FILED

IN THE UNITED STATES BANKRUPTCY COURT 02 MAR 28 PM 4: 12
FOR THE DISTRICT OF SOUTH CAROLINA

DISTRICT OF SOUTH CAROLINA

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| IN RE: | ) | |
| | ) | Chapter 7 |
| Cleveland Mills Company, | ) | |
| | ) | Case No.: 02-02452-B |
| Debtor. | ) | |
| | ) | |

NOTICE AND APPLICATION FOR SALE OF PROPERTY
FREE AND CLEAR OF LIENS AND BIDDING PROCEDURES

TO ALL CREDITORS AND PARTIES IN INTEREST:

YOU ARE HEREBY NOTIFIED that the Chapter 7 trustee is applying for approval to sell property of the debtor's estate described below free and clear of all liens and encumbrances according to the terms and conditions states below. The Chapter 7 trustee is also seeking approval of the bidding procedures to be used in the sale of such property.

TAKE FURTHER NOTICE that any response, return and/or objection to this Application should be filed with the Clerk of the Bankruptcy Court and served on all parties in interest within twenty (20) days from the date of this Notice.

TAKE FURTHER NOTICE that no hearing will be held on this Application unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **April 17, 2002 at 10:00 a.m.**, at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC 29306 (the "Sale Hearing"). No further notice of this hearing will be given.

TYPE OF SALE: Public auction with reservation of right by the secured creditor and the Chapter 7 trustee to accept bids made.

PROPERTY TO BE SOLD: The Chapter 7 trustee, through a Sales Agent, is offering for sale certain intact manufacturing facilities, including real and personal property assets (the "Assets"), except for the Excluded Assets (as defined below), in order to achieve the highest and best value for the Assets. A description of the Assets is as follows:

> All of the assets of Spartan International, Inc., real, personal or mixed, located at 101 West Main Street, Lawndale, North Carolina (the "Facility"), including without limitation land located across the street from the Facility used for water pumping. The Assets exclude sixteen adjacent and independent subdivided parcels of real property. Rolling stock is not included. Upon request, more detailed



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information regarding the Assets to be sold will be provided.

Assets are sold on an "as is, where is" basis.

Excluded Assets

Anything herein to the contrary notwithstanding, the Trustee shall retain and shall not sell, convey or transfer, assign or deliver any interest in the following assets and properties of the estate (the "Excluded Assets")

- Any of the estate's cash and cash equivalents whatsoever, whether on hand, in banks or elsewhere
- All accounts, accounts receivable, contract rights to payment, notes or notes receivable owing from affiliated companies or third parties
- All avoidance actions of the bankruptcy estate, including, but not limited to, those arising under 11 U.S.C. sections 510, 544-550 and applicable State law.
- All deposits of the bankruptcy estate
- All claims or causes of action of the bankruptcy estate
- All supplier rebates and credits, insurance refunds, policies or proceeds, tax refunds or other tax benefits
- All personal property, equipment or inventory which belongs to a third party and is being held by the Debtor
- Any and all incorporation documents, corporate minutes, financial records, income tax returns and any other documentation necessary for the Trustee to conclude the administration of the chapter 7 bankruptcy proceeding
- U.S. tax net operating losses of the Estate

PRICE: $1,750,000 and/**or best offer (overbids will be considered)** subject to acceptance of bid by the Chapter 7 trustee and secured creditor.

APPRAISAL VALUE: $2,011,720 as of September 2000

PLACE AND TIME OF SALE: April 17, 2002, 10:00 am, Donald Stuart Russell Federal Building, 201 Magnolia Street, Spartanburg, SC

SALES AGENT/AUCTIONEER/BROKER: Michael Fox International, Inc., 9454 Wilshire Blvd. PH Floor, Beverly Hills, CA 90212, (310) 248-2821, fax: (310) 271-6201.

COMPENSATION TO SALES AGENT/AUCTIONEER/BROKER: 10% of the net proceeds

ESTIMATED TRUSTEE'S COMPENSATION: Compensation allowed pursuant to 11 U.S.C. § 326(a).

LIENS/MORTGAGES/SECURITY INTERESTS ENCUMBERING THE PROPERTY:

General Electric Capital Corporation ("GECC") holds a first priority lien on the Assets, subject to further order of the Court. GECC has consented to the sale and its lien will attach to the proceeds thereof. The sales proceeds are not expected to satisfy GECC's debt but will reduce it. GECC is owed in excess of $20 million.

DEBTOR'S EXEMPTION: N/A

PROCEEDS ESTIMATED TO BE PAID TO THE ESTATE: The estate will receive 6% of the net proceeds.

STAY OF ORDER: The Chapter 7 trustee requests that the order approving this Application be effective immediately upon entry, and that the stay provided by Fed. R. Bankr. P. 6004(g) not apply. At the request of purchaser, the Chapter 7 trustee may submit orders relating to specific property to be sold which is listed herein. The Chapter 7 trustee requests that any such individual orders shall be treated as noticed herein and that they are also effective immediately upon entry.

## BIDDING PROCEDURE

Unless otherwise ordered by the Court for cause shown or as otherwise determined by the Sales Agent in its sole discretion, to participate in the Bidding Process, each person (a "Potential Bidder") must deliver (unless previously delivered) to the Sales Agent:

(i) A preliminary (non-binding) proposal regarding (i) the Assets sought to be acquired, (ii) purchase price range, (iii) the structure and financing of the transaction, (iv) any additional conditions that it may wish to impose, and (v) the nature and extent of additional due diligence it may wish to conduct; and

(ii) A form of financial disclosure acceptable to the Sales Agent and its advisors demonstrating such Potential Bidder's ability to close a proposed transaction.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs (i) and (ii) above, whose financial information demonstrates the financial capability of the Potential Bidder to consummate the Sale, and that the Sales Agent determines is reasonably likely to submit a bona fide offer and to be able to consummate the Sale if selected as a Successful Bidder.

Within two business days after a Potential Bidder delivers all of the materials required by subparagraphs (i) and (ii) above, the Sales Agent shall determine, and shall notify the Potential Bidder, whether the Potential Bidder is a Qualified Bidder. At the same time that the Sales Agent notifies the Potential Bidder that it is a Qualified Bidder, the Sales Agent shall allow the Qualified Bidder to conduct any additional due diligence with respect to the Assets sought to be acquired as hereinafter provided.

## Due Diligence

The Sales Agent shall afford each Qualified Bidder due diligence access to the Assets sought to be acquired. The Sales Agent will designate a representative to coordinate all reasonable requests for due diligence from such bidders. Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Sales Agent's representatives.

## Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver a written copy of its bid to Adam Reich, Michael Fox International, 9454 Wilshire Blvd., PH, Beverly Hills, CA 90212, (p) 310-248-2821, (f) 310-271-6201, not later than 4:00 p.m. (Prevailing Eastern Time) on April 12, 2002 (the "Bid Deadline"). The Sales Agent shall then distribute copies of the bids to the Chapter 7 trustee and secured creditor.

## Bid Requirements

All bids must include the following documents (the "Required Bid Documents"):

- An executed copy of an asset purchase agreement in a form approved by the Sales Agent (the "Asset Purchase Agreement")
- A good faith deposit (the "Good Faith Deposit") in the form of a certified check (or other form acceptable to the Sales Agent in its sole discretion) payable to the Chapter 7 trustee in an amount equal to at least 15% of the value of such bid.
- One or more affidavits or declarations establishing the bidder's good faith, within the meaning of 11 USC § 363(m) of the Bankruptcy Code.
- Written evidence of a commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to the Sales Agent in its sole discretion. The Sales Agent will consider a bid only if the bid is on terms acceptable to the Sales Agent and not conditioned on other conditions unacceptable to the Sales Agent. A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid."

## Bid Protection

The Sales Agent may (but is not required to) offer, with the consent of the Chapter 7 trustee and secured lender but otherwise in its sole discretion, a termination or break-up fee, expense reimbursement or other incentives (the "Bid Protection") to induce a Potential Bidder to make a Qualified Bid that is an offer that is subject to no contingencies other than court approval of the offer and any other contingencies acceptable to the Sales Agent in its sole discretion (such an offer, a "Firm Offer"). Such termination fee and expense reimbursement

shall not exceed 3% of the amount of the Qualified Bid and must reflect actual expenses incurred, and shall only be payable if a higher or otherwise better offer from another bidder is accepted and the party to whom such Bid Protection was provided was not in default of any of its obligations and was otherwise ready, willing and able to close on its proposed transaction. No party will be entitled to Bid Protection without a written agreement signed by the Sales Agent and the Qualified Bidder or the Chapter 7 trustee, which agreement explicitly sets forth the terms of such protection.

## "As Is Where Is"

The sale of the Assets shall be on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by the Sales Agent, the Chapter 7 trustee, their agents or the bankruptcy estate except to the extent set forth in the applicable Asset Purchase Agreement of the successful Bidder as accepted by the Sales Agent. Except as otherwise provided in such Agreement, all of the bankruptcy estate's right, title and interest in and to the Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "Interests") in accordance with and to the full extent allowed under 11 U.S.C. § 363, with such Interests to attach to the net proceeds of the sale of the Assets.

Each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures, or as to the Successful Bidder, as expressly stated in its Asset Purchase Agreement.

## Auction

After all Qualified Bids have been received, the Sales Agent shall conduct an auction (the "Auction") of the Assets. At the time of the Auction, no bid will be deemed to be a Qualified Bid, regardless of whether it was treated by the Sales Agent as a Qualified Bid prior to the date of the Auction, unless such bid constitutes a Firm Offer. The Auction shall take place at 10:00 a.m. (Prevailing Eastern Time) on April 17, 2002 at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC, or such later time or other place as the Sales Agent shall notify all Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder who has previously submitted a Qualified Bid will be eligible to participate at the Auction.

At the Auction, all Qualified Bidders will have an opportunity to bid on the Assets. The minimum initial overbid for the Assets shall be in an amount that in not less than $100,000 more than the highest Qualified Bid. After the initial overbid, any subsequent bids for the

Assets must be in an amount at least $10,000 more than the previous bid.

Upon conclusion of the Auction, the Sales Agent, in consultation with the Chapter 7 trustee and secured lender, shall (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) identify the highest and otherwise best offer for the Assets (the "Successful Bid"). The Sales Agent shall then present the Successful Bid to the Bankruptcy Court. The Sales Agent may adopt rules for the bidding process at the Auction that in its judgment, will better promote the goals of the bidding process and that are not inconsistent with any of the provisions of the Bankruptcy Code and Rules, any Bankruptcy Court order, or these Bidding Procedures.

Rights of the Lender

GECC is deemed to be a Qualified Bidders and shall be (i) entitled to participate in the Auction without submitting any prior bid, notice or other document; (ii) entitled to exercise its individual or collective credit bid rights under 11 U.S.C. § 363(k) of the Bankruptcy Code; and (iii) entitled to exercise such other rights and remedies as may be allowed by any order of the Bankruptcy Court or by its loan and security agreements.

Acceptance of Qualified Bids

The Sales Agent shall request authority to sell the Assets for the highest or otherwise best Qualified Bid received as determined in the sole discretion of the Sales Agent after consultation with the Chapter 7 trustee and secured lender. The Sales Agent's presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Sales Agent's acceptance of the bid. The Sales Agent will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court.

If the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, then (i) the next higher or otherwise best Qualified Bid shall be deemed the Successful Bidder upon approval of the Court, (ii) the Sales Agent shall be authorized to effectuate such sale without further order of the Bankruptcy Court as long as the next higher bidder has complied with all terms set forth herein and does not deviate from the terms set forth herein, and (iii) the Good Faith Deposit of the initial Successful Bidder shall be retained by the Chapter 7 trustee as liquidated damages.

Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in escrow until 3 business days after the Sale Hearing, whereupon they shall promptly be repaid to all Qualified Bidders. The Good Faith Deposit of the Successful Bidder shall be applied to the purchase price of the Assets.

Modifications

The Sales Agent may determine, in its business judgment after consultation with the Chapter 7 trustee and secured creditor, which Qualified Bid, if any, is the highest or otherwise best offer; and may reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that, in the Sales Agent's sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Chapter 7 trustee and the bankruptcy estate, and its creditors.

Applicant is informed and believes that it would be in the best interest of the estate to sell said property by public auction according to the terms and conditions set forth in this Notice. Applicant also believes that the funds to be recovered from the sale of said property justify the sale and the filing of this Application.

The Court may consider additional offers which comply with the requirements herein at any hearing held on this Application. The Court may order at any hearing on this Application that the Assets be sold to another party on more favorable terms which is in conformity with the bidding procedures established herein.

The Chapter 7 trustee may seek appropriate sanctions or other similar relief against any party filing a spurious objection to this Application.

WHEREFORE, the Chapter 7 trustee requests that the Court issue an order authorizing the sale of said property free and clear of all liens in the manner set forth herein and grant such and other further relief as the Court deems just and appropriate.

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March 27, 2002
Columbia, South Carolina