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10 *Attorneys for David A. Birdsell, Trustee*

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

14 AGAVERO READYMIX, LLC,

15 Debtor.

(Chapter 7 Case)

No. 2:21-bk-08328-BKM

**NOTICE OF TRUSTEE’S MOTION
FOR ORDER: (1) AUTHORIZING
SALE OF PROPERTY OF THE
ESTATE FREE AND CLEAR OF ALL
LIENS, ENCUMBRANCES, AND
INTERESTS, AS-IS, WHERE-IS; AND
(2) APPROVING SALE AND BIDDING
PROCEDURES**

AND

**NOTICE OF HEARING ON SALE
MOTION**

**Telephonic Hearing
Date: April 28, 2022
Time: 11:30 a.m.
Call in number: 877-336-1829
Access Code: 5564497**

16 **TO: ALL CREDITORS AND PARTIES-IN-INTEREST**

17 **NOTICE IS HEREBY GIVEN** that on March 29, 2022, David A. Birdsell, Chapter 7
18 Trustee (“Trustee”), by and through undersigned counsel, filed his *Motion for Order: (1)*
19 *Authorizing Sale of Property of the Estate Free and Clear of All Liens, Encumbrances, and*
20 *Interests, As-Is, Where-Is; and (2) Approving Sale and Bidding Procedures (“Motion”).* A
21 complete copy is available upon written request to the Trustee’s counsel as indicated above. The
22 pertinent provisions of the Sale Motion are set forth below.

23 **HEARING INFORMATION**

24 A **telephonic hearing** in said matter will be held before the Honorable Brenda K. Martin on
25 **April 28, 2022 at 11:30 a.m.** To attend the hearing, call 877-336-1829 and enter the access code
26 5564497.

**NOTICE OF MOTION, SALE INFORMATION,
AND DEADLINE TO OBJECT**

A copy of the Motion is available from counsel for the Trustee by written request to sheila.rochin@lane-nach.com or via fax to 602-258-6003. **The failure to appear at the hearing or to timely object may result in the property being sold free and clear of any and all liens and interests without further notice to you.**

Any objection should be filed in writing no later than **April 20, 2022**, with the U.S. Courthouse and Federal Building, as follows: (a) mail or hand-delivery to 230 N. 1st Ave., Suite 101, Phoenix, AZ 85003; or (b) electronically at the Court’s website: ecf.azb.uscourts.gov using the Court’s electronic filing procedures, with a copy to: Lane & Nach, P.C., 2001 E. Campbell Ave., Ste. 103, Phoenix, AZ 85016. Failure to appear or timely object may result in the requested relief being granted without further notice to you.

Property to be Sold:	The Estate’s Interest in a Frumecar Modulory 4000 Concrete Batch Plant (“ Property ” or “ Concrete Plant ”).
Terms of Sale:	<p>Prospective purchasers may not rely on the information in the Motion in making an offer and/or bid and must perform their own due diligence to analyze the value of this asset. The property will be sold on an “AS IS” / “WHERE IS” basis, with no warranties, guarantees express or implied.</p> <p>Interested buyers must do their own due diligence to determine the extent of the Estate’s interest in the Property and the location of the Property.</p> <p><u>Online Onsite Auctions:</u> Auction items are sold at onsite online auctions. Auctions begin on a Friday as noticed and will begin to close on Wednesday at 12:00 p.m. for non-titled property.</p> <p><u>Bidder Registration:</u> All bidders are required to register and provide the necessary information requested before bidding. Upon successful registration, each bidder is assigned a bidder number. A major credit card is required to bid online. A \$25 hold will be placed on each bidder’s credit card account, which hold will be reversed if the bidder is not the successful bidder. The hold will remain for successful bidders until payment has been made in full. Bidders are responsible for all purchases made with his/her bidder number, whether by the registered bidder or by anyone he/she might allow to use his/her number.</p> <p><u>Bidding:</u> All auctions are live online. Additionally, starting at 8:30 a.m. MST on the date scheduled for the closing of the auction.</p> <p><u>Payment/Charges:</u> (1) No buyer’s premium will be charged by Auctioneer. (2) Auctioneer does not accept credit/debit cards; Auctioneer accepts cash, cashier’s check, certified funds or wire transfers (with a \$15 fee). Payment is due no later than 2:00 p.m. on the Friday after the auction. (3) Sales Tax: For general assets and rolling stock, unless an Arizona tax resale license is provided at the time of payment, the purchaser will be required</p>

	<p>to pay the combined Arizona State and local sales tax totaling 8.6%. There is no sales tax on real estate.</p> <p><u>Default:</u> In the event of default, the second highest bidder will be given the option to become the successful bidder at his/her last bid. The bidder in default will be responsible for the difference in the bids, or the entire amount of his/her bid in the event that the second highest bidder does not take the option to become the successful bidder. The default bidder will also forfeit his/her deposit. A service charge of 1-1/2% per month, 18% APR, will be added to all overdue accounts. The bidder in default is also liable for all legal and collection fees.</p> <p><u>Auctioneer Warranties:</u> Auctioneer provides <u>no</u> warranty relating to title, possession, quiet enjoyment, or the like in this disposition. Everything in the auction is being sold “as is – where is” to the highest bidder, without warranty, representation, or guarantee of any kind. Potential bidders must perform their own due diligence.</p> <p><u>Additional Sale Terms:</u> (1) Auctioneer is not responsible for missing or broken items after the auction has ended. There are absolutely no refunds. (2) The property to be auctioned will be available for preview on Tuesday, May 17, 2022 from 10:00 am to 4:00 p.m. at the Premises, or by requesting an appointment with George Cunningham, (602) 469-4635. (3) The sale is subject to Trustee approval. (4) All bids at the auction shall be subject to higher and better bids until close of the auction.</p> <p>The buyer of any of the Concrete Plant shall be solely responsible for the costs of removing the purchased property and shall be liable to the landlord of the Premises for any damage to the Premises caused by its removal or by the buyer’s entry onto the Premises.</p> <p>The buyer of any of the Property shall be solely responsible for the costs of removing the purchased property and shall be liable to the landlord of the Premises for any damage to the Premises caused by its removal or by the buyer’s entry onto the Premises.</p>
Bidding Procedures:	<p>Online bidding will open at or before 4:00 p.m. MST on Friday, May 13, 2022. All bidding will start to close with the commencement of a live auction beginning at 8:30 a.m. MST on Wednesday, May 18, 2022, or at the time listed on the website. Online bidding will be available simultaneously during the live auction.</p>
To View the Property or Obtain More information:	<p>The Property to be auctioned will be available for preview on Tuesday, May 17, 2022 from 10:00 am to 4:00 p.m. at the Premises, or by requesting an appointment with George Cunningham, (602) 469-4635.</p>

<p>Description of Interest(s) in the Property:</p>	<p>Trustee conducted a UCC Lien Search on the Arizona Secretary of State website for any filed/perfected liens against personal property of the Debtor and found the following liens and that may attach to the Property. The purported liens are described more fully below.</p> <p><u>Commercial Capital Company, LLC</u> (“CCC”): Attached hereto as Exhibit B to the Motion is the CCC UCC Financing Statement.</p> <p>2020-004-3206-5: Financing Statement asserts CCC has a lease relating to the Concrete Plant. The Trustee asserts the lease is a disguised loan and therefore property of the Estate pursuant to 11 U.S.C. § 541.</p> <p>The Concrete Plant will be sold free and clear of CCC’s security interest and CCC will be paid in full from the sales proceeds in full satisfaction of any claim it may have against the Estate. To the extent CCC has rights or remedies against third parties, this sale will not alter any of the foregoing rights or remedies.</p> <p><u>Caterpillar Financial Services Corporation</u> (“Caterpillar”): Attached as Exhibit C to the Motion are the various Caterpillar UCC Financing Statements:</p> <p>2020-005-2037-3: Financing Statement asserts an interest in a Caterpillar Wheel Loader. Upon information and belief, this asset was sold or returned pre-petition and therefore not being sold via this Motion.</p> <p>2020-005-2039-4: Financing Statement asserts an interest in a Caterpillar 236D Skid Steer Loader. Upon information and belief, this asset was sold or returned pre-petition and therefore not being sold via this Motion.</p> <p>2020-005-3360-0: Financing Statement asserts an interest in a second Caterpillar Wheel Loader. Upon information and belief, this asset was sold or returned pre-petition and therefore not being sold via this Motion.</p> <p>2020-005-6824-9: Financing Statement asserts an interest in a Trail King Trailer. Upon information and belief, this asset was sold or returned pre-petition and therefore not being sold via this Motion.</p> <p>Caterpillar does not have an interest in the Concrete Plant and will not receive any sales proceeds for any of the above security interests.</p>
<p>Appraisals:</p>	<p>The Trustee is not aware of any recent appraisals on the Property being sold.</p>
<p>Compensation/Fees:</p>	<p>Auctioneer’s fee will be a commission of ten percent (10%) of any sale proceeds, plus any reasonable and necessary costs incurred in appraising, inventorying, and advertising the Property, subject to</p>

	further Court Order. Cunningham & Associates, Inc. is not an insider.
Deadline to Object:	Any objection shall be filed no later than April 20, 2022
Motion for Stay Relief:	There have been no motions for relief from stay file.

OBJECTIONS

Any objection to the Motion should be filed in writing with the Clerk of the Court, United States Bankruptcy Court, as follows: (a) 230 North First Avenue, Suite 101, Phoenix, Arizona 85003-1706 ; or (b) electronically at the Court’s website: ecf.azb.uscourts.gov using the Court’s electronic filing procedures, and a copy mailed to the Trustee’s attorney, Lane & Nach, P.C., at the above-address on or before April 20, 2022. **Objections should be supported by specific facts.**

If there is no timely written objection and request for hearing filed, the Court may sign an Order without further notice to you.

RESPECTFULLY SUBMITTED this 30th day of March, 2022.

LANE & NACH, P.C.

By: /s/ Adam B. Nach – 013622
Adam B. Nach
Helen K. Santilli
Attorney for Trustee

COPY of the foregoing mailed/delivered via electronic mail as follows:

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