

UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE: : CHAPTER 11
 :
 AERO PLASTICS, INC., : CASE NO. 05-60451-MHM
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 Debtor. :

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 AERO PLASTICS, INC., :
 :
 Movant, :
 :
 v. : CONTESTED MATTER
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WACHOVIA BANK, N.A., AMERITECH :
 CREDIT CORP., A.P. REALTY, LLC, :
 BANKERS, BMW FINANCIAL :
 SERVICES, CAM NIP MANAGEMENT, :
 LLC, McDONOUGH NI INDUSTRIAL, :
 LLC, CENTER CAPITAL CORP., CHASE :
 AUTOMOTIVE, FLEET CAPITAL :
 LEASING, GE CAPITAL, GE CAPITAL :
 COLONIAL PACIFIC, IOS CAPITAL :
 KEY EQUIPMENT FINANCE (CLS), :
 LAKESIDE FORKTRUCK REPAIR, :
 LG INTERNATIONAL (AMERICA), INC., :
 ORIX FINANCIAL SERVICES, INC., :
 PENSKE TRUCK LEASING CO., :
 SAILOR AUTOMATION, INC., THE :
 CIT GROUP/EF, TOYOTA MOTOR :
 CREDIT CORP., US BANCORP :
 FINANCE, WELLS FARGO EQUIPMENT :
 FINANCE, INTERNAL REVENUE :
 SERVICE, STATE OF GEORGIA (DEPT. :
 OF REVENUE), HENRY COUNTY TAX :
 COMMISSIONER, MASSACHUSETTS :
 DEPT. OF REVENUE, CITY OF :
 LEOMINSTER (MASS.), JULES AND :
 ASSOCIATES, INC., INTERSTATE :
 RESTORATION GROUP, THE GLIDDEN :
 COMPANY, MALLORY & EVANS :
 SERVICE CO., PROTECH MOLD & :

DIE, INC., ALLIANCE ENERGY CORP., :
MILACRON MARKETING CO., :
U.B.E. MACHINERY, INC., JOHN DOE, :
JOHN DOE CORPORATION,¹ :

Respondents. :

MOTION FOR ORDER (1) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES UNDER SECTION 363 OF THE BANKRUPTCY CODE; AND (2) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

COMES NOW Aero Plastics, Inc., the Chapter 11 debtor and debtor-in-possession herein (“**Debtor**”), by and through the undersigned counsel, and hereby files this Motion (the “**Motion**”) pursuant to 11 U.S.C. §§ 105, 363, and 365, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, for an order (1) authorizing the proposed sale of the assets to Equity South Advisors, LLC or its designee (“**Equity South**”), or to a higher and better bidder, free and clear of liens, claims and encumbrances, and (2) authorizing assumption and assignment of certain executory contracts and unexpired leases to Equity South or to a higher and better bidder. In support of this Motion, Debtor respectfully states as follows:

INTRODUCTION

1. On January 6, 2005 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtor operates from its principal places of business located at 163 Pioneer Drive, Leominster, Massachusetts 01453 and at 237 Greenwood Court, McDonough, Georgia 30253.

¹ John Doe and John Doe Corporation are those unknown parties who may claim a lien on the Debtor’s assets and who receive notice regarding this Motion even if they are not served with a copy of this Motion.

2. On January 19, 2005, the Official Committee of Unsecured Creditors (the “**Committee**”) was appointed in this case. On February 8, 2005, the Court entered an order authorizing the Committee to employ James C. Frenzel, P.C. as committee counsel. No trustee or examiner has been appointed in this case.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. The statutory predicates for the relief requested herein are sections 105(a) and 364 of the Bankruptcy Code and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

5. Wachovia Bank, National Association (“**Lender**”), as successor by merger to SouthTrust Bank, provided financing for the Debtor’s operations since September of 2002. The financing provided by the Lender was in the form of a revolving Line of Credit Note in the maximum principal amount of \$15,250,000 due (after certain forbearance agreements) December 31, 2004 (the “**Revolving Note**”) and a CAPEX Line of Credit Note in the maximum principal amount of \$5,500,000 due July 1, 2010 (the “**CAPEX Note**” and together with the Revolving Note, the “**Notes**”).

6. Lender asserts that, as of the Petition Date, the outstanding balance on the Revolving Note was \$12,841,581.61 and the outstanding balance on the CAPEX Note was \$5,162,065.43. Lender asserts that its claim (the “**Lender Claim**”) is secured by substantially all of Debtor’s assets, including inventory, goods, all accounts receivable, the proceeds of any insurance covering the collateral, and any other rights relating to the sale or other disposition of such collateral, and all records relating to the same. (the “**Prepetition Collateral**”).

7. On February 10, 2005, Debtor filed a motion requesting that the Court approve a settlement agreement between Debtor and Lender whereby, pursuant to the terms and conditions thereof, Lender will accept payments totaling \$10 million in satisfaction of Lender's \$18,003,647.04 claim. Debtor withdrew that motion to approve the settlement on March 9, 2005.

8. At a further hearing regarding cash collateral on March 9, 2005, counsel for Lender and Debtor announced that they would both consent to the entry of an order by the Court on the continued use of Cash Collateral containing the provisions set forth in an Order entered on March 11, 2005, and counsel for the Committee indicated the Committee's approval of these provisions.

9. The Order of March 11, 2005 required Debtor to file a motion under Section 363 of the Bankruptcy Code proposing to sell substantially all of the Debtor's assets for cash on or before April 8, 2005 to Equity South or its designee² (the "**Buyer**"), or a higher and better bidder, at a price acceptable to the Debtor and to accompany such motion with a request for approval of typical overbid protections for the Buyer and allowing the Buyer to be reimbursed out of the proceeds of an accepted competing bid for its incurred expenses, subject to a cap, assuming the Buyer is ready to close on its initial bid.

10. Accordingly, Debtor files this Motion proposing to sell all or substantially all of the Debtor's assets to the Buyer.

² On information and belief Equity South has formed an affiliated entity, AP Acquisition Holdings, Inc., a Georgia corporation, to be the Purchaser of the Debtor's assets. Further references to "Buyer" in this Motion shall be deemed to be references to AP Acquisition Holdings, Inc.

TERMS OF PROPOSED SALE AND PROCEDURES

11. Buyer has submitted an offer to purchase substantially all of the Debtor's assets and has submitted a letter of intent to the Debtor. Debtor anticipates that Buyer will subsequently execute an Asset Purchase Agreement (the "**APA**"), in substantially the form attached hereto as Exhibit "A," demonstrating Buyer's desire to purchase all or substantially all of the Debtor's assets (the "**Acquired Assets**"). Debtor will file the final version of the APA with the Court once the APA is executed by Buyer and Debtor.

12. In the event Buyer and Debtor are unable to negotiate a final version of the APA that both Buyer and Debtor are willing to execute, Debtor seeks authority to sell the Acquired Assets to another entity willing to execute an APA in substantially the form attached hereto. Alternatively, Debtor seeks authority to auction the Acquired Assets, upon approval by the Court of the terms and conditions of such auction.

13. A summary of the proposed sale terms are as follows:

(a) Buyer proposes to purchase, subject to approval of the Court, the Acquired Assets. Buyer believes it can complete its due diligence in sufficient time to close a sale of the Acquired Assets on or before 5:00 p.m. Eastern Time on April 8, 2005. The Acquired Assets include, but are not limited to, (1) inventory; (2) furniture, fixtures and equipment; (3) other incidental assets, both tangible and intangible, collectively comprising the business operations conducted at the Debtor's manufacturing facility (the "**Manufacturing Facility**") located in McDonough, Georgia and at the Debtor's administrative office space (the "**Administrative Office Space**") located in Leominster, Massachusetts; (4) certain intellectual property related to the Debtor's operations and products (including the "Aero Housewares" and related brands, logos, trade styles, trademarks, trade names, and servicemarks); and (5) accounts receivable and

general intangibles. In connection therewith, Buyer proposes to assume certain executory contracts and unexpired leases (the “**Assumed Contracts**”). A list of the Assumed Contracts is attached as **Exhibit B** hereto. Debtor reserves the right to amend such Exhibit, because the Buyer or the successful bidder, on or before the closing date for the proposed sale, may elect not to assume certain equipment leases. Debtor may request that those executory contracts that are not specifically assumed be rejected.

(c) The “**Purchase Price**” for the Acquired Assets is proposed to be Eight Million Five Hundred Thousand and no/100 Dollars (\$8,500,000.00)³. The Purchase Price is to be paid to the Debtor by wire transfer at closing. Additionally, Buyer proposes to assume the “**Assumed Liabilities**” (including all liabilities and obligations of the Seller with respect to the Assumed Contracts of Debtor) as defined and described in Section 2.2(a) of the APA.

(d) Debtor proposes to sell the Acquired Assets to Buyer (subject to higher or better bids as described below) free and clear of all liens, claims, interests, and encumbrances, pursuant to, *inter alia*, Sections 105(a), 363 and 365 of the Bankruptcy Code. The Acquired Assets are proposed to be sold on an “as is, where is” basis with no recourse or warranty, except as specifically set forth in the APA.

14. In order to maximize the value received for the Acquired Assets, Debtor proposes that other parties will be permitted to make competing offers for the Acquired Assets at the Sale Hearing (as defined herein).

15. With respect to any higher and better bid for the Acquired Assets, Debtor proposes that should any other qualified bidder (to be defined in the Sale Procedures Motion) desire to submit a higher and better bid, it must do so pursuant to procedures (“**Sale**

³ The Purchase Price is subject to reduction in an amount equal to each dollar received by Lender on account of the Lender Claim during the pendency of the Chapter 11 case.

Procedures”) to be set forth in a separate motion (the “**Sale Procedures Motion**”) to be filed by Debtor shortly. Debtor anticipates that the Sales Procedures proposed in the Sale Procedures Motion will include reasonable procedures to foster the integrity of the process.

16. Debtor will file the Sales Procedures Motion shortly and will request an expedited hearing and shortened notice with regard thereto so that the Sales Procedures can be fixed by Court Order prior to the Sale Hearing and so that prospective bidders will have notice of the terms of the Auction.

17. By this Motion, Debtor requests that the Court, pursuant to Sections 105, 363(b), 363(f) and 365 of the Bankruptcy Code, schedule a Sale Hearing to consider the proposed sale of the Acquired Assets and the assumption and assignment of the Assumed Contracts. At the Sale Hearing, Debtor requests that the Court approve the sale to Buyer, subject only to higher and better bids from a Qualified Bidder consistent with the Sale Procedures.

BASIS FOR RELIEF WITH REGARD TO SALE OF ASSETS AND RELATED RELIEF

18. Section 363 of the Bankruptcy Code authorizes a debtor-in-possession “after notice and a hearing ... to use, sell, or lease other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105 of the Bankruptcy Code grants to the Court the authority to “issue any order, process or judgment necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

19. A sale of all or substantially all of a debtor’s assets should be authorized if the debtor demonstrates that (i) a sound business purpose exists for doing so; (ii) adequate and reasonable notice of the proposed sale has been given; (iii) the sale is proposed in good faith; and (iv) the proposed purchase price is fair, reasonable, and adequate. *Committee of Equity Security*

Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2nd Cir. 1983); *Big Shanty Land Corp. v. Comer Properties, Inc.*, 61 B.R. 272 (N.D. Ga. 1985).

20. The factors to be considered in determining if there is a sound business purpose for the sale include the proportion of value of the asset to the estate as a whole, the effect of the proposed disposition on a future plan of reorganization, the proceeds to be obtained from the sale versus the appraised value of the property, and whether the asset is increasing or decreasing in value. *In re Lionel Corp.*, 722 F.2d at 1071.

21. Debtor's management, exercising its business judgment after a thorough review of Debtor's business, its current financial condition, its reasonable financial outlook, and its current liquidity position, decided to proceed with the sale of Debtor's property and commenced this process.

22. Under current circumstances, the proposed method of sale is the best manner for Debtor to maximize the value of the assets proposed to be sold. Debtor submits that, by following the proposed procedures, Debtor will be able to realize the best value for the property.

23. Compelling business reasons dictate a sale prior to confirmation of a plan of liquidation. Debtor shows that the proposed consummation of a sale is the only way to maximize the value of the property. Debtor submits that if the Court does not approve a prompt sale, then in all likelihood Debtor's property would be sold for substantially less than may be realized from a prompt sale of the property.

24. Accordingly, pursuant to § 363(f) of the Bankruptcy Code, Debtor requests that the Court authorize the sale of assets, free and clear of all liens, claims, and encumbrances (including, but not limited to, the liens which may be claimed by Lender), with any such liens, claims or encumbrances to attach to the proceeds of the sale. Debtor shows that such sale is

authorized because one or more of the following applies: (a) with regard to any holder of a claim secured by an asset to be sold, the holder of the claim has or will consent to the sale; (b) applicable non-bankruptcy law permits sales free and clear of any lien; (c) the claim is in bona fide dispute; or (d) the entity asserting a lien on or security interest in the assets to be sold could be compelled in a legal or equitable proceeding to accept a money satisfaction of its interest. 11 U.S.C. § 363(f).

25. The sale will be free and clear of all interests, including, without limitations, the liens, claims or interests held by the following: (i) Lender; (ii) the entities listed on the attached Exhibit “C” which may hold tax liens; and (iii) the entities listed on the attached Exhibit “C” who have filed judgment liens or mechanic’s liens in counties where the Debtor’s property is located and (iv) the entities listed on the attached Exhibit “C” who have liens on equipment or who entered into agreements with Debtor for the sale or lease of equipment. Debtor reserves the right to pay, with the consent of the Committee and of Lender, mechanic’s liens and personal property tax liens that attach to the proceeds of the sale. Debtor further reserves the right to contest the validity, extent or priority of any lien attached to the proceeds of the sale.

26. Debtor agrees that Buyer should be provided with typical overbid protections and allowed to be reimbursed from the surplus proceeds of an accepted competing overbid for the Buyer’s incurred expenses up to a cap to be determined by the Court (the “**Expense Reimbursement**”), assuming that Buyer is ready to close on its initial bid. Debtor hereby seeks Court approval of typical overbid protections and reimbursements, as directed in the Order entered March 11, 2005. Debtor will include a request in the Sale Procedures Motion that the Court determine the cap on the Expense Reimbursement.

27. Outside the bankruptcy context, courts commonly approve break-up/topping fees and expense reimbursements. Such fees and expense reimbursements are presumptively appropriate under the business judgment rule and nonbankruptcy courts rarely rule on their propriety. *In re Integrated Resources, Inc.*, 147 B.R. 650 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993); *see, e.g., Cottle v. Storer Communications, Inc.*, 849 F.2d 570 (11th Cir. 1988); *CRTF Corp. v. Federated Dep't Stores, Inc.*, 683 F. Supp. 422, 440 (S.D.N.Y. 1988); *Samjens Partners I v. Burlington Indus., Inc.*, 663 F. Supp. 614 (S.D.N.Y. 1987).

28. Similarly, bankruptcy courts are guided by the principles of the “business judgment” rule in evaluating a debtor’s decision to offer bidding protections. *See Integrated Resources*, 147 B.R. at 658 (“A bankruptcy court should uphold a break-up fee which was not tainted by self-dealing and was the product of arm’s-length negotiations.”); *In re 995 Fifth Ave. Ass’n*, 96 B.R. 24 (Bankr. S.D.N.Y. 1989). *See generally In re Tiara Motorcoach Corp.*, 212 B.R. 133, 137 (Bankr. N.D. Ind. 1997) (break-up fees “must be carefully scrutinized”).

BASIS FOR RELIEF WITH RESPECT TO ASSUMPTION AND ASSIGNMENT

29. Debtor seeks authority to assume and assign the Assumed Contracts in conjunction with the proposed sale of assets without further order of this Court. Because assumption and assignment of the Assumed Contracts is an integral part of the sale, Debtor requests that this Court authorize and approve, pursuant to Section 365 of the Bankruptcy Code, their assumption by Debtor and assignment to Buyer or to the successful bidder at the Sale Hearing.

30. The standard in determining whether an executory contract or unexpired lease should be assumed is the debtor’s “business judgment” that assumption is in its economic best interest. *In re Gardenier*, 831 F.2d 974, 975 (11th Cir. 1987), *cert. denied*, 488 U.S. 853 (1988).

In order to assume or assign an executory contract or unexpired lease in which a default has occurred, a debtor must (i) cure or provide adequate assurance that they will cure such defaults, (ii) compensate or provide adequate assurance that it will compensate the other parties to the contracts and leases for any actual pecuniary loss resulting from the default, and (iii) provide adequate assurance of future performance under the contracts and leases. 11 U.S.C. § 365(b)(1); *see, e.g., In re By-graph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D. N.Y. 1986).

31. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case. Among other things, adequate assurance may be provided by demonstrating that the debtor or the debtor’s assignee has the financial resources and the willingness to devote sufficient time and funding to establish a strong likelihood that the debtor or the debtor’s assignee will be able to comply with the terms of the lease or contract. *In re By-graph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D. N.Y. 1986). Adequate assurance of future performance may also be established on a case by case basis by proving that the other party or parties to the lease or contract get the “benefit of the bargain” for which they contracted. *Abney v. Fulton County (In re Fulton Air Service, Inc.)*, 34 B.R. 568, 573 (Bankr. N.D. Ga. 1983).

32. Debtor proposes to demonstrate compliance with these requirements by showing that Buyer or the successful bidder has the financial ability to satisfy any and all obligations that would be incurred in connection with the Assumed Contracts. Debtor will produce evidence at the Sale Hearing to show such financial ability to perform under the Assumed Contracts. Thus, the Sale Hearing will provide the Court and other interested parties with the opportunity to evaluate the ability of Buyer or the successful bidder to provide adequate assurance of future performance under the Assumed Contracts.

RELIEF FROM TRANSFER TAXES

33. Section 1146(c) of the Bankruptcy Code provides that the “issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under Section 1129 of [the Bankruptcy Code], may not be taxed under any law imposing a stamp tax or similar tax.”

34. This provision has been applied to transfers under a sale prior to, but in furtherance of, effectuating a plan. *Director of Revenue, State of Delaware v. CCA Partnership (In re CCA Partnership)*, 70 B.R. 696 (Bankr. D. De. 1987), *aff'd.*, 72 B.R. 765 (D. De. 1987), *aff'd.*, 833 F.2d 304 (3rd Cir. 1987); *In re Jacoby-Bender, Inc.*, 40 B.R. 10 (Bankr. E.D. N.Y. 1984), *aff'd.*, 758 F.2d 840 (2nd Cir. 1985). Debtor intends to file a plan of liquidation after the closing of the sale. Accordingly, Debtor submits that the sale should be afforded the protections of § 1146(c) of the Bankruptcy Code.

A FINDING THAT THE SALE IS IN GOOD FAITH

35. Debtor further seeks the protections afforded to a purchaser with regard to sale transactions under § 363(m) of the Bankruptcy Code, which provides that the reversal or modification on appeal of an authorization of a sale or lease of property does not affect the validity of the sale or lease under such authorization to an entity that purchased or leased the property in good faith.

36. Although the Bankruptcy Code does not define good faith, courts have recognized that the kind of misconduct that would destroy a good faith status involves fraud, collusion between the purchaser and other offerors, or an attempt to take grossly unfair advantage of other offerors. *In re Abbott Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3rd Cir. 1986).

37. Debtor submits that the proposed method of conducting the sale pursuant to the bid procedure described above is reasonable and appropriate. Debtor expects and will further show at the Sale Hearing that both Debtor and the successful purchaser will have proceeded in good faith. Therefore, the sale will be entitled to the protections of § 363(m) of the Bankruptcy Code.

NOTICE AND FILING OF OBJECTIONS

38. Debtor has prepared a Notice of Hearing on Motion for Order (1) Authorizing Sale of Assets Free and Clear of Liens, Claims and Encumbrances Under Section 363 of the Bankruptcy Code; and (2) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Section 365 of the Bankruptcy Code. Debtor proposes to serve the Notice via first class mail upon: (a) the United States Trustee; (b) counsel for Lender; (c) counsel for the Committee and the members of any such committee; (d) any respondent named in the Motion or party listed on Exhibit "C"; (e) all parties in interest who have served upon counsel for Debtor and filed with the Clerk of this Court a request that all notices be mailed to them pursuant to Bankruptcy Rule 2002(i); and (f) all parties which Debtor's management has identified as potential interested bidders for Debtor's property. Debtor submits that no further notice need be given or service need be made; provided, however, that Debtor will furnish notice to parties affected by any amendment to the Motion by facsimile or overnight delivery where possible.

39. Debtor requests that the Court require any objections to any relief requested in this Motion (a) be made in writing; (b) be filed with the Court prior to the Sale Hearing on a date set by this Court; and (c) be served so as to be actually received prior to the Sale Hearing by the counsel for Debtor, J. Michael Lamberth and William D. Matthews, Lamberth, Cifelli, Stokes

and Stout, P.A., 3343 Peachtree Road, N.E., East Tower, Suite 550, Atlanta, Georgia 30326-1022; and the Office of the U.S. Trustee, Room 362, Richard Russell Building, 75 Spring Street, S.W., Atlanta, Georgia 30303.

RELIEF REQUESTED

40. By this Motion, Debtor requests that the Court, pursuant to sections 105, 363(b), and 363(f), schedule a Sale Hearing to consider and approve the sale of the Acquired Assets and to hear and determine other issues relating thereto as addressed herein.

41. Debtor proposes to sell Debtor's assets. Debtor seeks to sell such property free and clear of liens, claims, interests, and encumbrances, as authorized by, inter alia, §§ 105 (a) and 363 of the Bankruptcy Code, with such liens to attach to the proceeds (without prejudice to Debtor's right to contest such liens). Through this Motion, Debtor requests that the Court enter of one or more orders (a) approving the sale of the assets free and clear of all liens, claims, and encumbrances to Buyer⁴ or to the qualified bidder submitting the best bid as determined by Debtor in exercising its business judgment and as approved by the Court; (b) transferring all liens, claims, and encumbrances on the assets that are sold solely to the proceeds of the sale and, with the consent of the Committee and of Lender, to pay mechanic's liens and personal property tax liens that attach to the proceeds of the sale; (c) finding that the sale of assets hereunder should be afforded the protections of § 1146(c) of the Bankruptcy Code and no transfer taxes shall apply; (d) finding that Debtor and the successful purchaser will have proceeded in good faith, and therefore, the sale is entitled to the protections of § 363(m) of the Bankruptcy Code;

⁴ In the event Buyer and Debtor are unable to negotiate a final version of the APA that both Buyer and Debtor are willing to execute, Debtor seeks authority to sell the Acquired Assets to another entity willing to execute an APA in substantially the form attached hereto. Alternatively, Debtor seeks authority to auction the Acquired Assets, upon approval by the Court of the terms and conditions of such auction.

(e) scheduling a hearing (the ‘**Sale Hearing**’) on the sale of Debtor’s assets as set forth herein; and (f) approving payment of the Expense Reimbursement.

WHEREFORE, Debtor respectfully requests that the Court enter an Order (1) approving the sale of the Acquired Assets to Buyer⁵ or the successful bidder; (2) authorizing Debtor to conduct an auction of the Acquired Assets and Assumed Contracts at the hearing scheduled on this Motion; (3) authorizing Debtor to consummate the sale of the Acquired Assets on the terms and conditions described in this Motion, including payment of the Expense Reimbursement; (4) finding that the successful bidder is purchasing the Acquired Assets in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code; (5) finding that the consideration to be paid by the successful bidder for the Acquired Assets and Assumed Contracts is fair and reasonable; (6) finding that the sale of the Acquired Assets is in the best interests of the Debtor’s estate and creditors; (7) approving the procedures set forth herein with respect to the assumption and assignment of the Assumed Contracts; (8) except as otherwise provided in the Letter of Intent, the Term Sheet, or any other agreement executed by the parties, finding that the successful bidder shall not be deemed a successor of the Debtor and shall acquire no successor liability for any claims against the Debtor as a result of the sale of the Acquired Assets; (9) finding that there has been proper and adequate notice given to all parties required by law to receive notice of the sale; (10) finding that the transfer of the Acquired Assets to the purchaser is not subject to any taxation under any state or local law imposing a stamp or similar tax in accordance with Sections 105 and 1146(c) of the Bankruptcy Code; (11) finding that the

⁵ In the event Buyer and Debtor are unable to negotiate a final version of the APA that both Buyer and Debtor are willing to execute, Debtor seeks authority to sell the Acquired Assets to another entity willing to execute an APA in substantially the form attached hereto. Alternatively, Debtor seeks authority to auction the Acquired Assets, upon approval by the Court of the terms and conditions of such auction.

requirements of Sections 363 and 365 of the Bankruptcy Code have been met; and (12) granting Debtor such other and further relief as is just and proper.

Respectfully submitted, this 11th day of March, 2005.

LAMBERTH, CIFELLI, STOKES
& STOUT, P.A.

Counsel for Aero Plastics, Inc.

By: /s/ William D. Matthews

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Exhibit “A”

ASSET PURCHASE AGREEMENT

[TO BE FILED UNDER SEPARATE PLEADING]

EXHIBIT “B” – LEASES TO BE ASSUMED AND ASSIGNED

Lease Agreements with the following lessors:

Lessor	Nature of Lease
<p>Ameritech Credit Corp DBA SBC Capital Services 13160 Collections Center Drive Chicago, IL 60693</p>	<p>Equipment lease (racking system)</p>
<p>A.P. Realty, LLC 163 Pioneer Drive Leominster, MA 01453</p>	<p>Lease of administrative office space (month-to-month) at Leominster, MA</p>
<p>BANKERS P.O. BOX 9209 UNIONDALE, NY 11555-9209</p>	<p>Software lease.</p>
<p>BMW FINANCIAL SERVICES P.O. BOX 9001065 LOUISVILLE, KY 40290-1065</p>	<p>Car lease.</p>
<p>CAM NIP MANAGEMENT LLC ATTN: BRUCE FEDERMAN 575 UNDERHILL BLVD #125 SYOSSET, NY 11791</p> <p>McDonough NI Industrial, LLC c/o John W. Mills, III, David A. Geiger Kilpatrick Stockton LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309-4530</p>	<p>Lease of building at 237 Greenwood Ct., McDonough, GA</p>
<p>CENTER CAPITAL CORPORATION P.O. BOX 388 FARMINGTON, CT 06034</p>	<p>Equipment lease – (3) Nissei’s KEF Sch #2</p>

CHASE AUTOMOTIVE P.O. BOX 15594 WILMINGTON, DE 19886-1304	Car lease (Volvo)
FLEET CAPITAL LEASING P.O. BOX 30860 HARTFORD, CT 06150-0860	Machinery, forktruck lease. Hycon Blow molder #27 Yale forktruck
GE CAPITAL P.O. BOX 642000 PITTSBURGH, PA 15264-2000 GE CAPITAL P.O. BOX 747016 PITTSBURGH, PA 15274-7016	Machinery, computer equipment lease. Chiller; (4) JSW machines Computer equipment
GE CAPITAL COLONIAL PACIFIC P.O. BOX 642752 PITTSBURGH, PA 15264-2752	Equipment lease LG 1750 #33
IOS CAPITAL PO BOX 41564 PHILADELPHIA, PA 19101-1564	Copier lease. Office copy machine (3); copier forem office; copier; ir2299 copier.
KEY EQUIPMENT FINANCE (CLS) NY-31-66-0819 P.O. BOX 1865 ALBANY, NY 12201	Equipment leases (2) Nissei's KEF Sch. #1; (7) Nissei' s KEF Sch. #3
LAKESIDE FORKTRUCK REPAIR 5008 NICHOLS DR FLOWERY BRANCH, GA 30542	Equipment and forktruck leases. Order picker; (4) forktrucks; (2) Yale forktrucks.
LG INTERNATIONAL (AMERICA), IN LOCKBOX 894583 LOS ANGELES, CA 90189-4583	Machinery and equipment leases (2) LG molds; Goldstar 1750 #29
ORIX FINANCIAL SERVICES, INC. EQUIPMENT FINANCE GROUP P.O. BOX 7247-0369 PHILADELPHIA, PA 19170-0369	Equipment lease (3) Nissei's KEF Sch. #6
PENSKE TRUCK LEASING CO. PO BOX 532658 ATLANTA, GA 30353	Truck lease. 2002 Sterling A9513

<p>SAILOR AUTOMATION, INC. 981 VIA RODEO PLACENTIA, CA 92870</p>	<p>Robot lease. (Model rz-50vw-m51)</p>
<p>THE CIT GROUP/EF ATTN: JOAN CAVANAUGH 1540 W. FOUNTAINHEAD PKWY TEMPE, AZ 85282</p>	<p>Equipment leases. (3) Nissei injection machines (one lease) (7) Nissei injection machines (one lease)</p>
<p>TOYOTA MOTOR CREDIT CORP. P.O. BOX 2431 COMMERCIAL FINANCE CAROL STREAM, IL 60132-2431</p>	<p>Forktruck lease. (11) electric forktrucks; (3) 7bbcu20; (1) 6HBE30; (1) 6fgcu15</p>
<p>US BANCORP EQUIP FINANCE P.O. BOX 790413 ST. LOUIS, MO 63179-0413</p>	<p>Equipment Lease Milacron MM550-60</p>
<p>WELLS FARGO EQUIPMENT FINANCE NW-8178 P.O. BOX 1450 MINNEAPOLIS, MN 55485-8178</p>	<p>Equipment Lease. Chiller.</p>

OTHER CONTRACTS TO BE ASSUMED AND ASSIGNED

- (i) any lease or service contracts for equipment remaining after the Closing Date selected by the Selected Bidder to be included in the Sale (herein the ‘Selected Equipment’”) which are specifically identified by the Selected Bidder as agreements to be assumed;
- (ii) any other agreements related to the Manufacturing Facility or the Administrative Office Space for services or goods to be performed or sold to the Manufacturing Facility or to the Administrative Office Space locations or performed or sold by the Manufacturing Facility Business or the Administrative Office Space business which Buyer elects to assume, including but not limited to agreements with sanitation disposal companies, copier or office equipment service contracts, and similar agreements.

Debtor may request that those executory contracts that are not specifically assumed and assigned to the Selected Bidder be rejected.

Exhibit “C”

EXHIBIT “C” – HOLDERS OF LIENS, CLAIMS AND INTERESTS

MAJOR SECURED CREDITORS

Paul B. O'Hearn
Erich N. Durlacher
Burr & Forman, LLP
171 17th Street Northwest
Suite 1100
Atlanta, GA 30363

Wachovia Bank, N.A.
Attn: William W. Teegarden
171 Seventeenth Street, Third Floor
Atlanta, Georgia 30363

PARTIES WITH POTENTIAL TAX LIENS

INTERNAL REVENUE SERVICE
401 W. PEACHTREE ST
STOP-334D
ATLANTA, GA 30308

Counsel of Record for Georgia Department of Revenue

Oscar B. Fears, III
Assistant Attorney General
Georgia Dept of Revenue
40 Capital Square, SW
Atlanta, GA 30334

State of Georgia Revenue Commissioner
410 Trinity-Washington Building
Atlanta, GA 30334

Georgia Department of Revenue
Bankruptcy Insolvency Unit
P.O. Box 3889
Atlanta, GA 30334

Attorney General of Georgia
132 State Judicial Building
Atlanta, GA 30334

GEORGIA INCOME TAX DIVISION
PO BOX 740385
ATLANTA, GA 30374-0385

HENRY COUNTY
TAX COMMISSIONER
PO BOX 488
MCDONOUGH, GA 30253

State of Massachusetts

MASS DEPT REVENUE
PO BOX 9564
BOSTON, MA 02114-9564

MASS DEPT REVENUE
SALES & USE TAX
PO BOX 7043
BOSTON, MA 02204

CITY OF LEOMINSTER
25 WEST STREET
OFFICE OF TREASURER/COLLECTOR
LEOMINSTER, MA 01453

PARTIES WITH EQUIPMENT LEASES OR CLAIMS SECURED BY EQUIPMENT

Ameritech Credit Corp
DBA SBC Capital Services
13160 Collections Center Drive
Chicago, IL 60693

BANKERS
P.O. BOX 9209
UNIONDALE, NY 11555-9209

BMW FINANCIAL SERVICES
P.O. BOX 9001065
LOUISVILLE, KY 40290-1065

CAM NIP MANAGEMENT LLC
ATTN: BRUCE FEDERMAN
575 UNDERHILL BLVD #125
SYOSSET, NY 11791

CENTER CAPITAL CORPORATION
P.O. BOX 388
FARMINGTON, CT 06034

FLEET CAPITAL LEASING
P.O. BOX 30860
HARTFORD, CT 06150-0860

GE CAPITAL
P.O. BOX 642000
PITTSBURGH, PA 15264-2000

GE CAPITAL COLONIAL PACIFIC
P.O. BOX 642752
PITTSBURGH, PA 15264-2752

IOS CAPITAL
PO BOX 41564
PHILADELPHIA, PA 19101-1564

KEY EQUIPMENT FINANCE (CLS)
NY-31-66-0819
P.O. BOX 1865
ALBANY, NY 12201

LAKESIDE FORKTRUCK REPAIR
5008 NICHOLS DR
FLOWERY BRANCH, GA 30542

LG INTERNATIONAL (AMERICA), IN
LOCKBOX 894583
LOS ANGELES, CA 90189-4583

ORIX FINANCIAL SERVICES, INC.
EQUIPMENT FINANCE GROUP
P.O. BOX 7247-0369
PHILADELPHIA, PA 19170-0369

PENSKE TRUCK LEASING CO.
PO BOX 532658
ATLANTA, GA 30353

SAILOR AUTOMATION, INC.
981 VIA RODEO
PLACENTIA, CA 92870

THE CIT GROUP/EF
ATTN: JOAN CAVANAUGH
1540 W. FOUNTAINHEAD PKWY
TEMPE, AZ 85282

TOYOTA MOTOR CREDIT CORP.
P.O. BOX 2431
COMMERCIAL FINANCE
CAROL STREAM, IL 60132-2431

US BANCORP EQUIP FINANCE
P.O. BOX 790413
ST. LOUIS, MO 63179-0413

WELLS FARGO EQUIPMENT FINANCE
NW-8178
P.O. BOX 1450
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Counsel for Wells Fargo

Jeffrey W. Cavender
McKenna Long Aldridge
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308

JULES AND ASSOCIATES, INC
515 S. FIGUEROA ST
STE 1950
LOS ANGELES, CA 90071

PARTIES WITH POTENTIAL JUDGMENT LIENS OR MECHANIC'S LIENS OR UCC

Interstate Restoration Group
c/o H. Bruce Jackson
Jackson & Tyler, LLP
235 Peachtree St., Ste. 601
Atlanta, GA 30303

The Glidden Company
d/b/a ICI Paints
925 Euclid Ave., 9th Floor
Cleveland, OH 44115

Mallory & Evans Service Co.
620 Kentucky St.
Scottsdale, Georgia 30079-1124

Mallory & Evans Service Co.
c/o J. Ben Shapiro, Esq.
Shapiro Fussell
1360 Peachtree St., Suite 1200
Atlanta, GA 30309-3214

ALLIANCE ENERGY CORP.
800 SOUTH STREET
WALTHAM, MA 02454

MILACRON MARKETING CO.
4165 HALFACRE RD.
BATVIA, OH 45102

U.B.E. MACHINERY, INC.
5700 S. STATE ST.
ANN ARBOR, MI 48108

CERTIFICATE OF SERVICE

This is to certify that I, William D. Matthews, have this date served a true and correct copy of the foregoing MOTION FOR ORDER (1) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES UNDER SECTION 363 OF THE BANKRUPTCY CODE; AND (2) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE by regular first class mail addressed to the parties listed on the attached Exhibit.

This 11th day of March, 2005.

 /s/ William D. Matthews
William D. Matthews

EXHIBIT TO CERTIFICATE OF SERVICE

Ameritech Credit Corp
DBA SBC Capital Services
13160 Collections Center Drive
Chicago, IL 60693

AP REALTY LLC
163 PIONEER DR.
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MASS DEPT REVENUE
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PLACENTIA, CA 92870

TCF LEASING, INC.
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WELLS FARGO EQUIPMENT FINANCE
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CIVIL TRIAL SEC/SO REGION
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Interstate Restoration Group
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