

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.



**/S/ RUSS KENDIG**

**Russ Kendig  
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
AT CANTON**

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In re: : Chapter 11  
: :  
SCHWAB INDUSTRIES, INC., *et al.*,<sup>1</sup> : Case No. 10-60702  
: (Jointly Administered)  
Debtors. :  
: Judge Russ Kendig  
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**ORDER APPROVING MOTION FOR ORDER (1) AUTHORIZING THE AUCTION SALES OF CERTAIN NON-CORE ASSETS, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; (2) WAIVING THE FOURTEEN-DAY STAY PERIOD PROVIDED BY BANKRUPTCY RULE 6004(H); AND (3) GRANTING RELATED RELIEF**

This matter came before the Court pursuant to the April 5, 2010 *Motion for Order (1) Authorizing the Auction Sales of Certain Non-Core Assets, Free and Clear of Liens, Claims,*

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525), Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

*Interests and Encumbrances; (2) Waiving the Fourteen-Day Stay Period Provided by Bankruptcy Rule 6004(h); and (3) Granting Related Relief [Docket No. 242] (the “Motion”).*

The Court has reviewed the Motion and considered the relief requested therein. Accordingly, the Court hereby FINDS as follows that

A. Notice of the Motion was just and proper and in accordance with all applicable laws and rules including, without limitation, Section 363, Rules 2002(a), 6004, and 9013.

B. No responses or objections to the relief requested in the Motion were filed by any party in interest.

C. Approval of the Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest.

D. Sale of the Non-Core Assets on the timetables presented in the Approved Budget attached to the *First Amended Agreed Order Authorizing Limited Use of Cash Collateral* [Docket No. 239] is necessary for Debtors to meet their operating cash needs in accordance with the Final Agreed Order Authorizing Limited Use of Cash Collateral (the “Final Cash Collateral Order”).

E. Sale of the Non-Core Assets on the timetables presented in the Approved Budget in the Final Cash Collateral Order is necessary for Debtors to have cash with which to operate and to preserve and maintain the value of their Core Assets.

F. The sale of the Non-Core Assets, as proposed in the Motion and on the timetables presented in the Approved Budget is an appropriate exercise of Debtors’ business judgment in accordance with Section 363 of the Bankruptcy Code.

G. The sale of the Non-Core Assets, as proposed in the Motion and on the timetables presented in the Approved Budget is fair and equitable and reasonably designed to achieve and obtain reasonable recoveries for the Non-Core Assets.

H. Debtors' decision to sell the Non-Core Assets through absolute auctions conducted by The Chartwell Group ("Chartwell") for the Non-Core Assets identified as "Excess Real Estate" and Cincinnati Industrial Auctioneers ("Cincinnati") for the Non-Core Assets identified as "Excess Machinery and Equipment" on Exhibit A to the Motion is reasonably designed to generate reasonable recoveries for the Non-Core Assets and is an appropriate exercise of Debtors' business judgment in accordance with section 363 of the Bankruptcy Code.

I. The timetables for auctions and closing of sales of Non-Core Assets (namely on or about May 29, 2010 for "Excess Machinery and Equipment", and on or about July 10, 2010 for "Excess Real Estate") are reasonable and will benefit Debtors' estates by creating available cash for use in accordance with the Approved Budget.

J. The process for sale of the Non-Core Assets used by Chartwell and Cincinnati will generate reasonable recoveries for the Non-Core Assets, and that such sales of Non-Core Assets shall be approved by this Order without any further notice or hearing to approve any sales of the Non-Core Assets.

K. Debtors, the Committee and the Secured Lenders consent to the sales of the Non-Core Assets as presented in the Motion. Accordingly, Section 363(f)(2) is satisfied and it is appropriate that the sales of the Non-Core Assets be made free and clear of any and all liens, encumbrances, claims and interests of any kind or nature, whatsoever; *provided, however*, that the Priming Lien, Replacement Liens and Pre-Petition Security Interests (as defined in the Final Cash Collateral Order) shall attach to all such sale proceeds.

L. It is an appropriate exercise of Debtors' business judgment to remove other Non-Core Assets from the sales approved under this Motion, so long as such removal occurs (i) before such Non-Core Asset is sold by Chartwell and/or Cincinnati; (ii) is with the consent of the Secured Lenders; and (iii) upon Debtors filing a notice identifying the removal of such Non-Core Asset with this Court.

M. In accordance with the Final Cash Collateral Order, Debtors' removal of six 2007 Volvo Model VHD64s located at or around Immokalee, Florida and one certain ready-mix plant located in Cape Coral, Florida (collectively, the "Removed Non-Core Assets") from inclusion in the assets for sale as "Excess Machinery and Equipment" by Cincinnati represents an appropriate exercise of Debtors' business judgment, designed to generate reasonable recoveries for the these assets, which will benefit Debtors' estates by creating available cash for use in accordance with the Approved Budget.

Now therefore, in light of the foregoing FINDINGS, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Motion.
2. The Motion is GRANTED as set forth herein.
3. Subject to the right of Debtors to remove assets from the classification as Non-Core Assets identified as "Excess Real Estate" (i) before such Non-Core Asset is sold by Chartwell; (ii) with the consent of the Secured Lenders; and (iii) upon Debtors filing a notice identifying the removal of such Non-Core Asset with this Court, Chartwell is authorized and directed to immediately list, market, advertise, negotiate, auction (through absolute auction) and sell the Non-Core Assets identified as "Excess Real Estate."

4. Chartwell's auction and sale of the Non-Core Assets identified as "Excess Real Estate" shall occur at a time reasonably calculated to result in receipt of proceeds from the sales of such Non-Core Assets on or about July 10, 2010.

5. Any sales completed by Chartwell of Non-Core Assets identified as "Excess Real Estate" shall be made free and clear of any and all liens, encumbrances, claims and interests of any kind or nature, whatsoever; *provided, however*, that the Priming Lien, Replacement Liens and Pre-Petition Security Interests shall attach to all such sale proceeds..

6. Any sales completed by Chartwell of Non-Core Assets identified as "Excess Real Estate" shall be consummated and closed in the ordinary course of Chartwell's business, without any further requirement for approval of this Court.

7. Upon the closing of any such sale by Chartwell of Non-Core Assets identified as "Excess Real Estate," Chartwell may retain the "Buyer's Premium" as its sole compensation from such sale and is ordered to remit all other sale proceeds to Debtors within two (2) days of receipt of such proceeds.

8. Chartwell is further ordered to submit to this Court a report of all Non-Core Assets sold by it, and such report shall describe (i) the Non-Core Assets sold; (ii) the purchase price for all each of the Non-Core Assets; (iii) the purchaser of each of the Non-Core Assets sold by Chartwell; and (iv) Chartwell's compensation and expenses resulting from each sale of the Non-Core Assets (the "Chartwell Report"). Subject to the right of interested parties to object to Chartwell's compensation and expenses as reported in the Chartwell Report, if no objection to the compensation or expenses reported in the Chartwell Report is filed with this Court within twenty (20) days of the filing of the Chartwell Report (with a copy of such objection provided to Chartwell, counsel for the Committee, Debtors and counsel for the Agent), Chartwell shall be

deemed to be paid in full for its services and will have no further requirement to present its fees to this Court, and Chartwell's compensation and expenses will be deemed to be approved (subject to Chartwell's obligation to promptly return any of its \$90,000 expense advance remaining after satisfaction of reasonable and necessary expenses). If a timely objection is filed to the Chartwell Report, Chartwell shall contact the Court to seek a hearing on such objection.

9. Debtors' Chief Restructuring Officer, or any other officer of Debtors, is empowered and authorized to execute any quit claim deeds or other instruments necessary (in addition to the authorization contained in this Order) to convey title to the Non-Core Assets identified as "Excess Real Estate" to such successful bidder(s).

10. Subject to the right of Debtors to remove assets from the classification as Non-Core Assets identified as "Excess Machinery and Equipment" (i) before such Non-Core Asset is sold by Cincinnati; (ii) with the consent of the Secured Lenders; and (iii) upon Debtors filing a notice identifying the removal of such Non-Core Asset with this Court, Cincinnati is authorized and directed to immediately list, market, advertise, negotiate, auction (through absolute auction) and sell the Non-Core Assets identified as "Excess Machinery and Equipment."

11. Cincinnati's auction and sale of the Non-Core Assets identified as "Excess Machinery and Equipment" shall occur at a time reasonably calculated to result in receipt of sale proceeds from the sales of such Non-Core Assets no later than May 29, 2010.

12. Any sales completed by Cincinnati of Non-Core Assets identified as "Excess Machinery and Equipment" shall be made free and clear of any and all liens, encumbrances, claims and interests of any kind or nature, whatsoever; *provided, however*, that the Priming Lien, Replacement Liens and Pre-Petition Security Interests shall attach to all such sale proceeds.

13. Any sales completed by Cincinnati of Non-Core Assets identified as "Excess

Machinery and Equipment” shall be consummated and closed in the ordinary course of Cincinnati’s business, without any further requirement for approval of this Court.

14. Upon the closing of any such sale by Cincinnati of Non-Core Assets identified as “Excess Machinery and Equipment,” Cincinnati may retain the “Buyer’s Premium” as its sole compensation from such sale and is ordered to remit all other sale proceeds to Debtors within two (2) days of receipt of such proceeds. Notwithstanding the previous sentence, Cincinnati may also retain sale proceeds necessary to reimburse itself for necessary and actual expenses incurred in completing the sale of the Non-Core Assets identified as “Excess Machinery and Equipment.”

15. Cincinnati is further ordered to submit to this Court a report of all Non-Core Assets sold by it, and such report shall describe (i) each of the Non-Core Assets sold; (ii) the purchase price for each of the Non-Core Assets; (iii) the purchaser of each Non-Core Asset sold by Cincinnati; and (iv) Cincinnati’s compensation and expenses resulting from each sale of the Non-Core Assets (the “Cincinnati Report”). Subject to the right of interested parties to object to Cincinnati’s compensation and expenses as reported in the Cincinnati Report, if no objection to the compensation or expenses reported in the Cincinnati Report is filed with this Court within twenty (20) days of the filing of the Cincinnati Report (with a copy of such objection provided to Cincinnati, counsel for the Committee, Debtors and counsel for the Agent), Cincinnati shall be deemed to be paid in full for its services and will have no further requirement to present its fees to this Court, and Cincinnati’s compensation and expenses will be deemed to be approved. If a timely objection is filed to the Cincinnati Report, Cincinnati shall contact the Court to seek a hearing on such objection.

16. Debtors’ Chief Restructuring Officer, or any other officer of Debtors, is empowered and authorized to execute any bills of sale or other instruments necessary (in

addition to the authorization contained in this Order) to convey title to the Non-Core Assets identified as "Excess Machinery and Equipment" to such successful bidder(s).

17. Notwithstanding anything ordered above, the Removed Assets shall not be considered Non-Core Assets for sale by Cincinnati, unless and until such Removed Assets fail to be sold pursuant to the terms and conditions included in the Final Cash Collateral Order, at which time, the Removed Assets will be reinstated as Non-Core Assets identified as "Excess Machinery and Equipment."

18. Not later than three (3) business days after the entry of this Order, Debtors shall serve, or cause to be served, a copy of this Order, on (i) the office of the United States Trustee for Region IX; (ii) each of Debtors' secured lenders (KeyBank, National Association, The Huntington National Bank, and Bank of America, N.A.); (iii) counsel for the Agent for Debtors' secured lenders; (iv) the additional creditors identified on Debtors' consolidated list of thirty (30) largest unsecured creditors; (v) counsel for the Committee; (vi) counsel for Naples Funding Group, L.C.; (vii) other known claimants having liens or security interests in property of Debtors; (viii) the Internal Revenue Service; (ix) the United States Department of Justice and (x) all other parties required to receive service of this Order pursuant to the case management procedures established in these Cases.

19. This Order is effective immediately.

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Prepared and submitted by:

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