

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA – READING DIVISION

In re:

MODERN PRECAST CONCRETE,
INC., *et al.*

Debtors.

Chapter 11
(Jointly Administered)

Case No. 12-21304-REF

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365 AND FEDERAL RULES OF
BANKRUPTCY PROCEDURE 2002, 6004 AND 6006 APPROVING SALE OF ASSETS
(INCLUDING ASSUMPTION AND ASSIGNMENT OF CONTRACTS) FREE AND
CLEAR OF ALL LIENS, ENCUMBRANCES, CLAIMS, AND INTERESTS**

This matter comes before the Court on the motion, dated December 6, 2012 (the “Motion”),¹ of Modern Precast Concrete, Inc., West North, LLC, and West Family Associates, LLC (collectively, the “Debtors”), jointly administered debtors-in-possession in the above captioned bankruptcy cases (the “Cases”), pursuant to sections 105(a), 363(b), and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Local Rules”), seeking entry of an order (a) authorizing and approving the sale (the “Sale”) of the Purchased Assets, as further described in the APA (as such term is defined further herein), by Debtors to the Successful Bidder and finding and concluding that the Sale of the Purchased Assets (i) is or will be a legal, valid and effective transfer of the Purchased Assets, (ii) vests or will vest in such Purchaser good title to the Purchased Assets free and clear of any and all liens, claims, interests and encumbrances, except those expressly assumed by the Purchaser; (iii) constitutes a transfer for reasonably

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or the APA.

equivalent value and fair consideration under the Bankruptcy Code and applicable law; (b) that all parties having a lien, claim, interest or encumbrance, of any kind or nature, against the Purchased Assets are forever barred, estopped and permanently enjoined from pursuing such liens, claims, interests and encumbrances against the Purchaser, any of its assets, property, successors or assigns or the Purchased Assets, except with respect to those expressly assumed by the Purchaser; (c) that the transactions contemplated by the APA are and were undertaken in good faith, as that term is defined pursuant to section 363(m) of the Bankruptcy Code; (d) that approves the asset purchase agreement submitted by the Successful Bidder (the "APA"); and (e) that permits Debtors to assume and assign to the Purchaser certain executory contracts and unexpired leases pursuant to sections 105(a) and 365 of the Bankruptcy Code and states (i) that all defaults of the Debtor(s) under such contracts and leases arising or accruing prior to the date of this Order (also known as the "Sale Order") have been or promptly will be cured by the Debtor(s) upon assumption by Debtors and assignment by the Debtor(s) to the Purchaser; (ii) that the Purchaser has provided adequate assurance of future performance of such assumed and assigned executory contracts and unexpired leases; and (iii) that the Purchaser shall have no liability or obligation with respect to any default or obligation arising or accruing with respect thereto prior to Closing, except those specifically assumed pursuant to the APA.

The Court having entered a Bid Procedures Order (as defined below) on December 12, 2012 [Doc. No. 52], and, in accordance with the Bid Procedures Order; and based upon the arguments of counsel and the evidence presented at the hearing, if any, to approve the Motion (the "Sale Hearing"); and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just

cause for the relief granted herein; and all objections to the Motion, if any, having been withdrawn or overruled; and after due deliberation and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:²

A. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and judicial predicates for the relief sought herein include sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9013.

B. Debtors continue, as debtors-in-possession, to operate and manage their businesses, which are engaged in the design, development, manufacture, production, finishing, marketing, sale and distribution of precast concrete, including, but not limited to, reinforced concrete pipe, site structures (including inlets, manholes and headwalls), box culverts, septic and pump tanks, stormwater systems and recharge tanks, Hy-Span bridges, retaining wall block, oil/water separators, precast concrete buildings (including DurRest Restrooms, Easi-Set and Easi-Span Buildings) and custom structures.

C. Time is of the essence in consummating the Sale and it is in the best interests of the Debtors and their estates to sell the Purchased Assets and to assume and assign the Purchased Contracts within the time constraints set forth in the APA. The terms of the APA are the highest and best terms that have been offered for the Sale of the Purchased Assets. This order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Accordingly, notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

applicable by Bankruptcy Rule 7054, this Court expressly finds that Debtors have articulated good and sound business reasons for waiving the stays imposed by Bankruptcy Rules 6004(h) and 6006(d), that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth therein.

D. Bidding Procedures. On the Petition Date, in order to commence and continue an appropriate marketing process to effectuate the Sale contemplated in the Sale Motion, Debtors filed Debtors' *Motion for an Order Pursuant to Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014 (I)(A) Authorizing and Scheduling an Auction at which the Debtors will Solicit Higher and Better Offers in Connection with the Sale of Certain Assets, (B) Approving the Bid Procedures for Such Assets, (C) Approving Break-Up Fee and (D) Approving the Form and Manner of Notice of the Bid Procedures and Auction; (II) Approving the Sale of Such Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; (III) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (IV) Approving Assumption of Escrow Agreement; and (V) Granting Related Relief as Requested Herein* (the "Bid Procedures and Sale Motion") [Doc. No. 7], which included proposed bid procedures and a form of proposed sale and cure notice. Through the Bid Procedures Motion, Debtors also sought approval of Oldcastle Precast, Inc. ("Oldcastle") as the Stalking Horse Bidder for the Purchased Assets and authorization to grant to Oldcastle a break-up fee of \$305,337 (the "Break-Up Fee"), calculated as 3.0% of the Proposed Purchase Price (as defined below), as set forth in greater detail in the Bid Procedures Motion and the APA. The APA provides for the sale by Debtors, and the purchase by Oldcastle, of those assets described in Section 2.01 of the APA for a total proposed purchase price to the Debtors of \$7,800,000, plus the Sellable Inventory Value, plus the

AR Value, less the WIP Adjustment, less any remaining amounts payable with respect to any items of Equipment that are subject to capital leases as described on Schedule 3.01 of the APA (the "Proposed Purchase Price").³ On December 11, 2012, at 1:30 p.m. (ET), the Court held a hearing on the Bid Procedures Motion (the "Bid Procedures Hearing"). On December 12, 2012 the Court entered its *Order (A) Authorizing and Scheduling an Auction and Hearing to Approve the Sale of Assets, (B) Approving the Bid Procedures in Connection with the Sale of Such Assets, (C) Approving Break Up Fee, (D) Approving the Form and Manner of Notice of the Bid Procedures and Auction; (E) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (F) Approving Assumption of Escrow Agreement, and (G) Granting Related Relief* (the "Bid Procedures Order") [Doc. No. 52]. Pursuant to the Bid Procedures Order, Debtors scheduled an auction for the sale of the Purchased Assets for January 14, 2013, at 10:00 a.m. (ET) (the "Auction Date") and a hearing to confirm the sale was conducted on January 15, 2013, at 1:30 p.m. (ET) (the "Sale Hearing Date").

E. On or about December 13, 2012, written notice⁴ of the Sale Hearing, the Auction, the Motion, and a reasonable opportunity to object or be heard with respect to the Sale and assumption and assignment of the Purchased Contracts was provided to all interested persons and entities, including: (a) the Office of the United States Trustee for Region 3, (b) counsel to any Creditors' Committee; (c) counsel to the Debtors' acknowledged pre-petition secured creditors; (d) counsel to any post-petition lenders; (e) parties entitled to receive notice in these

³ The Purchaser is also providing additional consideration of \$36,000 to a non-debtor affiliate seller of certain forms related to the business, which \$36,000 shall be paid to M&T Bank at Closing.

⁴ Pursuant to the Local Rules and applicable General Orders of the Bankruptcy Court, any party receiving electronic notices through the Bankruptcy Court's electronic noticing system (CM/ECF) shall be deemed to have received written notice of any document filed on the docket in these cases after such party commenced receiving such electronic notices.

Cases pursuant to Bankruptcy Rule 2002; (f) all entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in or on any or all of the Purchased Assets, (g) all parties on the Debtors' master mailing matrix, including, without limitation, all known creditors of the Debtors, (h) all counterparties to the Purchased Contracts, (i) the Internal Revenue Service and all state/local taxing authorities in jurisdictions where the Debtors have or may have any tax liability; (j) all persons who have expressed an interest in acquiring the Purchased Assets within the last twelve (12) months, and (k) counsel to the Purchaser. This notice and opportunity to object constitutes due, proper, timely adequate and sufficient notice.

F. The Purchased Contracts listed on Schedule 2.01(d) to the APA ("Schedule 2.01(d)"), may be assumed and assigned by Debtors and (1) there is no legal impediment to the assumption and assignment of the agreements identified on Schedule 2.01(d); (2) none of the agreements identified on Schedule 2.01(d) is of the kind identified in section 365(c) of the Bankruptcy Code as an agreement that cannot be assumed and assigned by a debtor; and (3) the Purchaser has provided adequate assurance of its future performance for each of the agreements set forth on Schedule 2.01(d) within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. Notwithstanding any Purchased Contracts listed on Schedule 2.01(d), the Purchaser is hereby authorized for forty-five (45) days following Closing, in its sole discretion, to add or remove from the list of Purchased Contracts to be assumed and assigned.

G. The Cure Amounts, if any, arising from the Purchased Contracts, as set forth on Schedule 2.01(d), are the true and correct amounts necessary to cure any existing defaults under the Purchased Contracts as of the date of the Sale Hearing. The Purchaser has furnished adequate assurance of future performance under the Purchased Contracts.

H. Based on the representations and statements made in the Sale Motion and the Bid Procedures Motion, and at the Bid Procedures Hearing and the Sale Hearing, Debtors and their professionals have engaged in adequate, sufficient and reasonable marketing of the Purchased Assets designed to generate interest in the Purchased Assets. The Court is satisfied that no further marketing of the Purchased Assets is necessary and would not result in a higher or better bid being identified or negotiated, after considering, among other things, the interests of all stakeholders in these Purchased Assets, the time, costs and resources needed to continue any marketing process, the resources of Debtors and the morale of their employees. Debtors and their professionals conducted the Sale process in accordance with the Bid Procedures Order and creditors and other parties-in-interest have been afforded a reasonable opportunity to bid for the Purchased Assets (collectively, the "Marketing Process"). Through the Marketing Process, Debtors and their professionals contacted 222 interested parties following commencement of the Cases. These contacts resulted in at least 45 parties executing confidentiality agreements (including such agreements executed pre-petition) with Debtors to obtain access to confidential and proprietary information. Debtors timely responded to all appropriate requests for additional or more robust information. The Court is satisfied that any information not provided to any potential bidder for the Purchased Assets was in accordance with this Court's Orders and therefore justified. The Marketing Process did not result in any party submitting a bid for some or all the Purchased Assets. The Court is satisfied that Debtors' Marketing Process has identified and located the highest and best aggregate value for the Purchased Assets. Debtors' conduct in connection with the marketing of the Purchased Assets is in good faith, approved and ratified.

I. In accordance with the Bid Procedures Order and consistent with the Sale Notice, Debtors did not hold an auction (the "Auction") of the Purchased Assets because no competitive bids were received. Accordingly, Oldcastle is the Successful Bidder (also defined as the "Purchaser"). For purposes of this Sale Order, until and unless Oldcastle fails to Close and consummate the Sale, Oldcastle shall also be known as the "Purchaser."

J. The Debtors have determined that the highest and/or otherwise best offer for the Purchased Assets was that of the Purchaser, providing for an estimated aggregate purchase price of \$7,800,000, plus the Sellable Inventory Value, plus the AR Value, less the WIP Adjustment, less any remaining amounts payable with respect to any items of Equipment that are subject to capital leases as described on Schedule 3.01 of the APA (the "Purchase Price") as set forth in the APA. The Sale of the Purchased Assets to the Purchaser is supported and consented to by M&T Bank, the Debtors' primary pre-petition secured lender, as well as the Official Committee of Unsecured Creditors. The Purchase Price is fair and adequate consideration for the Purchased Assets, is the highest and best price for the Purchased Assets, and demonstrates an exercise of Debtors' reasoned business judgment.

K. Upon the closing under the APA (the "Closing"), the Purchased Assets will have been acquired after adequate marketing, in good faith, and as the result of arm's-length negotiations.

L. In accordance with the provisions of the Bid Procedures Order, the Debtors have served notice upon the non-debtor parties to the Purchased Contracts: (i) that the Debtors seek to assume, assign, and/or transfer certain executory contracts as provided for in the APA at or after the Closing, as the case may be; and (ii) of the relevant proposed Cure Amounts (as hereinafter defined). The service of such notices was good, sufficient and appropriate under the

circumstances and no other notice need be given in respect to establishing Cure Amounts for the Purchased Contracts. Each of the non-debtor parties to the Purchased Contracts has had an opportunity to object to the Cure Amounts set forth in the notice. The assumption and assignment of the Purchased Contracts pursuant to the terms of this Order and as set forth in the APA is integral to the Sale and is in the best interests of the Debtors and their estates, creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

M. Notice, as specified herein and as evidenced by the affidavits of service and publication (if any) filed with the Court, is reasonable and adequate. Such notice and opportunity for hearing was adequate and appropriate in the circumstances of these cases, comports with all due process requirements, and satisfies the requirements of the Bankruptcy Rules, and no other or further notice is required.

N. Subject to entry of this Sale Order, the Debtors have (i) full power and authority to execute the APA, (ii) all of the power and authority necessary to consummate the transactions contemplated by the APA, and (iii) taken all action necessary to authorize and approve such transactions.

O. Except as otherwise expressly provided in the APA, no further consents or approvals are required for the Debtors to consummate the Sale of the Purchased Assets other than the consent and approval of this Court. Neither the execution of the APA nor the Sale of the Purchased Assets in accordance with the terms of the APA will constitute a violation of any provision of the organization documents of the Debtors or any other instrument, law, regulation, or ordinance by which the Debtors are bound. To the extent any consents are required, the Court finds that the parties required to provide such consents had ample notice of these proceedings,

the Bid Procedures Motion, the Bid Procedures Order, the APA, the Auction, the Sale Notice, and all other related pleadings, and by their non-response, have consented to the Sale of the Purchased Assets. This Sale Order may be used in any manner necessary to communicate, notify, or record such consent. Such consents shall be binding on all such parties, their successors and assigns. Moreover, each governmental unit that has issued or granted a Permit (as defined in the APA) or has work performed for it by Debtors has consented (expressly or by virtue of receiving actual or constructive notice of the assumption and assignment and not objecting thereto at the Sale Hearing) to the assumption and assignment of such Permit or contracts for work to the Purchaser.

P. This Sale Order and consummation of the Sale are supported by good business reasons and will serve the best interests of the Debtors, their estates, and creditors by maximizing the values obtained from Purchased Assets. Such business reasons include, but are not limited to, the fact that (a) there is a substantial risk of deterioration in value of the Purchased Assets; (b) the APA constitutes the highest and best offer for the Purchased Assets; (c) the APA and Closing present the best opportunity to realize the value of the Purchased Assets on a going-concern basis and avoid a decline and devaluation of the Purchased Assets; and (d) Closing of the APA allows Debtors' employees, customers and vendors the benefits of ongoing business operations, preserving relationships, commerce and employment.

Q. The marketing and bidding procedures implemented by the Debtors, as set forth in the Motion, the Bid Procedures Order, and the record of the hearings relating to the Sale, were fair, proper, and reasonably calculated to result in the best value received for the Purchased Assets. Further, the bidding process set forth in the Bid Procedures afforded a full, fair and reasonable opportunity for any Qualified Bidder, as defined therein, to submit bids and

participate in the auction. The bidding process was conducted properly and in good faith, without collusion and in accordance with the Bid Procedures Order. The Purchaser was a Qualified Bidder pursuant to the Bid Procedures Order. The APA constitutes the highest and best offer and will provide a greater recovery for the Debtors' estates than would be provided by any other known alternative.

R. The APA and the transactions related thereto were negotiated, proposed, and entered into by the Purchaser without collusion, in good faith, and from an arm's length bargaining position. There is no insider relationship between affiliates of the Purchaser and the Debtors. The Debtors and the Purchaser have not engaged in any conduct that would cause or permit the sale pursuant to the APA to be avoided under section 363(n) of the Bankruptcy Code.

S. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and as such is entitled to all of the protections afforded thereby, and has acted in good faith in all respects in connection with this proceeding, in that: (i) the Purchaser, in acquiring the Purchased Assets, recognized that the Debtors were free to deal with other interested parties; (ii) the Purchaser agreed to provisions in the APA which would enable the Debtors to accept a higher and better offer; (iii) the Purchaser complied with all the provisions in the Bid Procedures Order; (iv) all payments to be made by the Purchaser and other agreements entered into between the Purchaser and the Debtors in connection with the Sale have been disclosed; and (v) the negotiation and execution of the APA and related agreements were in good faith and constituted an arm's length transaction.

T. The consideration to be paid by the Purchaser to the Debtors for the Purchased Assets is fair and reasonable, is the highest and/or otherwise best offer for the Purchased Assets, and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code,

the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and any similar laws of any state or jurisdiction whose law is applicable to the Sale. The Debtors' determination that the APA constitutes the highest and/or otherwise best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

U. Except as specifically set forth in the APA, Purchaser shall not have any liability in respect of a liability, claim (as that term is defined in section 101(5) of the Bankruptcy Code) or obligation of or against Debtors related to the Purchased Assets. The Purchaser shall not be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets, to: (i) be a successor (or other such similarly situated party) to the Debtors (other than with respect to the Assumed Obligations); or (ii) have, *de facto* or otherwise, merged with or into the Debtors. The Sale does not constitute a *sub rosa* plan. The Purchaser is not acquiring or assuming any Liens and Claims, except as expressly set forth in the APA with respect to the Assumed Obligations, including, without limitation, any liability arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance agreements, change in control agreements or other similar agreements to which the Debtors are or were a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtors, (iii) all deeds of trusts and security interests; (iv) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, and any obligations with respect thereto that arise from or pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal

Rehabilitation Act of 1973, the National Labor Relations Act, the Americans with Disabilities Act of 1990, the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Worker Adjustment and Retraining Notification Act (the "WARN Act"), (v) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims, (vi) reclamation, environmental or other similar liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any other environmental, health and safety requirements, (vii) state discrimination laws, (viii) any products liability or other similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims, (ix) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (x) any bulk sales or similar law, (xi) any litigation by or against the Debtors, and (xii) the laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including without limitation, any theory of antitrust or successor or transferee liability.

V. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to the Purchaser, and the assumption, assignment and sale of the Purchased Contracts to the Purchaser, were not free and clear of all Liens and Claims of any kind or nature whatsoever (except for the Assumed Obligations), or if the Purchaser would, or in the future could, be liable for any of such Liens and Claims. Absent the ability to sell the Purchased Assets free and clear of all liens, encumbrances, claims and interests pursuant to Section 363(f) of the Bankruptcy Code, a material adverse

impact would occur upon the value paid for the Purchased Assets. As a result, Debtors' estates would suffer and yield a substantially lower value for Debtors' assets.

W. The consummation of the Sale pursuant to the APA will be a legal, valid, and effective Sale of the Purchased Assets to the Purchaser and will vest the Purchaser with all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all Liens and Claims, in accordance with sections 105(a) and 363(f) of the Bankruptcy Code, because one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Specifically, sections 363(f)(1), (3) and (5) are all satisfied with respect to each applicable Claim and Lien. In addition, all parties with Liens and Claims against the Purchased Assets, if any, who did not object to the Motion and the relief requested therein, or who withdrew their objections to the Motion, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

X. The Court is satisfied that Debtors' investment banker, Griffin Financial Group LLC ("Griffin"), satisfactorily performed its obligations to provide Debtors with investment banking services through the Marketing Process and the Auction and, in accordance with the Order approving its retention, has fully and finally earned its fee as set forth therein related to the Sale. The Court finds no reason to delay in compensating Griffin, and concludes that Griffin should be compensated by Debtors upon Debtors' receipt of the Purchase Price and following entry of an order approving a fee application for Griffin relating thereto.

Y. Objections to the Sale Motion were filed on behalf of Conti Enterprises, Inc., the Official Committee of Unsecured Creditors, the H&K Entities, and the Neel Company. Further, an informal objection was asserted by ReCon Wall Systems, Inc.. All of the foregoing objections have since been resolved and withdrawn.. To the extent not otherwise expressly

resolved through this Sale Order, all other Objections are hereby found to be without merit or have been resolved with Debtors and, therefore, are OVERRULED or deemed withdrawn.

Z. All objections thereto having been resolved, the amounts set forth on Exhibit A to the Notice of Assumption and Assignment dated December 12, 2012 (Doc. No. 78) (the “Cure Amounts”), are deemed the necessary amounts to “cure” all “defaults” under section 365(b) of the Bankruptcy Code with respect to the Purchased Contracts.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted in all respects.
2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled, or otherwise dealt with as expressly provided herein and in the Bid Procedures Order are hereby overruled on their merits.

3. Oldcastle is hereby declared the Successful Bidder and, subject to and in accordance with this Sale Order, Debtors are authorized to consummate, complete and close the sale of the Purchased Assets and assumption and assignment of the Purchased Contracts to Successful Bidder.

4. Pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the Sale of the Purchased Assets and the APA are approved, and the Debtors are authorized to enter into and consummate the APA and all agreements contemplated thereunder, and execute any and all documents and take all actions necessary and appropriate to effectuate and consummate the Sale of the Purchased Assets in consideration of the Purchase Price specified therein pursuant to the Bid Procedures Order, any other orders of this Court, and sections 363 and 365 of the Bankruptcy Code and upon the terms set forth in the APA, including, without limitation, selling, assigning, and transferring to the Purchaser all of the Debtors’ right, title, and interest in and to the Purchased Assets, issuing, executing, delivering, filing and

recording, as appropriate, the documents evidencing and consummating the APA and other related agreements, and taking any other actions required of the Debtors to effectuate the Sale necessary or appropriate to implement, effectuate and consummate the intent of the parties entering into the APA and other related agreements to sell, assign and transfer from Debtors to the Purchaser the Purchased Assets (and the Purchased Contracts), including making any non-material modifications, amendments or corrections of those agreements that may be required so that they more fully reflect such intent, this Sale Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by the respective directors, stockholders, partners or members of such entities. The Debtors' prior execution of the APA is hereby ratified and approved.

5. The transfer of the Purchased Assets is a legal, valid, and effective transfer and shall, in accordance with sections 105(a) and 363(f) of the Bankruptcy Code, and upon payment of the Purchase Price, vest the Purchaser with all right, title, and interest of the Debtors in the Purchased Assets, free and clear of all Liens and Claims (other than Assumed Obligations), including, but not limited to, any and all encumbrances, obligations, liabilities, demands, guarantees, options, license rights, tag-along rights, due on sale rights, restrictions, contractual commitments, rights of first refusal, rights of setoff, pledges, judgments, charges or interests of any kind or nature that have been, are or could be asserted against the Debtors whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise, and any and all rights and claims under any bulk transfer statutes and related laws, whether arising by agreement, statute, or otherwise and

whether arising before or after the commencement of these chapter 11 cases, whether known or unknown, including Liens and Claims of any of the creditors, vendors, employers, suppliers, or lessors of the Debtors or any other third party, including, without limitation, *de facto* merger, successor liability, substantial continuity under the WARN Act or any employee benefit plan, Debtors' workers' compensation rating, or otherwise, whether known or unknown, whether contingent, unliquidated, disputed, whether imposed by agreement, understanding, law, equity or otherwise, including without limitation those of the kind specified in sections 502(g), 502(h) and 502(i) of the Bankruptcy Code, and whether arising before or after the commencement of these Cases, except as any of the foregoing may constitute Assumed Obligations. Notwithstanding anything to the contrary in this Sale Order, sale of the proprietary faceforms, form units, and accessories developed by ReCon Wall Systems, Inc. and any inventory produced therefrom, is contingent upon and subject to the Purchaser assuming the Purchase, License and Production Agreement dated April 22, 2003 as amended May 1, 2008, between ReCon Wall Systems, Inc. and Modern Precast Concrete, Inc. and the contemporaneous curing of any defaults under such agreement.

6. Without limiting the generality of the foregoing, the Purchaser shall not be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets, to: (i) be a successor (or other such similarly situated party) to the Debtors; or (ii) have, *de facto* or otherwise, merged with or into either or both of the Debtors. The Purchaser is not acquiring or assuming any Liens and Claims, except as expressly set forth in the APA with respect to the Assumed Obligations, including, without limitation, any liability arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance agreements, change in control agreements or other similar agreements to which the Debtors are

or were a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtors, (iii) all deeds of trusts and security interests; (iv) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, and any obligations with respect thereto that arise from or pursuant to ERISA, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Americans with Disabilities Act of 1990, the Consolidated Omnibus Budget Reconciliation Act of 1985 or the WARN Act; (v) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims, (vi) reclamation, environmental or other similar liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any other environmental, health and safety requirements, (vii) state discrimination laws, (viii) any products liability or other similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims, (ix) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (x) any bulk sales or similar law, (xi) any litigation by or against the Debtors, and (xii) the laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including without limitation, any theory of antitrust or successor or transferee liability. Neither the Purchaser nor any of its employees, members, directors, advisors, lenders, affiliates, owners,

successors and assigns shall have any successor or transferee liabilities under or with respect to the Purchased Assets or any Liens and Claims of any kind or character.

7. The Purchaser shall not assume, and shall be deemed not to have assumed, any liabilities or obligations of Debtors, except for those liabilities specifically set forth in the APA (collectively, the "Assumed Obligations"). Effective upon the Closing Date and except with respect to Assumed Obligations, Permitted Exceptions and Permitted Liens, all persons and entities asserting or holding any Liens and Claims against the Debtors or in or with respect to the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), however arising, shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Liens and Claims (other than Assumed Obligations) against the Purchaser.

8. Without limiting the generality of the foregoing, effective upon the Closing and except as otherwise provided by stipulations filed with or announced to this Court with respect to a specific matter, all persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner, any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitration or other proceedings against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any (a) Liens and Claims (other than an Assumed Obligations) arising under, out of, in connection with or in any way relating to the Debtors, the Purchased Assets or the operation of the Purchased Assets prior to the Closing, or (b) successor liability, including, without limitation, the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors or assigns, assets, properties or benefit plans, (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the

Purchaser, its successors, assets, properties or benefit plans; (iii) creating, perfecting or enforcing any interest against the Purchaser, its successors or assigns, assets, properties or benefit plans; (iv) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Purchaser or its successors or assigns; (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) revoking, terminating or failing or refusing to issue or renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

9. Notwithstanding any provision of this Order, the APA and/or any other agreement to the contrary, in resolution of the objection of Haines & Kibblehouse, Inc., Blooming Glen Contractors, Inc., Leigh Valley Site Contractors, Inc., Reading Materials, Inc. and Stone Express, Inc., and any of their divisions, subsidiaries, affiliates, and related entities (collectively, the "H&K Entities"), the accounts receivable asserted to be owed by the H&K Entities to the Debtors shall not be sold to the Purchaser under the APA. Further, in resolution of the H&K Entities' asserted right of setoff with respect to such accounts receivable, Reading Materials, Inc., (on behalf of the H&K Entities) shall, within fifteen (15) calendar days of the date of this Order, pay \$140,000 to the Debtors' estates, which payment shall be subject to the liens of M&T Bank as post- and pre-petition lender and shall be payable and promptly delivered as payment to M&T Bank upon Debtors' receipt of same and said funds shall not be used in the Debtors' operations. Additionally, the H&K Entities shall be entitled to assert a general unsecured claim in the amount of \$250,000, which shall be deemed allowed. Upon payment of the \$140,000, all claims by and between the Debtors and the H&K Entities which arose on or

before January 15, 2013 (including, but not limited to, claims under 11 U.S.C. § 503(b)(9)) shall be deemed resolved and satisfied, subject only to the H&K Entities' allowed general unsecured claim of \$250,000.

10. Upon consummation of the transactions contemplated by the APA and payment of the Purchase Price, a certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to act to cancel any of the Liens and Claims of record.

11. Upon consummation of the transactions contemplated by the APA, all Liens and Claims (including, without limitation, all liens and claims in respect of any post-petition financing extended to Debtors or post-petition obligations incurred by Debtors) shall be released, terminated, and discharged as to the Purchased Assets to the fullest extent permitted by law without necessity of any further notice to, or action by, any person or entity and all persons or entities holding liens or claims of any kind and nature against Debtors or any of their affiliates or with respect to any of the Purchased Assets are hereby barred and enjoined from asserting such liens and claims against the Purchased Assets or the Purchaser or its successors, designees, or assigns and any of their respective affiliates, stockholders, members, officers, directors, employees, agents, or representatives. All Liens and Claims shall be transferred at the Closing to the proceeds from the Sale (the "Sale Proceeds") of the Purchased Assets to the same extent and with the same priority and validity as such liens and claims had in the Purchased Assets prior to Closing.

12. The Sale shall be binding upon all entities, including, without limitation, the Debtors, the Purchaser, all creditors and equity holders of the Debtors, all persons having or asserting Liens and Claims upon the Debtors or the Debtors' assets, including the Purchased

Assets, and all parties to any actions or proceedings that directly or indirectly contest the power or authority of the Debtors to sell, assign, and convey the Purchased Assets, that seek to enjoin any such sale, assignment, or conveyance, or that assert any rights of first offer, first refusal, and the like which may apply in connection herewith.

13. The contemplated Sale has been undertaken by the Purchaser and the Debtors at arm's length, without collusion, and the Purchaser shall acquire the Purchased Assets pursuant to the APA in good faith, under section 363(m) of the Bankruptcy Code, and is, and shall be entitled to all of the protections in accordance therewith. The consideration provided for the Purchased Assets pursuant to the APA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

14. The APA and all other documents, agreements and instruments necessary to effectuate and consummate the transactions contemplated by the APA, together with the terms and provisions of this Sale Order, shall be binding upon and inure to the benefit of the Debtors, any successors and assigns of the Debtors, the Purchaser, the Purchaser's successors and assigns, including, without limitation, any trustees appointed for the Debtors in their chapter 11 cases or in any superseding proceedings under chapter 7 of the Bankruptcy Code.

15. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases shall conflict with or derogate the provisions of the APA or this Sale Order.

16. The APA or any document relating thereto may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors or their estates.

17. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists between the provisions of the APA or any previous Order of this Court and this Sale Order, the provisions contained herein shall govern. The failure specifically to include any provisions of the APA in this Sale Order does not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the APA be authorized and approved in its entirety.

18. The provisions of this Sale Order shall be self-executing and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Sale Order. However, the Debtors and the Purchaser, and each of their respective officers, employees, and agents, are authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Purchaser deem necessary or appropriate to implement and effectuate the terms of the APA and this Sale Order. This Sale Order is and shall be (i) effective as a determination that, upon the Closing and the payment of the Purchase Price, Liens and Claims existing as to the Purchased Assets conveyed to the Purchaser have been and hereby are adjudged and declared to be unconditionally and irrevocably released, discharged, and terminated; and (ii) binding upon and govern the acts of all entities, including all filing agents or officers, title agents or companies, recorders or registrars of mortgages or deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may

be required to report or insure any title or state of title in or to any of the Purchased Assets conveyed to the Purchaser.

19. The Debtors are hereby authorized and directed to pay, simultaneously with Closing, all proceeds from the sale of the Purchased Assets as follows: 1) first, to M&T Bank, the Debtors' senior secured lender, in full repayment of the Debtors' debtor in possession financing; 2) second, solely in the event of an Alternative Sale Transaction (as defined in the APA), to Oldcastle on account of the Break-Up Fee, and 3) third, except as set forth below, to M&T Bank on account of the Pre-Petition Liens and Post-Petition Replacement Liens. The payment to M&T Bank of the sale proceeds allocable to the real estate located at 3900 Glover Road, Easton, Pennsylvania, shall be in accordance with and subject to the agreement(s) applicable to such proceeds between M&T Bank and the Pennsylvania Industrial Development Authority, with each such parties' rights being specifically preserved hereby. The amount that would otherwise be payable to M&T Bank under this paragraph shall be further subject to the General Unsecured Sale Carveout, as defined below.

20. The Debtors, M&T Bank, and the Official Committee of Unsecured Creditors have agreed that M&T Bank shall Carveout ("General Unsecured Sale Carveout") from Net Sale Proceeds (as defined herein) the lesser of five percent (5%) thereof or \$450,000 for distribution solely to General Unsecured Creditors (as defined herein). The General Unsecured Sale Carveout shall be paid to the Committee to be held in escrow at the same time proceeds are received by M&T from the sale. Net Sale Proceeds shall include all proceeds received by M&T Bank from the Sale of the Debtors' assets to Oldcastle, or any higher or better offer received and approved by the Court less only the DIP Loan from M&T Bank as of the date of Closing and closing costs including the Griffin fee but no other professional fees. General

Unsecured Creditors shall include only those unsecured claims which arose pre-petition and for which the claimant cannot seek any priority or administrative status under 11U.S.C. § 503 or § 507, except that a creditor's claim for prepetition goods is not excluded from this pool of creditors solely because it has the right to file a claim under 11 U.S.C. § 503(b)(9), however such claim shall be treated as a general unsecured claim with no priority as it relates to the General Unsecured Sale Carveout Funds. For the avoidance of any doubt, no administrative professionals of the Debtor or Committee, no claims which can assert priority status under 11 U.S.C. § 507 or any administrative claims under 11 U.S.C. § 503 shall share in the pro rata distribution of the General Unsecured Sale Carveout. If the Debtor's proceeding converts to a chapter 7, a chapter 7 Trustee may use up to \$15,000 for his commission and costs to distribute such funds solely to those creditors to whom this paragraph limits distribution. The General Unsecured Sale Carveout shall not be available for use in any plan by the Debtor, Committee or any other party except as a mechanism for distribution of the funds. M&T Bank has agreed it will not assert any claim against the General Unsecured Sale Carveout as it concerns any deficiency claims, if any, it may have against the Debtors' bankruptcy estates.

21. In further resolution of the Committee's objection, Section 8.07 of the APA shall be modified so as to limit the Purchaser's ability to designate certain parties as Key Suppliers, such that the Purchaser may only designate the lesser of up to ten (10) Key Suppliers or such number of Key Suppliers who received, in the aggregate, payments from the Debtors of up to one million dollars (\$1,000,000) during the ninety-days prior to the Petition Date.

22. Each of the Debtors, the Debtors' bankruptcy estates and the Committee on its own behalf and on behalf of each of its past, present and future predecessors, successors, heirs, subsidiaries and assigns (collectively, the "Borrower Party Releasers"), hereby, to the

maximum extent permitted by applicable law, unconditionally, irrevocably and fully and forever releases, remises, acquits, relinquishes, irrevocably waives and discharges M&T Bank, together with its respective past, present and future predecessors, successors, subsidiaries, parent entities, assigns, participants, shareholders, partners, members, owners, affiliates, managers, employees, officers, directors, and attorneys (collectively, the "Bank Releasees"), from, against or with respect to any and all actions and causes of action, suits, judgments, executions, disputes, claims, demands, debts, obligations, liabilities, damages, offset rights, counterclaims, cross-complaints, defenses (including defenses to payment), rights (including rights of indemnity or contribution), choses in action, sums of money, compensation, expenses, costs and losses, and all remedies in respect of the foregoing, of any type, kind, nature, description or character, whatsoever, whether known or unknown, fixed or contingent, direct, indirect or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, matured or unmatured and whether in contract, in tort or under any state or federal law or otherwise at law or in equity, including, without limitation, any claims or defenses as to the amount, extent, validity, priority or perfection of M&T Bank's liens and/or obligations, "lender liability" claims and causes of action, any causes of action, claims or defenses under chapter 5 of the Bankruptcy Code, any other type of Debtors' and Debtors' bankruptcy estates' claims, or any other claims and causes of action and any resulting subordination, recharacterization or recoupment of any payments made to the Bank Releasees prior to the Petition Date or pursuant to any order entered by this Court or otherwise which any Borrower Party Releasees have had, now have or may hereinafter have against the Bank Releasees for or by reason of any act or omissions (including any misfeasance or malfeasance), matter, cause or thing whatsoever accruing or arising prior to or on the date of this Order or which does, could, might or may be claimed to exist on the date of

this Order or any time prior thereto, including any of the same accruing or arising, directly or indirectly in any manner from, in respect of and/or relating to (a) the Debtors; (b) the prepetition loan documents; (c) the prepetition obligations and indebtedness; (d) the DIP financing documents; (e) the DIP financing obligations and indebtedness; (f) the assertion or enforcement of any rights or remedies under any of the prepetition and/or DIP loan documents or applicable law; and (g) any fact, matter, transaction, omission or event relating thereto, in each case as though fully set forth herein at length. The release section referenced above shall be binding on all bankruptcy trustees whether chapter 7 or 11 that are appointed in the above-referenced Debtors' estates.

23. Pursuant to sections 105(a), 363(b), 363(f), 365(a), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are hereby authorized to assume and assign to the Purchaser as of the Closing, and for up to forty-five (45) days after the Closing (during which time the Purchaser, in its discretion, may identify contracts to become Purchased Contracts, or undesignate contracts previously designated as Purchased Contracts), as the case may be, any or all of the Purchased Contracts. The assignment and transfer by Debtors to the Purchaser of the Purchased Contracts upon Closing or thereafter constitutes assignment and transfer to the Purchaser of all of Debtors' right, title and interest (including common law rights) to all of their intangible property included in the Purchased Contracts. Upon assignment to the Purchaser, the Purchased Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, notwithstanding any provision that purports to prohibit assignment or condition assignment on approval by any counterparty to an Purchased Contract, or to give any counterparty to a Purchased Contract a right or option to effect any forfeiture, modification, right of first refusal, or termination of Debtors' or the Purchaser's interests or rights in any of the

Purchased Assets or Purchased Contracts, and, pursuant to section 365(k) of the Bankruptcy Code, Debtors shall be relieved from any post-Closing liability.

24. The Cure Amounts set forth on the exhibit to the Cure Notice are the true and correct cure amounts and are hereby authorized and directed to be paid under sections 363(b) and 365 of the Bankruptcy Code in accordance with the terms of the APA for each such Purchased Contract that is assumed and assigned to purchaser. All defaults or other obligations of Debtors under the Purchased Contracts arising or accruing prior to the Closing shall be deemed cured upon payment of the Cure Amounts set forth on the exhibit to the Cure Notice at the Closing or as soon as practicable after being designated a Purchased Contract. The Cure Amounts set forth on the exhibit to the Cure Notice shall be final and binding on all counterparties to the Purchased Contracts, and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment, irrespective of whether such assumed executory contract or unexpired lease contains an audit clause. The Purchaser shall assume all obligations of Debtors under any Purchased Contract first arising from and after the Closing and shall not assume or bear responsibility for any obligation under any Purchased Contract accruing thereunder prior to the Closing except to the extent such obligation constitutes a liability expressly assumed pursuant to the APA. Upon assumption and assignment of any Purchased Contract, Debtors and their estates shall be relieved of any liability for breach of such Purchased Contract whether occurring before or after such assumption and assignment in accordance with section 365(k) of the Bankruptcy Code. The Purchaser and the Debtors shall contact all counterparties with notification of whether their Purchased Contracts are being assumed and assigned by virtue of the Sale.

25. The assumption and assignment of the executory contract with The Neel Company (“Neel”) identified as Purchase Order 11-796 (the “Neel Contract”) shall be conditioned upon finalization of an agreement between the Debtors, Neel, Oldcastle and M&T Bank as to an appropriate mechanism for resolution of Neel’s concerns. Upon finalization of such an agreement, an appropriate order may be submitted, or such other appropriate pleading as may be agreed to among the parties to effectuate the assumption and assignment of the Neel Contract. In the event no such agreement is reached, the Neel Contract shall not be assumed or assigned and the amounts asserted by the Debtors to be owed to the Debtors by Neel under the Neel Contract shall not be sold to the Purchaser under the APA.

26. The objection of Conti Enterprises, Inc. (“Conti”) to the Debtors’ proposed assumption and assignment to the Purchaser of an executory contract between Conti and the Debtors has been mooted by the Purchaser’s permanent removal of such contract from the schedule of Purchased Contracts attached to the APA. Further, the amounts asserted by the Debtors to be owed to the Debtors by Conti under such executory contract shall not be sold to the Purchaser under the APA and, notwithstanding anything to the contrary elsewhere in this Order, all defenses and claims of the parties to such executory contract are expressly reserved in all respects, whether under bankruptcy or non-bankruptcy law, including with respect to asserted receivables due thereunder. This provision does not preclude, prior to Closing, a written agreement being reached as to such amounts between the Debtors and Conti, with the consent of M&T Bank and Purchaser, but the parties are not obligated to do so prior to Closing.

27. For each such Purchased Contract, the payment of any Cure Amounts (if any) pursuant to this Sale Order shall (a) effect a cure of all defaults existing thereunder as of the applicable Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party

resulting from such default and (c) together with the assumption of the Purchased Contracts by the designated Purchaser, constitute adequate assurance of future performance thereof. The Purchaser shall then have assumed the Purchased Contracts and be deemed substituted as the applicable party to the agreements, pursuant to section 365(f) of the Bankruptcy Code and the assignment by Debtors of such Purchased Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither Debtors nor the Purchaser shall have any further liabilities to the non-Debtor parties to the relevant Purchased Contract other than the Purchaser's obligations under the Purchased Contracts that become due and payable on or after the effective date of the assumption and assignment.

28. Any provisions in any Purchased Contract that prohibit or condition the assignment of such Purchased Contract or allow the party to such Purchased Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Purchased Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by Debtors and assignment to the Purchaser of the Purchased Contracts have been satisfied. Upon the Closing for current Purchased Contracts and upon the effective date of the assumption and assignment for contracts that become Purchased Contracts after the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all rights, title and interest of the relevant Debtors under the applicable Purchased Contracts. Any provision of any lease of real property constituting a Purchased Contract that purports to permit the landlord(s) thereunder to cancel the remaining term of such lease if Debtors discontinue their use or operation of the leased real property is void and of no force and

effect, and shall not be enforceable against the Purchaser or any sublessees thereof, and the landlord(s) under such lease shall not have the right to cancel or otherwise modify such lease or increase the rent, assert any claim or impose any penalty by reason of such discontinuation, Debtors' cessation of operations, the assignment of such lease to the Purchaser or the interruption of business activities at any of the leased premises.

29. If the Closing does not occur, the Purchased Contracts shall not be deemed to have been assumed by Debtors or assigned to the Purchaser. Likewise, if a Purchased Contract is removed from Schedule 2.01(d) by Oldcastle in accordance with the terms of its APA, such agreement shall not be deemed to have been assumed by Debtors or assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. To the extent an agreement is removed in accordance with the terms of the APA, Debtors shall, within 10 days thereafter, serve a notice to the non-Debtor parties to such agreement that the agreement is no longer a Purchased Contract.

30. Any claim scheduled by Debtors or any proof of claim related to Debtors' obligations under any Purchased Contract is hereby disallowed to the extent that such claim is based on obligations under such Purchased Contract, and is considered satisfied in full. The counterparties to the Purchased Contracts shall be forever barred, estopped and enjoined from (i) asserting any counterclaim, defense, setoff or other claim against the Purchaser, Debtors or any successors or assigns of Debtors based upon any defaults that may exist under the Purchased Contracts as of the Closing Date, whether declared or undeclared, or known or unknown, (ii) asserting any other claims arising under the Purchased Contracts prior to the date of the commencement of Debtors' bankruptcy cases, and (iii) objecting to the assumption and assignment of the Purchased Contracts on any grounds.

31. Without limiting the generality of the provisions of the APA or other provisions of this Sale Order, the Purchaser shall not be deemed to have assumed any obligation or liability under, or otherwise be deemed liable in any manner whatsoever with respect to, any contract or lease of the Debtors that is not explicitly designated as an Purchased Contract, absent the Purchaser's written agreement as to the subsequent inclusion of any specifically identified contract or lease and the satisfaction of the requirements of section 365 of the Bankruptcy Code with respect to any such contract or lease.

32. Without limiting in any manner the effect of the other provisions of this Sale Order, all persons and entities that assert Liens and Claims against the Purchased Assets, including persons or entities that have filed financing statements, mortgages, mechanic's liens, *lis pendens*, maritime liens or other documents or agreements evidencing interests with respect to the Purchased Assets, shall be, and hereby are, directed to execute such documents and take all other actions as may be necessary to release their interests, liens, claims or encumbrances against the Purchased Assets, as such interests may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, maritime liens or other documents or agreements evidencing interests with respect to the Purchased Assets shall not have delivered to Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Purchased Assets, then (a) Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Purchased Assets; (b) the Purchaser and/or Debtors are hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded,

shall constitute conclusive evidence of the release of all interests, liens, claims and encumbrances in the Purchased Assets of any kind whatsoever; and (c) the Purchaser may seek to have such persons or entities held in contempt of this Court. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state and local governmental agency, department or office.

33. All entities that are currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets in which the Debtors hold an interest are hereby directed to surrender possession of such Purchased Assets either to (a) the Debtors before the Closing Date or (b) to Purchaser on the Closing Date, unless possession of certain of the Purchased Assets shall remain with a third party pursuant to the terms of an Purchased Contract.

34. Subject to the fulfillment of the terms and conditions of the APA, as of the Closing, this Sale Order shall be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring the Debtors' title and interest in the Purchased Assets to the Purchaser.

35. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale.

36. The Court shall retain exclusive jurisdiction to interpret, construe, and enforce the provisions of the APA and this Sale Order in all respects, and further, to hear and determine any and all disputes between the Debtor(s) and/or the Purchaser, as the case may be, and any other non-debtor party to, among other things, the Purchased Contracts, concerning, inter alia, assignment thereof by the Debtors to the Purchaser under the APA, any dispute between the Purchaser and the Debtors as to their respective obligations with respect to any

asset, liability, or claim arising hereunder, any dispute raised by non-Debtor parties concerning the assumption and assignment of the Purchased Contracts to the Purchaser, and disputes regarding interests, liens, claims or encumbrances against or in the Purchased Assets, whether or not such interests, liens, claims or encumbrances attach to the Sale Proceeds.

37. Provided that any chapter 11 plan of the Debtors is confirmed prior to the recording of any deed or transfer documents pursuant to the APA, pursuant to section 1146(a) of the Bankruptcy Code, the (i) issuance, transfer, or exchange of debt, equity security, or other interest in the Debtors, (ii) creation of any mortgage, deed of trust, or other security interest, (iii) making or assignment of any lease or sublease, or (iv) making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan and the APA, will not be subject to any stamp tax, recording tax, personal property transfer tax, real estate transfer tax, sales or use tax, or other similar tax or government assessment, and the appropriate state or local government official or agent shall forego the collection of any such tax or government assessment and shall accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or government assessment.

38. The automatic stay of section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under the APA, including, without limitation, with respect to any cash held in escrow pursuant to the provisions thereof.

39. Any appeal seeking to enjoin or stay consummation of the sale of the Purchased Assets or assignment of the Purchased Contracts shall be subject to the appellant posting a bond in an amount not less than the Purchase Price pending the outcome of such appeal.

40. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

41. Unless otherwise specifically set forth herein, there are no brokers involved in consummating the Sale and no brokers' commissions are due.

42. To the extent permitted by 11 U.S.C. § 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of Debtors' chapter 11 bankruptcy cases or the consummation of the Sale.

43. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

44. This Sale Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, or otherwise, and the Debtors may take any action authorized under this Sale Order immediately.

Date: Jan 18, 2013

By the Court:



U.S.B.J.