

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE:

AMERICAN CONTAINER, INC.,

Case No. 16-26399-PJD

Debtor

Chapter 11

DEBTOR'S EXPEDITED MOTION FOR AN ORDER (I) (A) APPROVING SALE PROCEDURES IN CONNECTION WITH SALE OF DEBTOR'S REAL ESTATE, (B) APPROVING EXPENSE REIMBURSEMENT, (C) SCHEDULING AN AUCTION AND HEARING TO APPROVE THE TRANSACTION AND (II) APPROVING THE PROPOSED SALE

Comes now American Container, Inc. ("American") or the "Debtor"), by counsel, and hereby moves pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of (I) an order approving sale procedures in connection with sale of the Debtor's real estate (the "Bidding Procedures"), (b) approving the expense reimbursement, and (c) scheduling an auction and hearing approving the transaction and approving the form and manner of notice thereof; and (II) an order (a) approving the proposed sale and (b) granting certain related relief (the "Motion"). The Debtor respectfully requests that the Court hears this Motion on an expedited basis and has, accordingly, filed a Motion to Shorten Notice. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this case and this Motion in this District is proper pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 363(f), 503 and 507 of the Bankruptcy Code, and Bankruptcy Rules 2002(a)(2), 2002(m), 6004, 9007 and 9014.

BACKGROUND

3. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is managing its affairs as a debtor-in-possession. As of the date hereof, no creditors' committee, trustee or examiner has been appointed in this Chapter 11 case.

RELIEF REQUESTED

4. By this Motion, the Debtor seeks entry of an order (a) approving sale procedures in connection with sale of the real property of the Debtor consisting of an industrial building located at 8530 W. Sandidge Road, Olive Branch, Mississippi, pursuant to an Agreement for the Purchase and Sale of Real Estate ("Agreement") subject to higher or better offers, (b) approving an expense reimbursement for D&D Corrugated, LLC, (the "Proposed Purchaser" or "D&D"), and (c) scheduling an auction and hearing to approve the transaction and approving the form and manner of notice thereof. In addition, the Debtor also seeks, upon passing of the Bid Deadline or, in the event of an auction, the conclusion of the Sale Hearing (defined below), entry of an order (a) authorizing the sale to the Proposed Purchaser or such other person or entity who is the Prevailing Bidder (defined below) free and clear of all liens, claims and encumbrances, and (b) granting certain related relief (such order is referred to as the "Sale Order").

PROPOSED SALE AND PROPOSED PURCHASER

5. The asset to be sold consist of real estate municipally known as 8530 W. Sandidge Road, Olive Branch, Mississippi, together with all buildings, structures and improvements, of every nature whatsoever now situated thereon, and all easements, rights of way, streets, ways, alleys, passages, sewer rights, water rights and powers, and all estates, rights (including rights, such as warranty enforceable against third parties), titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property, having the following legal description:

Property lying and being in the Southeast Quarter of Section 33, Township 1 South, Range 6 West in DeSoto County, Mississippi and being more particularly described as follows:

Beginning at a point in the south line of Section 33, said point being in Sandidge Road, at the accepted southwest corner of the southeast quarter of Section 33, Township 1 South, Range 6 West and in the east line of the property described in Book 297, Page 121 Parcel II; thence North 89 degrees 48 minutes 04 seconds West along said south line of Section 33, a distance of 177.0 feet to the True Point of Beginning; thence North 00 degrees 47 minutes 00 seconds East passing an iron pin found at 40 feet a total distance of 484.0 feet to an iron pin found; thence South 89 degrees 48 minutes 04 seconds East a distance of 177.0 feet to an iron pin found; thence North 00 degrees 47 minutes 00 seconds East a distance of 474.90 feet to an iron pin found in the southwest line of U.S. Highway 78 (R.O.W. varies); thence South 63 degrees 47 minutes 00 seconds East a distance of 114.80 feet to a concrete monument found; thence South 52 degrees 28 minutes 00 seconds East a distance of 617.94 feet to an iron pin found; thence South 00 degrees 47 minutes 00 seconds West passing an iron pin found at 493.76 feet a total distance of 533.76 feet to a point in the south line of said Section 33; thence along said south line, being in Sandidge Road, North 89 degrees 48 minutes 04 seconds West a distance of 775.82 feet to the point of beginning. (the "Real Estate").

6. Under the terms of the Agreement D&D will purchase, subject to solicitation of higher

and better offers and entry of an order of this Court approving the transaction, the Real Estate. D&D has offered to pay consideration of \$1,900,000.00 for the Real Estate. D&D will also agree to deposit \$10,000.00 to the trust account of Beard & Savory, PLLC, exclusively for use in payment of administrative expenses in the Chapter 11 case. Renasant Bank and the principal of D&D, David M. Harris, have, subject to Court approval, reached an agreement in regarding the potential sale/purchase of the Real Estate, whereby, in material part, the Bank will accept a net amount of \$1,900,000.00 to satisfy its debt, deed of trust and guarantees, provided that the sale is completed by October 31, 2017.

7. D&D, the proposed purchaser, is a Mississippi Limited Liability Company with its principal place of business in Mississippi. D&D is affiliated with D&D Packaging, Inc., a secured creditor of the Debtor and current lessee of the Real Estate. Its sole member, David M. Harris, is also a creditor of the Debtor and has an interest in an LLC that holds a 10% non-controlling equity interest in the Debtor.

BASIS FOR RELIEF

A. Approval Of Bid Procedures

8. The Motion seeks, among other things, approval of the Bidding Procedures to be used in connection with soliciting higher and better offers for the sale of all or substantially all of the Debtor's assets, and to approve certain "stalking horse" protections to the Proposed Purchaser.

9. The Bidding Procedures are designed to maximize value for the Debtor's estate and ensure that a marketing and sales process is undertaken by the Debtor in accordance with the timeline required by the Proposed Purchaser and to afford the maximum possible return to creditors.

The Bidding Procedures are the result of negotiations between the Debtor and the Proposed Purchaser and are summarized as follows:

9.A. Assets to be Sold: The Debtor shall offer for sale the Real Estate.

9.B. Purchase Price: The consideration to be paid by the Proposed Purchaser for the Real Estate under the Agreement is \$1,900,000.00, plus a deposit \$10,000.00 to the trust account of Beard & Savory, PLLC, for use in payment of administrative expenses in the Chapter 11 case.

9.C. Potential Participation Requirements: Any person who wishes to participate in the bidding process (each, a "Potential Bidder") must become a "Qualifying Bidder." As a prerequisite to becoming a Qualifying Bidder (and, thus, being able to conduct due diligence), a Potential Bidder: (i) must deliver an executed confidentiality agreement in form and substance acceptable to the Debtor; and (ii) must be financially able, as determined by the Debtor, to consummate a transaction to purchase the Real Estate.

9.D. Due Diligence: The Debtor shall afford to any Qualifying Bidder the time and opportunity to conduct reasonable due diligence, subject to certain requirements that the Debtor deems appropriate. The due diligence period shall extend through and include the Bid Deadline (defined below).

9.E. Bid Requirements: To be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder by a date no later than the Bid Deadline that:

9.E.i. states such Qualifying Bidder offers to purchase the Real Estate, upon the same terms and conditions substantially as set forth in the Agreement or pursuant to an alternative arrangement that the Debtor determines is no less favorable than the terms and conditions of the Agreement;

- 9.E.ii. is accompanied by a duly executed Agreement for Purchase and Sale of Real Estate with evidence of Board of Director or other governing approvals;
- 9.E.iii. states such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement without financing contingencies of any kind and provides written evidence in support thereof;
- 9.E.iv. states such Qualifying Bidder's offer is irrevocable until the closing of the Sale if such Qualifying Bidder is the Prevailing Bidder;
- 9.E.v. contains reasonable provisions for the Debtor to make a determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Purchase Agreement;
- 9.E.vi. does not request or entitle such Qualifying Bidder to any break-up fee, expense reimbursement or similar type of payment;
- 9.E.vii. fully discloses the identity of each entity that will be bidding in the Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;
- 9.E.viii. will result in value to the Debtor's estate that is \$50,000 more than the aggregate of \$1,910,000.00, plus the amount of the Expense Reimbursement; and

9.E.ix. provides certified funds as a purchase deposit equal to five percent (5%) of the purchase price contained in the Asset Purchase Agreement; and

A competing bid shall constitute a Qualifying Bid only if it meets the requirements of Paragraph 9(E) i-ix above.

9.F. Bid Deadline: A Qualifying Bidder shall deliver its bid by written or electronic copy of its bid by a date no later than fifteen (15) calendar days subsequent to the entry of the Sale Procedures Order. If no Qualifying Bids are received by the Bid Deadline, the Debtor shall request that this Court approve the Agreement with the Proposed Purchaser.

9.G. Evaluation of Qualifying Bids: If the Debtor has received a timely, conforming Qualifying Bid, the Debtor shall notify the bidder whether its bid has been determined to be qualified by a date no later two (2) days prior to the Auction Date (defined below).

10. Auction: In the event that the Debtor timely receives one or more Qualifying Bids other than the Asset Purchase Agreement, the Debtor shall determine which Qualifying Bid is the highest and best value to the Debtor. The Debtor shall, on a date to be determined by the Debtor, conduct the Auction no later than the date that is five (5) business days after the Bid Deadline (the "Auction Date").

11. Auction Procedures: The Auction shall be governed by the following procedures:

- i. only the Proposed Purchaser, who shall be deemed a Qualifying Bidder, and the other Qualifying Bidders shall be entitled to make any subsequent bids at the Auction;

- ii. the Qualifying Bidders shall appear in person at the Auction or through a duly authorized representative;
- iii. bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;
- iv. D&D shall be permitted to credit-bid to the extent of the secured claim of D&D Packaging, Inc. secured by the Real Estate, subject to the \$10,000 required to be deposited to the trust account of Beard & Savory, PLLC for use in payment of administrative expenses in the Chapter 11 case.
- v. Qualifying Bidders may then submit successive bids in increments of at least \$10,000 higher than the bid at which the Auction commenced and then continue in minimum increments of at least \$10,000.00 higher than the previous bid, provided that the Debtor shall retain the right to modify the bid increment requirements at the Auction;
- vi. all Qualifying Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement at the Auction, provided that any such modifications to the Purchase Agreement on an aggregate basis and viewed in whole, shall not be less favorable to the Debtor than the terms of the Purchase Agreement from the Proposed Purchaser;
- vii. the Auction shall continue until there is only one offer that the Debtor determines, subject to this Court's approval, is the highest or best from among the Qualifying Bids submitted at the Auction (the "Prevailing

Bid"). The bidder submitting such Prevailing Bid shall become the "Prevailing Bidder; and

- viii. within one (1) day after adjournment of the Auction, the Prevailing Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made.

12. Sale Hearing: In the event of an auction, the Prevailing Bid will be subject to approval by this Court. The hearing to approve the Prevailing Bid (the "Sale Hearing") shall take place no later than five (5) business days following the conclusion of the Auction. In the event no Qualifying Bids are submitted by the Bid Deadline, American shall submit for entry, without the necessity of further hearing, an Order Approving the sale to D&D pursuant to all the terms and conditions set out in the Purchase Agreement attached as Exhibit A to the Motion, free and clear of all liens, claims and encumbrances with such liens claims and encumbrances to attach to the proceeds of sale. Said Order shall determine the purchaser to be a good faith purchaser entitled to the protections of §363(m) of the Bankruptcy Code, waive the 14-day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, and authorize disbursement of the sale proceeds as set out in the Motion.

13. Return of Deposit: All deposits shall be returned to each bidder not selected by the Debtor as the Prevailing Bidder no later than five (5) business days following the substantial consummation of the sale to the Prevailing Bidder.

B. Approval of Buyer Protections

14. To induce the Proposed Purchaser to expend the time, energy and resources necessary to submit a stalking horse bid, the Debtor has agreed to provide the Proposed Purchaser, and seek this Court's approval of, certain bid protections to the Proposed Purchaser pursuant to the

terms of the Asset Purchase Agreement. As set more specifically below, the Debtor has agreed to provide the Proposed Purchaser with a right to expense reimbursement equal to the actual costs and expenses incurred by the Prospective Purchaser in investigating, negotiating, pursuing and documenting the transaction envisioned herein, including legal and accounting fees, capped at \$15,000.

15. By this Motion, the Debtor seeks authorization to pay the Proposed Purchaser expense reimbursement (the "Expense Reimbursement") in the amount of up to \$15,000 if the Debtor accepts an alternative transaction for the sale of the Real Estate to any party other than the Proposed Purchaser, to be paid exclusively from sale proceeds.

16. The Expense Reimbursement cap has been calculated as an estimate of the amount necessary to reimburse the Proposed Purchaser for its reasonable out-of-pocket costs and expenses (including legal fees and expenses) incurred in connection with the formation, negotiation and documentation of the Purchase Agreement and to fund reasonable expenses the Proposed Purchaser incurs with respect to obtaining financing and its due diligence and its participation in the sale process. Although the amount payable may be less than the \$15,000 cap, the Debtor has identified the capped amount in order to afford potential bidders certainty in formulating any bid, and capped the maximum amount so as not to chill the submission of such overbids.

17. It is understood by the Debtor, that in entering into the Purchase Agreement, the Proposed Purchaser has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible price for the Debtor's assets will be received. The Expense Reimbursement induced the Proposed Purchaser to submit a bid that will serve as a minimum floor

bid on which the Debtor, its creditors and other bidders may rely. Accordingly, the Debtor represents that the Expense Reimbursement is reasonable and appropriate and represents the best method for maximizing value for the benefit of the Debtor's estate.

C. Disposition of Proceeds

18. Renasant Bank holds a first priority security interest in the Real Estate. D&D Packaging, Inc. holds a second priority security interest in the Real Estate. Once the sale of the Real Estate has been consummated as contemplated herein, the proceeds of sale in the amount of \$1,900,000.00 shall be disbursed to Renasant at closing to satisfy its secured claim. The remaining proceeds, if any, shall be deposited to the trust account of Beard & Savory, PLLC, to be held pending further orders of the Court.

APPLICABLE AUTHORITY

A. Bidding Procedures

(i) The Bidding Procedures are Fair and are Designed to Maximize the Value Received for the Assets Given the Financial Exigencies Facing the Debtor

19. The Bidding Procedures proposed herein are designed to maximize the value received for the Debtor's business by facilitating a competitive bidding process in which all Potential Bidders are encouraged to participate and submit competing bids, taking into account the financial exigencies facing the Debtor.

20. The Bidding Procedures provide Potential Bidders with more than the twenty days' notice envisioned by Rule 2002 of the Bankruptcy Rules, which is sufficient notice and an opportunity to acquire the information necessary to submit a timely and informed bid.

21. At the same time, the Bidding Procedures provide the Debtor with the opportunity to consider all competing offers and to select the highest or best offer for the completion of an Asset Sale. Entering into the Asset Purchase Agreement with the Proposed Purchaser insures fair value by setting a minimum purchase price and testing the price in the marketplace. Accordingly, the Debtor and all parties in interest can be assured that, taking into account the financial condition of the Debtor, the consideration paid for the Debtor's business will be fair, reasonable, and in the best interest of the Debtor's estate and creditors, and there are sound business reasons to approve the Bidding Procedures.

(ii) The Expense Reimbursement is Reasonable and Appropriate

22. The sole bid protection being provided to the Purchaser is up to a \$15,000 expense reimbursement.

23. After considering the reasonableness of bidding incentives, courts have approved a range of break-up fees as a percentage of the purchase price in the range provided here as being appropriate under the facts and circumstances of the case. See *In re Great Northern Paper, Inc.*, Case No. 03-10048 (Bankr. D. Me. February 18, 2003) (fee of 5.4% plus reimbursement of expenses upheld).

24. The Expense Reimbursement should be approved because it is reasonable, will not chill bidding and is necessary to further this process of selecting additional bids. The Proposed Purchaser has made clear that it will not proceed as a stalking horse without the protection of ensuring that its expenses are reimbursed if the process it served to put into motion results in some other party owning the Debtor's assets. The Debtor's ability to continue to shop its assets for a higher or better offer, or even to market test the Proposed Purchaser's offer, would be eliminated if

the Debtor could not secure the Asset Purchase Agreement, inclusive of the Expense Reimbursement provision.

25. Payment of the Expense Reimbursement will not harm creditors. Pursuant to the Purchase Agreement, the Debtor will incur the obligation to pay the Expense Reimbursement only if the Debtor accepts an alternative transaction for the sale of the Real Property to any party other than the Proposed Purchaser and that sale closes. The Expense Reimbursement will be paid from the proceeds of an alternative transaction in which the Prevailing Bidder is not the Proposed Purchaser. In light of the benefit to the Debtor's estate that is realized by having an agreed-upon Purchase Agreement, which thereby enables the Debtor to preserve the value of its estate and promote more competitive bidding, approval of the Expense Reimbursement is warranted.

B. The Sale of Assets Is Authorized under Bankruptcy Code Section 363(b)

26. At the conclusion of the Sale Hearing, the Debtor will also request that the Court approve the sale of the Real Estate to the Proposed Purchaser or such other Qualifying Bidder who submits the Prevailing Bid. The Debtor submits that the sale of the Real Estate to the Proposed Purchaser pursuant to the Asset Purchase Agreement, or such as the agreement as the Debtor may reach with the party submitting the Prevailing Bid, is in the best interest of the Debtor's estate and its creditors.

27. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Although Section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of

property of the estate, courts have required that such use, sale or lease be based upon a debtor's sound business judgment.

28. The decision to sell the Real Estate by private sale pursuant to Section 363 of the Code is an exercise of sound business judgment by the Debtor.

C. The Sale of Assets Free and Clear of Liens, Claims, and Interests Is Authorized Under Bankruptcy Code Section 363(f).

29. The Debtor respectfully submits that it is appropriate to sell the Real Estate free and clear of all interests, pursuant to Section 363(f) of the Bankruptcy Code, with all such interests attaching to the net sale proceeds of the Real Estate to the extent applicable.

30. The Debtor believes that one or more of the tests under Section 363(f) will be satisfied with respect to the transfer of the Real Estate pursuant to a Sale Order.

CONCLUSION

Wherefore, the Debtor respectfully requests that the Court enter orders as follows:

1. Approving the Bid Procedures, including, but not limited to, approval and payment of the Expense Reimbursement as a super-priority administrative claim free and clear of all liens, claims and encumbrances from the sale proceeds, and such other relief as may be deemed proper;
2. At the conclusion of the sale process enter an order approving the sale of Debtor's Real Estate free and clear of all liens, claims and encumbrances with such liens claims and encumbrances to attach to the proceeds of sale, determining the purchaser to be a good faith purchaser entitled to the protections of §363(m) of the Bankruptcy Code and waiving the 14-day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure;

3. Authorizing disbursement of the sale proceeds as set forth above; and
4. Granting the relief requested herein and such other and further relief as the Court deems just and proper.

Respectfully submitted,

BEARD & SAVORY, PLLC

/s/ Russell W. Savory

Russell W. Savory (12786)
Attorney for American Container, Inc.
119 South Main Street, Suite 500
Memphis, TN 38103
901-523-1110

CERTIFICATE OF SERVICE

I, Russell W. Savory, do hereby certify that a true and genuine copy of the foregoing pleading has been served on following parties by facsimile, electronic notice or U.S. Mail, this 12th Day of September, 2017:

All parties listed on the Matrix.

/s/ Russell W. Savory

Russell W. Savory

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This Agreement for Purchase and Sale of Real Property (“Agreement”) is made and entered into effective as of the 29th day of August, 2017, by and between **American Container, Inc.**, a Tennessee corporation (“Seller”), and **D&D Corrugated, LLC**, a Mississippi limited liability company (“Purchaser”).

1. PROPERTY

Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, that certain property located in the southeast quarter of Section 33, Township 1 South, Range 6 West, Olive Branch, Desoto County, Mississippi, municipally known as 8530 Sandidge, Olive Branch, Mississippi, and more particularly described on **Exhibit A** hereof, together with all buildings, structures and improvements, of every nature whatsoever now situated thereon, and all easements, rights of way, streets, ways, alleys, passages, sewer rights, water rights and powers, and all estates, rights (including rights, such as warranty enforceable against third parties), titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described (collectively hereinafter, the “Property”).

1. PURCHASE PRICE AND PAYMENT

2.1 Purchase Price. The purchase price for the Property (the “Purchase Price”) shall be \$1,910,000.00, to be paid by Purchaser as follows:

(a) By depositing with Martin, Tate, Morrow & Marston, PC, within ten (10) business days from the effective date hereof, the sum of \$10,000 as earnest money (the “Earnest Money”). The Earnest Money shall be deposited in a federally insured IOLTA.

(b) By paying to Seller, by and through Seller’s Counsel, at Closing (as hereafter defined), the balance of the Purchase Price in the amount of \$1,890,000.00, and by depositing \$10,000 in the IOLTA account of Beard & Savory, PLLC.

2. TITLE, FINANCING, AND CONTINGENCIES

3.1 Title. Within five (5) business days following the effective date of this Agreement, Purchaser, at its expense, shall seek to obtain a commitment (“Commitment”) from Chicago Title Insurance Company (“Title Company”) to issue an American Land Title Association standard form owner's title policy in an amount satisfactory to Purchaser, which in no event shall be less than the Purchase Price, and a standard form lender’s title policy in the amount of any financing needed by Purchaser to complete the Closing. Seller shall cause to be satisfied and/or discharged at Closing all liens and encumbrances affecting and/or encumbering the Property, *except for* those certain easements

of record in the Desoto County Chancery Clerk's Office at Book 160, Page 651, and Book 160, Page 653, and the liens of 2017 City and County real estate taxes.

3.2 Financing. This Agreement is contingent upon Purchaser receiving an appraisal of the Property and financing for the purchase, both of which are acceptable to Purchaser in its sole discretion.

3.3 Contingencies. This Agreement is contingent upon Seller obtaining an Order satisfactory to Purchaser from the United States Bankruptcy Court for the Western District of Tennessee ("Bankruptcy Court"), Case No. 16-26399-PJD ("Bankruptcy Matter"), authorizing and/or ratifying Seller's ability to enter into this Agreement and authorizing Seller to consummate the transaction contemplated hereby.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1 Purchaser's Representations and Warranties. Purchaser agrees, covenants, represents and warrants to Seller that:

(a) (1) Purchaser is a duly organized and existing limited liability company in its State of formation; (2) Purchaser has full right and authority to enter into the Agreement and has been authorized to execute this Agreement and to consummate the transactions contemplated herein; (3) each of the person(s) executing this Agreement on behalf of Purchaser is authorized to do so; and (4) this Agreement constitutes a valid and legally binding obligation of Purchaser, enforceable in accordance with its terms; and

(b) Purchaser, as soon as possible but in no event later than Closing, shall deliver to Seller such documentation as either Seller or Seller's Counsel may reasonably require to evidence the matters set forth in paragraph 4.1(a) hereof, including without limitation a resolution authorizing the transaction contemplated herein; and

(c) There is no legal or administrative proceeding, including without limitation bankruptcy proceedings, pending on or, to the best of Purchaser's knowledge, threatened against or affecting Purchaser, which could prevent consummation of the transactions contemplated hereby; and

(d) Neither the execution nor the delivery of this Agreement, nor the consummation of the sale and purchase contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which it is bound.

4.2 Breach of Purchaser's Representations and Warranties. Notwithstanding anything herein to the contrary, any breach by Purchaser of any of the representations or warranties contained in this Agreement which is discovered prior to Closing, shall constitute a default by Purchaser hereunder, and subject to the notice and cure provisions of Section 6, Seller shall have the sole and exclusive remedy provided for in Section 6.2.

4.3 Seller's Representations and Warranties. Seller agrees, covenants, represents, and warrants to Purchaser as follows:

(a) (1) Seller is a duly organized and existing corporation in its State of formation; (2) Seller has full right and authority to enter into this Agreement and is authorized to execute this Agreement and to consummate the transactions contemplated herein; (3) the person(s) executing this Agreement on behalf of Seller, if not Seller personally, is authorized to do so; and (4) this Agreement constitutes a valid and legally binding obligation of Seller, enforceable in accordance with its terms;

(b) Seller, as soon as possible but in no event later than Closing, shall deliver to Purchaser such documentation as either Purchaser or Purchaser's Counsel (hereinafter defined) may reasonably require to evidence the matters set forth in paragraph 4.3(a) including without limitation a resolution authorizing the transaction contemplated herein and/or the Order contemplated by Section 3.3 hereof; and

(c) There is no legal or administrative proceeding pending or to Seller's knowledge, threatened against or affecting Seller, which could prevent the consummation of the transactions contemplated hereby, except for the Bankruptcy Matter within which cause and prior to the Closing, Seller shall procure the Order contemplated by Section 3.3 hereof; and

(d) Neither the execution nor delivery of this Agreement nor the consummation of the sale and purchase contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or will result in the breach of any of the terms, conditions or provisions of any other agreement or instrument to which Seller is a party or by which Seller is bound; and

(e) There is no fact or circumstance known to Seller which would prohibit, restrict, or cause unreasonable cost or delay to Purchaser's intended ownership and operation of the Property; and

(f) There is no hazardous waste contamination or actual, alleged, or possible violation of any environmental law with respect to the Property; and

4.4 Breach of Seller's Representations Warranties. Any breach of any representation or warranty by Seller which is discovered by Purchaser before Closing, shall constitute a default by Seller hereunder, and subject to the notice and cure provisions of Section 6, Purchaser shall have the remedies provided for in Section 6.1.

4.5 Survival of Representations and Warranties. All representations and warranties of Purchaser in Section 4.1 and all representations and warranties of Seller in Section 4.3 shall survive the Closing.

5. Closing

5.1 Closing.

(a) The closing hereunder (the "Closing") shall take place no later than October 31, 2017. At the Closing, Seller shall deliver: (1) a Warranty Deed to Purchaser conveying fee simple absolute title to the Property to Purchaser; (2) an owner's affidavit in a form acceptable to the Title Company, confirming amongst other items the existence of no materialmen's lien(s) upon the Property

and unrecorded third party rights to the Property; (3) a GAP Indemnity agreement in a form acceptable to the Title Company, confirming that Seller will take no action between the effective date of the Commitment and the recordation of the deed and any deed of trust made by Purchaser in favor of a lender providing financing to create an encumbrance upon title to the Property; (4) an acceptable FIRPTA; and (5) a signed settlement statement in a form agreeable to Purchaser's Counsel.

(b) Pro-rations/Closing Costs/Possession.

(1) Taxes. All real estate taxes for 2017 shall be paid by Purchaser with no pro-rations at Closing.

(2) Closing Costs & Third Party Reports. Purchaser shall pay all transfer taxes and recording costs of the deed and deed of trust, if any, all financing costs of Purchaser, the costs of any survey and inspection it desires, all title insurance costs, and the fees of Purchaser's Counsel. Seller will pay for the preparation of the warranty deed and the fees of Seller's Counsel.

(3) Possession. Purchaser shall be given possession of the Property as of the date of Closing.

1. DEFAULT

6.1 Seller's Default. If Seller defaults by failing to close the transaction contemplated by this Agreement or to perform any of its obligations or agreements hereunder, either prior to or at Closing, and such failure continues for five (5) business days after written notice thereof by Purchaser to Seller, Purchaser may, as its option terminate this Agreement, at which time the Earnest Money, shall be returned to Purchaser, or Purchaser may bring an action for specific performance of this Agreement and/or an action for damages.

6.2 Purchaser's Default. If Purchaser defaults by either failing to close the transaction contemplated by this Agreement or to perform any of its obligations or agreements hereunder and such failure continues for five (5) business days after written notice thereof by Seller to Purchaser, then Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement by giving Purchaser and Purchaser's Counsel written notice thereof, in which event, subject to the indemnities provided herein, neither party hereto shall have any further right, duties or obligations hereunder and Seller shall be entitled to receive the Earnest Money, as liquidated damages, it being acknowledged that same is not a penalty but a reasonable estimate of actual damages as it is difficult or impossible to determine the uncertainties of the real estate market.

2. COMMISSIONS

7.1 Commissions. Neither party has hired any broker or real estate agent which is entitled to any commission in conjunction with this transaction.

7.2 Indemnification. Purchaser and Seller agree to indemnify and hold each other harmless from and against any and all real estate commissions, finders fees or brokers fees due or

claimed to be by reason of the act of the indemnifying party in connection with this transaction, such indemnity to include attorney's fees and costs incurred by each party in connection with any such claim. All indemnities in this Section 7 shall survive the Closing or termination of this Agreement and not be merged therein.

3. CONDEMNATION AND CASUALTY LOSS

8.1 Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened before the Closing, shall remain with Seller. If before the Closing the Property or any portion thereof shall be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation which would result in material damages, Seller shall immediately give written notice thereof to Purchaser and Purchaser's Counsel and Purchaser may then terminate this Agreement by written notice to Seller's Counsel given within five (5) business days after receipt of the notice from the Seller, in which event the Earnest Money shall be returned to Purchaser, and this Agreement shall become null and void and of no further effect.

4. NONWAIVER

9.1 Nonwaiver. Unless otherwise expressly provided herein, no waiver by Seller or Purchaser of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to Seller or Purchaser upon any breach under this Agreement shall such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller or Purchaser of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Seller or Purchaser either hereunder or by law shall be cumulative and not alternative, and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law, unless expressly provided to the contrary herein.

5. NOTICES

10.1 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when transmitted electronically or when personally delivered to a party's address as provided for herein, or on the next delivery day if sent by a nationally recognized overnight courier service, prepaid, addressed to Seller or Purchaser, as the case may be, as follows:

If to Purchaser:
D&D Corrugated, LLC
c/o David Mark Harris
7388 Hollyview Dr.
Memphis, TN 38125
(901) 619-6222

“Purchaser’s Counsel”:
Martin, Tate, Morrow & Marston, PC
c/o Brett A. Schubert
6410 Poplar Avenue, Ste 1000
Memphis, TN 38119
bschubert@martintate.com

If to Seller:
American Container, Inc.
8118 Meadow Glen Dr.
Germantown, TN 38138
(662) 890-0325

“Seller’s Counsel”:
Beard & Savory, PLLC
Attn: Russell W. Savory
119 South Main Street, Suite 500
Memphis, TN 38103
(901) 523-1110
russ@bsavory.com

Either party hereto may change the address for notice specified above by giving the other party three (3) business days’ advance written notice of such change of address. Any notice herein required by one party to be given to another shall be deemed properly given if sent only by one of the party’s attorneys to the other party’s attorney.

11. **MISCELLANEOUS**

11.1 Construction and Interpretation. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of Mississippi.

11.2 Amendment and Waiver. This Agreement may not be modified or amended, except by an agreement in writing signed by the Seller and Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but, except as otherwise specifically provided for herein, any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

11.3 Venue. Purchaser and Seller agree that any litigation instituted in connection with this Agreement shall be in the county in which the Property is located.

11.4 Assignment. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns. Purchaser may assign its rights in this Agreement without the consent of Seller.

11.5 Acknowledgment of Cancellation. Upon a termination or cancellation of this Agreement both parties covenant and agree to execute such documents as either party may reasonably request to evidence such termination.

11.6 Time. The parties hereto agree that time shall be of the essence with respect to the performance of this Agreement however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Mississippi, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

11.7 Attorney's Fees for Enforcement. If it becomes necessary for either party to file a suit to enforce this Agreement or any provision contained herein or interpret same, the party prevailing in such action shall be entitled to receive, in addition to all other remedies or damages, reasonable attorneys' fees, expert witness' fees and costs incurred in such suit.

11.8 Survival. Except as otherwise provided herein, the warranties, representations, agreements, covenants, indemnity and authorizations made herein shall survive the Closing or termination of this Agreement.

11.9 Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be considered an original and all of which together shall constitute one and the same instrument.

11.10 Facsimile Signature. The parties hereto have the right to rely upon pdf or facsimile copies of another party's signature, which shall have the same force and effect as an original signature. Further, the Agreement shall be deemed to be complete and fully executed if these are signature pages attached bearing either an original or copy, including a pdf or a facsimile copy, of the parties' signatures.

IN WITNESSETH WHEREOF, the parties have executed this Agreement as of its effective date.

"Purchaser"

D&D Corrugated, LLC

By: _____
Name: Mark Harris
Title: Member

"Seller"

American Container, Inc.

By: _____
Name: _____
Title: _____

EXHIBIT A

Property lying and being in the Southeast Quarter of Section 33, Township 1 South, Range 6 West in DeSoto County, Mississippi and being more particularly described as follows:

Beginning at a point in the south line of Section 33, said point being in Sandidge Road, at the accepted southwest corner of the southeast quarter of Section 33, Township 1 South, Range 6 West and in the east line of the property described in Book 297, Page 121 Parcel II; thence North 89 degrees 48 minutes 04 seconds West along said south line of Section 33, a distance of 177.0 feet to the True Point of Beginning; thence North 00 degrees 47 minutes 00 seconds East passing an iron pin found at 40 feet a total distance of 484.0 feet to an iron pin found; thence South 89 degrees 48 minutes 04 seconds East a distance of 177.0 feet to an iron pin found; thence North 00 degrees 47 minutes 00 seconds East a distance of 474.90 feet to an iron pin found in the southwest line of U.S. Highway 78 (R.O.W. varies); thence South 63 degrees 47 minutes 00 seconds East a distance of 114.80 feet to a concrete monument found; thence South 52 degrees 28 minutes 00 seconds East a distance of 617.94 feet to an iron pin found; thence South 00 degrees 47 minutes 00 seconds West passing an iron pin found at 493.76 feet a total distance of 533.76 feet to a point in the south line of said Section 33; thence along said south line, being in Sandidge Road, North 89 degrees 48 minutes 04 seconds West a distance of 775.82 feet to the point of beginning.