

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.*,¹ : Case No. 10-60702
: (Jointly Administered)
Debtors. :
: Judge Russ Kendig
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¹ 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).

AGREED ORDER APPROVING MOTION FOR A REVISED BIDDING PROCEDURES ORDER APPROVING (1) EXECUTED STALKING HORSE ASSET PURCHASE AGREEMENT; (2) PROPOSED BREAK-UP FEE AND EXPENSE REIMBURSEMENT; (3) REVISED BIDDING PROCEDURES; (4) THE FORM AND MANNER OF SERVICE OF NOTICE OF THE SALE HEARING AND AUCTION; AND (5) THE FORM AND MANNER OF SERVICE OF NOTICE OF THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES WHICH REVISES ORDER (1) APPROVING AUCTION AND BIDDING PROCEDURES AND AN AUCTION DATE; (2) SCHEDULING DATE AND TIME FOR SALE HEARING; (3) APPROVING THE FORM AND MANNER OF SERVICE OF NOTICE OF THE SALE HEARING AND AUCTION PURSUANT TO BANKRUPTCY RULES 2002, 6004 AND 6006; (4) APPROVING THE FORM AND MANNER OF SERVICE OF NOTICE OF THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (5) GRANTING RELATED RELIEF

This matter having come before the Court on the Motion for a Revised Bidding Procedures Order Approving (1) Executed Stalking Horse Asset Purchase Agreement; (2) Proposed Break-Up Fee and Expense Reimbursement; (3) Revised Bidding Procedures; (4) the Form and Manner of Service of Notice of the Sale Hearing and Auction; and (5) the Form and Manner of Service of Notice of the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "Revised Sale Procedures Motion") filed on May 3, 2010 by Schwab Industries, Inc ("SII"), Medina Cartage Co. ("MCC"), Medina Supply Company ("MSC"), Quality Block & Supply, Inc. ("QBS"), O.I.S. Tire, Inc. ("OIS"), Twin Cities Concrete Company ("TCC"), Schwab Ready-Mix, Inc. ("SRM"), Schwab Materials, Inc. ("SMI") and Eastern Cement Corp. ("ECC", and together with SII, MCC, MSC, QBS, OIS, TCC, SRM and SMI, the "Debtors"), seeking entry of an order (a) establishing the bidding and auction procedures (the "Bidding Procedures") that will govern the sale of substantially all of the assets of Debtors (the "Assets"); (b) scheduling the hearing (the "Sale Hearing") to approve the sale of the Assets (the "Sale"); (c) approving the proposed form of service of notice (the "Sale Notice") for the Sale; and (d) approving the form of service of notice related to the assumption and assignment of unexpired leases and executory contracts (the "Cure Claim Notice"). The Revised Sale

Procedures Motion sought to modify the Court's Order of April 16, 2010 approving certain bidding procedures (the "Original Sale Procedures Order"). Unless otherwise defined herein, capitalized terms in this order (the "Revised Sale Procedures Order") shall be given the same meaning accorded to such terms in the Revised Sale Procedures Motion. The Court has considered the entire record in these proceedings to date, including pleadings filed in response to the motion to approve the Original Sale Procedures Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the foregoing, and after due deliberation and good sufficient factual and legal cause appearing therefor, the Court finds and concludes as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 5005 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for relief sought herein include sections 105(a), 363, 365 and 1146(c) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 2002, 4001(d), 6004, 6006, 9013 and 9014 and Local Rule 9013.

2. Debtors are diligently marketing the Assets for sale.

3. Debtors have entered into a stalking horse Asset Purchase Agreement (appended to the Revised Sales Procedures Motion, the "APA") with Cement Resources LLC (the "Stalking Horse Bidder").

4. Due and proper notice of the Revised Sale Procedures Motion has been given to all necessary parties.

5. Debtors have shown good and sufficient business reasons for the relief requested in the Revised Sale Procedures Motion and have exercised prudent and reasonable business judgment with respect thereto.

6. Good cause exists for the establishment of the timelines set forth under this Revised Bid Procedures Order and in the Bidding Procedures attached hereto.

7. Debtors have been advised that time is of the essence for the Stalking Horse Bidder. Taking into consideration solicitation efforts made by Debtors thus far, the levels of interest received by Debtors in the Assets, the consent of the agent under Debtors' prepetition secured lending facility (the "Agent") to the sale of the Assets proposed by the APA, and the value to be provided to the Debtors' chapter 11 estates through the transaction contemplated by the APA, Debtors have concluded, and the Court finds, that the modifications to the Original Sale Procedures Order set forth herein are warranted under the circumstances. In light of the above factors, certain bid protections for the Stalking Horse Bidder are likewise warranted, including the modification of the rights of certain parties under the Court's Final Agreed Order Authorizing Limited Use of Cash Collateral that was entered by the Court on April 15, 2010 (the "Cash Collateral Order").

8. The objections of the Committee of Unsecured Creditors and National Lime and Stone Company are resolved.

9. The other objections to the Revised Sale Procedures Motion have been preserved and adjourned to the Sale Hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT

1. The Bidding Procedures hereby are revised and approved as attached hereto as Exhibit A, and Debtors are authorized to proceed with the auction and sale process in accordance with the Bidding Procedures.

2. The form of APA set forth as Exhibit B hereto is approved, and Debtors are authorized to proceed with the utilization of the APA as the form document to be utilized as part of the Bidding Procedures.

3. Within two business days after the entry of this Revised Sale Procedures Order, Debtors shall serve (except with respect to those parties receiving electronic notice in Debtors' bankruptcy proceeding) the Sale Notice, substantially in the form annexed hereto as Exhibit C on the following entities: (i) all parties that contacted Debtors or their advisors in connection with the marketing and sale process for the Assets; (ii) all entities who receive electronic notice in Debtors' bankruptcy proceedings; and (iii) all parties required to be served pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014 and the case management procedures in place in these Cases. In addition, Debtors shall also serve all prospective offerors and parties-in-interest upon written request. Service pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014 on those parties not receiving electronic notice shall be by first-class mail addressed to the business address of such persons appearing in Debtors' records notwithstanding Bankruptcy Rule 9014. Pursuant to Bankruptcy Rule 2002, service of the Sale Notice described herein shall constitute good and sufficient notice of the Bidding Procedures (including the APA), the Auction, this Revised Sale Procedures Order, the Sale Motion, and the Sale Hearing (and any proceedings to be held thereon or related thereto) on all known and unknown creditors and parties-in-interest, including persons entitled to service pursuant to Bankruptcy Rules 2002, 6004(a), 6004(c), 6006(c) and 9014. The Form of Sale Notice is hereby approved.

4. Debtors shall serve via overnight courier upon all parties (the "Counterparties") to executory contracts and unexpired leases (the "Contracts") that are or may be assumed and assigned in connection with the Sale a notice (the "Cure Claim Notice"), substantially in the

form attached hereto as Exhibit D, concurrently with this Order. The Cure Claim Notice shall provide notice of (a) the Debtors' intent to assume and assign certain of the Contracts to any Successful Bidder, in the event that the Successful Bidder designates such Contract as an executory contract or unexpired lease to be assumed and assigned; (b) a schedule of the Contracts and the prepetition monetary defaults, if any, associated with each Contract that is required to be cured under section 365 of the Bankruptcy Code (the "Cure Amounts"); and (c) the procedures for filing objections to the assumption and assignment of the Contracts, including any objections to proposed Cure Amounts. As the APA provides for the Successful Bidder to assume certain of Debtors' post-petition (but pre-closing) accounts payable, the Cure Amounts set forth on the exhibit to the Cure Claim Notice shall include prepetition liabilities. In the event that the Stalking Horse Bidder is not the Successful Bidder, Debtors shall re-serve a revised Cure Claim Notice which will include amounts to be paid by the Debtors to cure postpetition defaults, according to their business records. Service pursuant to Bankruptcy Rules 6006(c) and 9014 on those parties not receiving electronic notice shall be by overnight mail addressed to the business address of such persons appearing in Debtors' records notwithstanding Bankruptcy Rule 9014. The Form of Cure Claim Notice is hereby approved.

5. Objections, if any, to the Sale Motion or the assumption and assignment of any Contracts (including objections to Cure Amounts, objections with respect to the provision of adequate assurance of future performance or objections to the assignment of a Contract under section 365 of the Bankruptcy Code) shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules and orders of this Court, shall set forth (i) the nature of the objector's claims against or interests in Debtors' estates; (ii) the basis for the objection; (iii) the specific grounds therefor; and (iv) all evidence in support of said objection, and shall be filed and served so as to

be received on or before **May 21, 2010 at 5:00 p.m. E.D.T.**, by (a) Debtors and Debtors' Counsel, (b) the Committee and its Counsel, (c) the United States Trustee, (d) counsel for the Agent, (e) counsel for each of the Debtors' prepetition secured lenders; (f) counsel for Naples Funding Group, L.C., (g) counsel to the Stalking Horse Bidder and (h) all parties requesting service of notice and other motions and pleadings in this chapter 11 proceeding. Any person that does not comply with this paragraph shall not be heard at the Sale Hearing.

6. Except as set forth above, nothing otherwise contained in this Order shall be deemed to deprive any party of the right to object timely to the Sale Motion, all of which rights will be expressly reserved by this Order.

7. An Auction of the Assets shall be held on **May 27, 2010 at 10:00 a.m. E.D.T.**

8. The Sale Hearing to consider the relief requested in the Sale Motion and to consider whether to approve the bid by the Stalking Horse Bidder or other Successful Bidder shall be held on **May 28, 2010 at 10:00 a.m. E.D.T.**

9. A Break-Up Fee and Expense Reimbursement in the combined amount of \$1,900,000 are reasonable and appropriate and are hereby approved.

10. The Break-Up Fee and Expense Reimbursement, in the amount set forth in paragraph 9 above, shall be paid to the Stalking Horse Bidder in the following circumstances: (i) immediately upon the consummation of a transaction or series of related transactions, other than the transactions to be consummated under the APA, pursuant to which a material portion of the Debtors' Assets will be acquired by, or transferred to, a third party (whether pursuant to an asset sale, merger, stock purchase, a chapter 11 plan or otherwise), including pursuant to a credit bid (any such transaction, an "Alternative Transaction"); or (ii) in the event that the APA is terminated pursuant to Section 10.1 of the APA (other than Section 10.1(d) and 10.1(j)),

immediately upon the closing of each transaction (out of the proceeds of each such transaction) pursuant to which any portion of the Debtors' Assets are acquired by, or transferred to, a third party (whether pursuant to an asset sale, merger, stock purchase, chapter 11 plan, or otherwise), including pursuant to a credit bid, but excluding sales of inventory in the ordinary course of business, until the Break-Up Fee and Expense Reimbursement have been paid in full.

11. To the extent applicable and due and payable and otherwise unpaid, the Break-Up Fee and Expense Reimbursement, as set forth in paragraph 9 above, shall constitute superpriority administrative expenses allowable under sections 364(c)(1) and section 503(b) of the Bankruptcy Code. Consistent with paragraphs 9 and 10 herein, any Break-Up Fee and Expense Reimbursement payable under the APA to the Stalking Horse Bidder shall be allowed and paid, without any further Court approval or order. In the event that the Stalking Horse Bidder's Break-Up Fee and Expense Reimbursement becomes payable pursuant to paragraph 10 above, any such amounts shall not be paid to the Debtors or become property of their estate, but shall instead be paid directly by the buyer to the Stalking Horse Bidder out of the proceeds of such transaction contemplated in paragraph 10 above. Notwithstanding any existing lien, claim or encumbrance, the Replacement Liens granted by the Cash Collateral Order (as such term is defined in the Cash Collateral Order) and any liens of the Pre-Petition Lenders (as such term is defined in the Cash Collateral Order) shall be subject to an additional carve-out equal to the amount of the Break-Up Fee and Expense Reimbursement, as set forth in paragraph 9 above, and such liens shall not attach to such amounts in the event that such amounts become payable pursuant to the terms of this Order.

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Prepared and Submitted by:

/s/ Christopher W. Peer

Lawrence E. Oscar (0022696)
Daniel A. DeMarco (0038920)
Christopher W. Peer (0076257)
HAHN LOESER & PARKS LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
Telephone: (216) 621-0150
Facsimile: (216) 241-2824
E-mail: leoscar@hahnlaw.com
dademarco@hahnlaw.com
cpeer@hahnlaw.com

Counsel to Debtors

/s/ Aaron L. Hammer

Douglas L. Lutz, Esq. (0064761)
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Telephone: 513.651.6800
Facsimile: 513.651.6981
E-Mail: dlutz@fbtlaw.com

and

Aaron L. Hammer, Esq.
Richard S. Lauter, Esq.
Thomas R. Fakes, Esq.
FREEBORN & PETERS LLP
311 South Wacker Drive, Ste. 3000
Chicago, Illinois 60606-6677
Telephone: 312.360.6000
Facsimile: 312.360.6995

Counsel for the Official Committee of Unsecured Creditors

NO OBJECTION

/s/ Curtis L. Tuggle

Alan R. Lepene (0023276)
Curtis L. Tuggle (0078263)

THOMPSON HINE LLP

3900 Key Center
127 Public Square
Cleveland, Ohio 44114
Phone: (216) 566-5500
Fax: (216) 566-5800

*Attorneys for KeyBank National Association, as
Administrative Agent for the Pre-Petition Lenders*

/s/ Ryan T. Routh

David G. Heiman
Ryan T. Routh
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: 216.586.3939
Facsimile: 216.579.0212
E-Mail: rrouth@jonesday.com

Counsel for Cement Resources, LLC

EXHIBIT A

CLE - 2707828.1

**REVISED PROCEDURES FOR SOLICITATION AND SELECTION OF HIGHEST
AND BEST QUALIFIED BIDDER IN CONNECTION WITH SALE OF
SUBSTANTIALLY ALL THE ASSETS OF SCHWAB INDUSTRIES, INC., et al.**

These Revised Bid Procedures shall govern the sale of substantially all of the assets of Debtors.

A. Assets to be Sold.

The assets to be sold consist of (i) certain ready-mix operations located in the state of Ohio (the "Ohio Ready-Mix Assets"); (ii) certain ready-mix operations located in the state of Florida (the "Florida Ready-Mix Assets"); (iii) a certain 2,100 acre plot of real estate with aggregate reserves in Lee County, Florida, presently operated as an orange grove (the "Corkscrew Quarry Assets") and (iv) a lease of the deep water port at Port Manatee on the gulf coast of Florida (the "Eastern Cement Assets," and together with the Ohio Ready-Mix Assets, the Florida Ready-Mix Assets and the Corkscrew Quarry Assets, individually a "Component Asset" and collectively, the "Debtors' Assets").

A detailed description of each of the Debtors' Assets can be obtained by any Potential Bidder (as defined herein) through the process described below in Section C entitled Due Diligence.

After consultation with their professionals, the Committee and the Agent, but subject to the consent of the Agent, Debtors' Assets may be sold in bulk or in piecemeal, such decision(s) being made to maximize the value to be paid by the Successful Bidder(s) for Debtors' Assets. Accordingly, potential purchasers of Debtors' Assets may submit bids to purchase any Component Asset(s), all of Debtors' Assets, or any subset of Debtors' Assets.

Pursuant to these Revised Bid Procedures and Section 363 of the Bankruptcy Code, the Assets shall be sold free and clear of all liens, claims, rights, interests and encumbrances, other than liabilities expressly assumed.

The Assets shall be sold and are being purchased by the Successful Bidder (as defined herein) "as is – where is" and "with all faults."

B. Stalking Horse Bidder and Asset Purchase Agreement.

The Debtors have identified as a stalking horse bidder for their Assets Cement Resources LLC (the "Stalking Horse Bidder") and have entered into an asset purchase agreement with the Stalking Horse Bidder (the "APA"). It is requested that Bidders use the APA, which can be found in the data room hosted by WRP (as defined herein), to submit any Bid(s).

C. Due Diligence

Debtors shall provide any potential bidders for any of the Debtors' Assets that have delivered to Debtors an executed confidentiality agreement in form and substance acceptable to Debtors (a "Potential Bidder") (i) reasonable access to the online data room maintained by

Debtors' investment bankers, WRP (which shall include the Stalking Horse APA); (ii) reasonable access to Debtors' books, records, facilities, key personnel, officers, independent accountants and legal counsel for the purpose of conducting due diligence; and (iii) reasonable access to Debtors' facilities and locations. Subject to any order as may be entered by the Court, Debtors are not required to provide confidential or proprietary information to any party if Debtors reasonably believe that such disclosure would be detrimental to the interests and operations of Debtors or any of Debtors' affiliates. Debtors shall, in good faith, attempt to resolve any dispute arising from such a decision of Debtors to exclude any requested due diligence information, but any unresolved disputes shall be presented to the Court for resolution.

Debtors shall consider reasonable requests for additional information through their investment bankers, WRP.

D. Qualified Bid Requirements

Debtors, in consultation with their professionals, the Agent and Committee, shall determine whether a Potential Bidder has submitted a Qualified Bid.

In order to be a "Qualified Bid," such bid must:

(i) be in writing;

(ii) be accompanied by an executed copy of an agreement, substantially in the form of the APA (the "Modified APA"), which agreement shall not be subject to any internal approval (including board approval), due diligence or financing contingency, and a redline comparison of such agreement to the APA reflecting such changes to the APA as are proposed by the Bidder;

(iii) include a cash purchase price for the Debtors' Assets (in each case, a "Qualified Bid Purchase Price") that (X) if such Bid is for substantially all the Debtors' Assets, shall be an amount not less than \$2,150,000 in excess of the Cash Purchase Price proposed in the APA and (Y) if such Bid is for one or more Component Assets such Qualified Bid Purchase Price shall be such Qualified Bidder(s) proposed Cash Purchase Price for such Component Asset(s) *provided however* that such Qualified Bidder(s) is informed that the Break Up Fee shall be payable to the Stalking Horse Bidder if the Stalking Horse Bidder is not selected as the Successful Bidder and that the aggregate of all Component Asset Bids (without Qualified Bidders necessarily having knowledge of any other Bid(s)) must be greater than the Cash Purchase Price proposed in the APA by (A) \$250,000; plus (B) the Break Up Fee in accordance with the terms of the Order approving these Bidding Procedures;

(iv) provide that such Potential Bidder's offer is irrevocable until the closing of the sale of Debtors' Assets if such Potential Bidder is a Successful Bidder or Reserve Bidder (each as defined below);

(v) provide that the proposed transaction will be expected to close on or before June 1, 2010 if (i) such Potential Bidder is a Successful Bidder or Reserve Bidder, and (ii) the order entered by the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court") approving such sale is not stayed pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure or pursuant to an order entered by the Bankruptcy Court or other court of competent jurisdiction;

(vi) be accompanied by a good-faith deposit in an amount equal to 5% (the "Qualified Bid Deposit"), of such Potential Bidders' Qualified Bid Purchase Price in the form of a bank draft or wire transfer paid to Debtors' counsel, Hahn Loeser & Parks LLP (wire instructions can be obtained from WRP);

(vii) be accompanied by satisfactory evidence, in the opinion of Debtors, in consultation with their professionals, the Agent and the Committee, of committed financing or other confirmable fiscal wherewithal to consummate the transactions set forth in the Modified APA;

(viii) be accompanied by an affirmative statement from such Potential Bidder that it will fully and completely comply with these Bidding Procedures;

(ix) be actually received by Debtors' investment bankers, WRP, on or before May 24, 2010, at 5:00 p.m. E.D.T. (the "Bid Deadline"); and

(x) meet all other requirements of these Bid Procedures.

The APA is considered to be a Qualified Bid and the Stalking Horse Bidder a Qualified Bidder.

WRP shall immediately, upon receipt, distribute any bids that seek to be considered Qualified Bids to all Qualified Bidders and to the following parties:

Debtors

c/o Laurence V. Goddard, Chief Restructuring Officer
THE PARKLAND GROUP
1375 East 9th Street, Suite 1350
Cleveland, OH 44114

With copies to:

Lawrence E. Oscar, Esq.
Daniel A. DeMarco, Esq.
Christopher W. Peer, Esq.
HAHN LOESER & PARKS, LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114

and

David Cesar
Mark D. Kozel
THE PARKLAND GROUP
1375 East 9th Street, Suite 1350
Cleveland, OH 44114

and

Agent

c/o Alan R. Lepene, Esq.
Curtis L. Tuggle, Esq.
THOMPSON HINE LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 41114

and

Committee

c/o Douglas L. Lutz, Esq.
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202-4182

and

Aaron L. Hammer, Esq.
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606

The Stalking Horse Bidder

Cement Resources LLC
c/o GarMark Advisors LLC
One Landmark Square
6th Floor
Stamford, CT 06901
Attn: Steven C. Pickhardt
Fax No.: (203) 325-8522

and:

Cement Resources LLC
c/o Atlas Holdings FRM LLC
One Sound Shore Drive, Suite 203
Greenwich, CT 06830
Attn: Timothy J. Fazio
Fax No.: (203) 622-0151

with a copy to:

Jones Day
North Point

901 Lakeside Avenue
Cleveland, Ohio 44114
Attn: David G. Heiman, Esq.
Fax No.: (216) 579-0212

E. Qualified Bidder Requirements.

Debtors, in consultation with the Agent and the Committee, shall determine whether a Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder is a Qualified Bidder.

In order to be a "Qualified Bidder," such Potential Bidder must be a person or entity that:

- (i) has delivered to Debtors, or Debtors' representative, an executed confidentiality agreement in form and substance acceptable to the Debtors;
- (ii) has delivered to WRP a Qualified Bid (including transmittal of the entire Qualified Bid Deposit) on or before the Bid Deadline; and
- (iii) meets all other requirements of these Bid Procedures.

Debtors shall notify any Potential Bidder whether they are a Qualified Bidder within twenty-four (24) hours after the Bid Deadline. **Any Potential Bidder that fails to meet the qualifications to be considered a Qualified Bidder shall not be permitted to participate at the Auction, provided however, the Debtors may, in their discretion, upon consent of the Agent and with consultation of the Committee work with Potential Bidders who fail to qualify as Qualified Bidders as of the Bid Deadline to remedy any defects in such Bid(s) to allow such Potential Bidders to qualify as Qualified Bidder(s) so long as such efforts conclude no later than 5:00 PM Eastern Daylight Time on May 25, 2010 .**

Debtors reserve the right, subject to the consent of the Agent and in consultation with the Committee, to reject any Bid from a Potential Bidder.

F. Auction.

If Debtors receive more than one Qualified Bid, then an auction (the "Auction") shall be held on May 27, 2010, at 10:00 a.m. E.D.T. at the Cleveland, Ohio offices of Hahn Loeser & Parks LLP, located at 200 Public Square, Suite 2800, Cleveland, Ohio 44114.

Debtors reserve all rights, subject to the consent of the Agent, to cancel or reschedule the Auction for any reason at any time, following consultation with their professionals, the Committee and the Agent, provided that the Stalking Horse Bidder shall be consulted with regard to any decision to cancel or reschedule the Auction. Any such cancellation or rescheduling, however, shall not relieve Debtors from performing their obligations under the APA unless the Stalking Horse Bidder agrees to amend the terms of the APA in connection with such cancellation or rescheduling. Such consideration may include a decision by Debtors to abandon the Auction and pursue completion of a Plan of Reorganization, if the Agent and the Stalking Horse Bidder both consent.

G. Auction Process.

In order to participate in the Auction, all Qualified Bidders must appear in person at the Auction, or through a duly authorized representative. In addition to Qualified Bidders (along with their advisors and counsel), only representatives of Debtors, the Stalking Horse Bidder, Committee, Agent, and Huntington National Bank and Bank of America, N.A. (together with KeyBank National Association, collectively, the "Pre-Petition Lenders"), Naples Lending Group, L.C. and Office of the United States Trustee for Region 9 shall be entitled to be present at the Auction. Debtors will arrange for a stenographic record of the Auction to be made. Each Qualified Bidder shall be required to confirm that it has not engaged in any actions that would be considered inconsistent with these Bid Procedures or fundamentals of fairness with respect to the bidding or Debtors' Assets.

Debtors, in consultation with the Agent and Committee, will separately evaluate all Qualified Bids, whether for Component Assets or all of Debtors' Assets. The Auction shall be conducted in rounds and in any order that Debtors determine. Debtors may, subject to the consent of the Agent, return to an Auction for any set of Debtors' Assets at any time, until it has determined and named a Successful Bidder(s) for all the Debtors' Assets.

In determining the highest and best bid made at each round of the Auction, the Debtors will consider the proceeds to be received by the Debtors after calculating the need to pay the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder under the APA as well as other relevant factors, economic and otherwise. The Auction shall be conducted in rounds and in any order the Debtors determine. At the end of every round, Debtors shall declare the highest or otherwise best bid or bids at that time for the Debtors' Assets.

Each Qualified Bidder shall have the right to continue to improve its respective bid at the Auction. The initial minimum over bid shall be \$100,000 over any Bid established in a Qualified Bid prior to the auction (the "Initial Overbid"), provided however the Initial Overbid on any bid for substantially all the Assets shall be no less than \$250,000. Thereafter, Qualified Bidders may increase their Qualified Bids in any manner that they deem fit; provided, however, that each subsequent increase must include a minimum of \$100,000 in additional consideration.

Debtors, in consultation with the Agent and the Committee reserve the right to approach any Bidder and seek clarification to bids at any time, including without limitation, inviting Bidder(s) to communicate with other Bidder(s) if such communication would be beneficial to the Auction achieving a higher and better Bid.

Upon a determination by Debtors that no further higher or otherwise best bid has been received, Debtors, with the consent of the Agent and consultation with the Committee, may conclude the Auction. At the conclusion of the Auction, Debtors, with the consent of the Agent, and in consultation with the Committee, shall determine which Qualified Bid is the highest and best bid (a "Successful Bid") and the next highest and best Qualified Bid submitted at the Auction (a "Reserve Bid"). The Qualified Bidder submitting the Successful Bid shall become a "Successful Bidder," and the Qualified Bidder submitting the Reserve Bid shall become a "Reserve Bidder."

The value of any Qualified Bid, for purposes of these proceedings, shall be determined by comparing, among other things, (i) the type, number and nature of any changes to the APA or

requested by each such Qualified Bidder(s), (ii) the extent to which such modifications are likely to delay the closing of the Sale of Debtors' Assets to such Qualified Bidder(s), and the cost to the Debtors and their estates of such modifications or delay, including consideration of anti-competitive concerns, (iii) the type and amount of consideration to be received by the Debtors' estates, (iv) the amount of any cure payments, which, if paid by Seller, would reduce the proceeds available for distribution to creditors, (v) the likelihood of the Qualified Bidder(s) ability to close the transaction (including without limitation consideration of such Qualified Bidders' financial wherewithal), (vi) the impact of the Qualified Bids on the Debtors' employees and other stakeholders, (vii) the net benefit to the Debtors' estates and (viii) other risks which could impair the closing a transaction to sell Debtors' Assets.

H. Return of Deposits.

The provisions of the APA regarding the deposit of the Stalking Horse Bidder shall apply to the application or return of the deposit of the Stalking Horse Bidder, notwithstanding any provisions set forth below.

The Deposit of the Successful Bidder shall be applied to the Successful Bidder's obligations under the Successful Bid upon closing of the transactions contemplated thereby. If a Successful Bidder fails to close the transactions contemplated by the Successful Bidder then such Successful Bidder shall indefeasibly forfeit its Deposit (and any right to any Stalking Horse Protection Fee, if applicable).

The Deposit of the Reserve Bidder shall be returned to the Reserve Bidder upon closing of the transactions contemplated by the Successful Bidder; provided, however, that if the Successful Bidder fails to close the sale transaction when and as provided in the Successful Bid, then the Deposit of the Reserve Bidder shall be applied to the Reserve Bidder's obligations under the Reserve Bid upon closing of the transactions contemplated thereby. If a Reserve Bidder fails to close the transactions contemplated by a Reserve Bid, then such Reserve Bidder shall forfeit its Deposit.

All other Deposits of Qualified Bidders who are not the Successful Bidder or Reserve Bidder shall be returned within five (5) business days after conclusion of the Auction.

I. Sale Hearing.

The Sale Hearing will be held on **May 28, 2010 at 10:00 a.m. (prevailing Eastern Time)** at the United States Bankruptcy Court for the Northern District of Ohio, Federal Building & U.S. Courthouse, Frank T. Bow Building, 201 Cleveland Avenue SW, Canton, Ohio 44702. At the Sale Hearing, the Debtors will seek the entry of an order (the "Sale Order") approving and authorizing the proposed Sale to the Successful Bidder, if any. The Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Sale Hearing, but any adjournment or rescheduling shall not relieve Debtors from performing their obligations under the APA or the Modified APA, as applicable.

J. Closing; Assumption and Assignment of Executory Contracts and Unexpired Leases.

The closing of any sale of any of Assets (or a portion thereof) will occur in accordance with the terms of the Successful Bidder's APA or the Modified APA, as applicable.

To the extent not otherwise addressed in the APA or Modified APA, Debtors have filed and served a schedule of the unexpired leases and executory contracts known by Debtors to be able to be assumed by a Successful Bidder on all parties to such agreements (unless a different deadline is set forth in the APA or the Modified APA, as applicable), which schedule shall include Debtors' calculation of the amounts they believe must be paid to cure all prepetition defaults under each of the unexpired leases and executory contracts that are to be assumed and assigned to the Successful Bidder (collectively, the "Cure Amounts").

K. Allen Concrete Pumping ("ACP").

ACP is a Florida general partnership 50% owned by Debtor SRM and 50% by Allen Concrete & Masonry, Inc. ("Allen Masonry"). Allen Masonry and ACP each assert a right of first refusal on Debtor SRM's interest in ACP (the "Allen ROFR"). To the extent a bidder desires to acquire the interest of Debtor SRM in ACP (the "ACP Interest") a separate purchase price shall be stated for the ACP Interest. The Debtors shall notify promptly Allen Masonry of any Bid for the ACP Interest and the price proposed therefore to give effect to the Allen ROFR. Allen Masonry shall respond by agreeing to purchase the Allen Interest for such price or waiving the Allen ROFR by the time of the commencement of the Sale Hearing.

Please direct any questions regarding the foregoing Bid Procedures to either WRP or counsel for the Debtors.