor's counsel pursuant to these Competitive Bidding Procedures. Bidding at the Auction Sale will be limited to those persons or entities who constitute a Qualified Bidder. Commencing with the highest competitive bid submitted by a Qualified Bidder to purchase the Premises (i.e., the Purchase Price plus Minimum Overbid and any additional amount bid in addition thereto) as determined by the Debtor, PNC Bank and the Committee, competitive bidding

among Purchaser and any Qualified Bidder(s) shall proceed in minimum increments of \$5,000 in excess of the highest competitive bid, with such competitive bidding to continue until the highest and best bid to purchase the Premises in accordance with the Agreement is received by the Debtor and recommended to the Court for approval;

(g) At the conclusion of the Auction Sale, the Debtor, in consultation with PNC Bank and the Committee, shall determine the highest and best offer and shall announce the name of the successful Qualified Bidder (as such, the "Successful Competing Bidder"). Thereafter, subject to the Court's docket, the Sale Hearing will commence, at which the Debtor will seek approval of the sale of the Premises to, as the case may be, the Purchaser or other Successful Competing Bidder;

(h) The Bidder Deposit submitted by a Qualified Bidder that is not the Successful Competing Bidder will be returned to such Qualified Bidder within two (2) days after the date of the closing of the sale of the Premises to the Successful Competing Bidder. In the event the Successful Competing Bidder whose competitive bid is approved by the Court fails to close its purchase of the Premises as required by the Agreement and the Sale Approval Order, the Bidder Deposit of such Successful Competing Bidder shall immediately thereafter become property of the Debtor's estate;

(i) In the event the Successful Competing Bidder as approved by the Court fails to close its purchase of the Premises as required by the Agreement and the Sale Approval Order, the Qualifying Bidder submitting the second highest competing bid at the Auction Sale, as approved by the Debtor, PNC Bank and the Committee, shall be deemed to be the Successful Competing Bidder and shall close its proposed purchase of the Premises at its last bid;

(j) The closing of the sale of the Premises to the Purchaser or the Successful Competing Bidder shall take place on the eleventh (11th) day after entry of the Sale Approval Order. If a timely appeal is filed, the Successful Competing Bidder, in its discretion, may proceed with the closing as authorized by section 363(m) of the Bankruptcy Code;

(k) All prospective bidders may contact Kutlick Platz Realty, L.L.C., 730 Bev Road, Suite 1, Boardman, Ohio 44512, Phone: (330) 965-6700 Fax: (330) 965-6900 to obtain information respecting the Premises and the Agreement. All prospective bidders shall have an opportunity prior to May 11, 2001, to inspect the Premises at mutually convenient times and places upon request to Mr. William Kutlick. In addition, prospective bidders shall be given access to the Premises for the purpose of investigation and conducting such tests and studies as the prospective bidder shall reasonably deem necessary. The Debtor will provide all prospective bidders with other appropriate and pertinent information they may request regarding the Debtor;

(l) Pursuant to section 363(f) of the Bankruptcy Code, the Auction Sale of the Premises to the Purchaser or to the Successful Competing Bidder shall be free and clear of all liens, encumbrances, charges, and other similar adverse rights, liabilities, interests, and claims of every nature and description, including, without limitation, federal, state, or local

taxes of any kind or nature, including workers' compensation or unemployment taxes, assessments or charges (collectively, the "Interests"), except as otherwise provided in the Agreement. All Interests shall attach to the proceeds of the sale of the Premises to the same extent, and having the same validity, perfection, priority, and enforceability as such Interests had with respect to the Premises immediately prior to the Auction Sale. Any disputes regarding the extent, validity, perfection, priority, or enforceability of such Interests with respect to the proceeds of the Premises shall be determined by the Court or a court of competent jurisdiction upon appropriate motion or other request therefor; and

(m) The reversal or modification on appeal of the Sale Approval Order and the sale of the Premises to the Purchaser or the Successful Competing Bidder shall not affect the validity of the sale of the Premises to the Purchaser or the Successful Competing Bidder that purchased the Premises in good faith, whether or not such entity knew of the pendency of the appeal, unless the Sale Approval Order is stayed pending an appeal.

Objections

Any **OBJECTION** to the Sale Motion or to the sale of the Premises must (i) conform to the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules, (ii) set forth the name of the objector and the nature and amount of any claim held by such party, (iii) state with particularity the legal and factual bases for the objection, and (iv) be filed with the Clerk of the Bankruptcy Court at the address set forth above and a copy served on William E. Schonberg, Benesch, Friedlander, Coplan & Aronoff LLP, 2300 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2378; Timothy M. Reardon, Nadler, Nadler & Burdman Co., L.P.A., 20 Federal Plaza West, Suite 600, Youngstown, Ohio 44503; Joel M. Helmrich, Meyer, Unkovic & Scott, LLP, 1300 Oliver Building, Pittsburgh, Pennsylvania 15222-2304; Office of the United States Trustee, Attn: Amy L. Good, BP Tower- 20th Floor, Suite 3300, 200 Public Square, Cleveland, OH 44114, so as to be filed and received not later than **4:00 p.m. (Eastern) on May 11, 2001.**

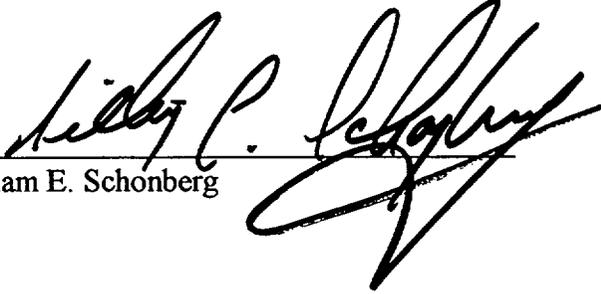
Dated: March ____, 2001
Cleveland, Ohio

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**Counsel for Youngstown Osteopathic
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in Possession**

CERTIFICATE OF SERVICE

A copy of the foregoing *Debtor's Motion for Order (A) Prescribing the Form and Manner of Notice of Hearing and Scheduling Hearing on Motion to Sell Debtor's Hospital Facility and of Auction Sale in Connection Therewith, (B) Approving Competitive Bidding Procedures Respecting Auction Sale of the Hospital Facility and (C) Approving Topping Fee Provisions of Agreement in Favor of Proposed Purchaser* and the *Notice of Hearing* thereon were sent regular United States mail delivery to all parties listed on the annexed Service List on the 28th day of March, 2001.



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