

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

Kubco Decanter Services, Inc.
Debtor.

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§
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§

CASE NO. 16-34581

DEBTOR’S EXPEDITED MOTION TO APPROVE (I) SALE PROCEDURE, FORM OF ASSET PURCHASE AGREEMENT AND FORM OF NOTICE; AND (II) BID PROTECTIONS

MOVANT HAS REQUESTED AN EXPEDITED HEARING IN THIS MATTER ON DECEMBER ____, 2016, at __:00 P.M. IN COURTROOM 600, 515 RUSK, HOUSTON, TEXAS 77002.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING, UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-THREE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

To the Honorable Jeff Bohm,
United States Bankruptcy Judge:

Kubco Decanter Services, Inc (“Debtor” or “Kubco”) and files this Motion to Approve (i) Sale Procedure, Form of Asset Purchase Agreement and Form of Notice; and (ii) Bid Protections.

Nature of the Motion

1. The Debtor believes that the highest and best value for its creditors can be realized by the sale of substantially all of the Debtor’s assets pursuant to 11 U.S.C. § 363. The Debtor proposes to conduct an auction for the Debtor’s assets to obtain the highest bids. In order

to induce an initial bidder to serve as the “stalking horse bidder” at the auction, the Debtor proposes certain bid procedures and protections. The Debtor seeks court approval of these sale procedures and bid protections as set forth below.

Expedited Consideration

2. The Debtor does not have authority or available cash to operate the Debtor as a going concern. In order to preserve value in the Debtor’s assets, the Debtor seeks expedited consideration of this Motion so that the marketing and sale process can begin immediately. Under the circumstances, the Debtor believes that time is of the essence and that the value of the Debtor’s assets will decrease with the passage of time. No party is prejudiced by expedited consideration of this Motion as all interested parties may participate in the sale process.

Background

3. On September 9, 2016 the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code. The Debtor is a Texas Corporation, which was formed under the laws of the State of Texas in 1999.

4. The Debtor operates a Decanter Service servicing a variety of industries, including the Oil and Gas Industry and operates from a facility located at 8031 Breen Road, Houston, Texas 77064. Kubco does not own any real property, but is subject to a long term lease on the operating facility.

5. Kubco provides a full range of centrifuge products, including new and re-manufactured equipment, as well as parts and complete centrifuge related services creating a one-stop shop for all of the centrifuge product and service needs of its customers.

6. As a result of the recent depression in the Oil and Gas market, Kubco has suffered along with others and has exhausted its reserves, rendering it unable to continue to operate with

the loss of its customers, resulting in the filing of Chapter 11 (“Case”).

7. Just prior to the filing of the Case, the Debtor was forced to lay off the majority of its line employees and conducted exit interviews to comply with labor law regarding COBRA insurance issues and other related matters of importance to its dedicated staff.

8. The Debtor anticipates a liquidation of the assets of the estate and is optimistic that the highest and best price will be obtained by a controlled liquidation and perhaps a bulk sale of the entity and its working assets.

9. The Debtor produced gross receipts of as much as \$18 Million, but in the recent periods revenue has declined as reported on its Statement of Financial Affairs (Docket #1) as follows:

1. Gross revenue from business			
<input type="checkbox"/> None			
Identify the beginning and ending dates of the debtor's fiscal year, which may be a calendar year		Sources of revenue Check all that apply.	Gross revenue (before deductions and exclusions)
From the beginning of the fiscal year to filing date:	From <u>01/01/2016</u> to <u>Filing date</u> MM/DD/YYYY	<input checked="" type="checkbox"/> Operating a business <input type="checkbox"/> Other _____	<u>\$2,418,074.00</u>
For prior year:	From <u>01/01/2015</u> to <u>12/31/2015</u> MM/DD/YYYY	<input checked="" type="checkbox"/> Operating a business <input type="checkbox"/> Other _____	<u>\$7,862,420.00</u>
For the year before that:	From <u>01/01/2014</u> to <u>12/31/2014</u> MM/DD/YYYY	<input checked="" type="checkbox"/> Operating a business <input type="checkbox"/> Other _____	<u>\$12,810,952.00</u>

10. The Debtor’s assets that are subject to the proposed sale¹ are listed in the inventory attached as Exhibit “A.”

11. The Debtor has attempted to maintain its market and continues to receive minimal orders for its products and in the conduct of its business. It is anticipated that the prospective bidders will either remove the assets from the leasehold within 10 days of closing of sale or make arrangements with the landlord to release the premises.

12. The Debtor proposes terms for an Asset Purchase Agreement, attached to this

¹ The sale will also include intellectual property such as customer lists, proprietary software and url. However, prospective bidders should only rely on the list attached to the proposed APA in preparing their bid.

Motion as Exhibit A, that is subject to higher and better offers. The Debtor has seeks approval of a sale procedure and certain bid protections as set forth below.

The Sale Procedure, Form of Asset Purchase Agreement and Form of Notice

13. The Debtor seeks approval of the following procedures and protections:

Asset Purchase Agreement. The Debtor seeks approval of the form of Asset Purchase Agreement attached to this Motion. All bids must be marked against this form of Asset Purchase Agreement.

Notice of Auction and Sale Hearing. Within three (3) business days following the entry of an order approving this Motion, the Debtor will serve by first-class mail a notice of the proposed sale containing the date of the Auction and Sale Hearing to: (i) all potential purchasers previously identified by the Debtor; (ii) all other potentially interested parties identified by the Debtor; (iii) the Office of the United States Debtor; (iv) all parties who are known to possess or assert a lien, claim, encumbrance or interest in or upon any of the assets; and (vi) all applicable United States, state and local regulatory or taxing authorities, recording offices or any governmental entity which have a reasonably known interest in the relief requested.

Qualified Bidders. Only Qualified Bidders may participate in the bidding process. To become a Qualified Bidder, a potential bidder must on or before the date set by the Court, (i) deposit with the Debtor the sum of \$15,000 (each, the “Alternative Buyer’s Deposit”) which deposit shall be nonrefundable unless such Qualified Bidder is not the highest and best offer as determined by the Court; (ii) submit to the Debtor an unqualified and binding cash bid of at least \$600,000, plus the assumption of assumed liabilities, along with an executed written agreement substantially in the form of the Asset Purchase Agreement (“Qualified Bids”); and (iii) provide financial and other information to the Debtor that allow them to make a reasonable determination as to such bidder’s ability to consummate a sale as contemplated herein. The first bid received by the Debtor exceeding \$600,000, shall be deemed to be a Qualified Bidder and a party in interest for all purposes. Such first bidder shall be deemed the “Stalking Horse” bidder. If no other Qualified Bidders are identified, the Asset Purchase Agreement between the Debtor and first bidder shall be deemed the Highest and Best Bid (as defined below). The Debtor shall be responsible for conducting the bid, auction, and sale processes.

Notice of Qualified Bidders. On or before the date set by the Court, the Debtor shall file a notice with the Court identifying all Qualified Bidders and attaching copies of all bids that were timely received. The Debtor shall serve a copy of the notice and the corresponding bids on all Qualified Bidders by electronic mail.

Credit Bidding. Amegy Bank of Texas (“Amegy”) is the only known creditor with a perfected security interest in the assets being sold pursuant to the APA. Amegy Bank, at its sole election, will be allowed to credit bid up to the balance owed to Amegy on the date of the Court Order determining the highest and best bid. On the date of the filing, Amegy was owed \$541,379.72 by the Debtor.

Auction. If one or more timely Qualified Bids are received, an open auction for the Purchased Assets will be conducted on a date set by the Court in Courtroom 600, Bob Casey Federal Courthouse, 515 Rusk, Houston, Texas. Only Qualified Bidders may participate in the auction. All Qualified Bidders, or their authorized representatives, must be physically present at the auction. At the commencement of the auction, the Debtor shall announce the bidding order, which shall be based on: (i) the amount of the Qualified Bidder’s bid (from low to high); and (ii) if Qualified Bids are identical, the time the Qualified Bids were delivered to the Debtor (the first such received identical bid going first in the auction); *provided, however,* that the Stalking Horse bidder shall bid last in any bidding round in which it participates. Minimum overbid increments at the auction shall be in the amount of not less than \$25,000.

Selection of the Highest and Best Bid. At the conclusion of the auction, the Debtor will announce the highest and best Qualified Bid (the “Highest and Best Bid”) and the next highest and best Qualified Bid (the “Back-Up Bid”). The Debtor will seek approval of the Highest and Best Bid at the Sale Hearing. If for any reason, the Qualified Bidder submitting the Highest and Best Bid fails to timely consummate the purchase of the Purchased Assets, the Debtor may seek to consummate a sale based on the Back-Up Bid without further approval by the Court. The Back-Up Bid and the obligation of the party submitting such bid to consummate the purchase of the Purchased Assets shall remain open and in full force until the close of a sale of the Purchased Assets to the party making the Highest and Best Bid or the party making the Back-Up Bid.

Sale Hearing. The Court will conduct a hearing on to confirm the sale to the Highest and Best Bidder. If for any reason the Highest and Best Bidder fails to close the sale, the Debtor may seek to consummate a sale based on the Back-Up Bid without further order of the Court.

Return of Deposits. Within two business days after the conclusion of the auction described above, the Debtor shall return by check the full amount of the Alternative Buyer’s Deposit submitted by each party that is not selected as submitting the Highest and Best Bid or the Back-Up Bid. If the sale of the Purchased Assets is consummated with the party submitting the Highest and Best Bid, the Alternative Buyer’s Deposit of the party that is declared the Back-Up Bid shall be returned by check transfer within two business days after the closing of the sale to the party submitting the Highest and Best Bid. In the event that closing does not occur by the date specified by the Back-Up Bidder in its bid, it shall be entitled (at its option) to return of its deposit, in which case it shall no longer have

the status of Back-Up Bidder. If the Stalking Horse bid is neither the Highest and Best Bid nor the Back-Up Bid, then its deposit shall be returned within twenty-four (24) hours of the conclusion of the auction.

14. The foregoing sale procedure provides an appropriate framework to ensure that the Debtor's goal of obtaining the maximum value for the Purchased Assets is realized. The proposed process is transparent and represents a fair balance of the competing issues present in this case.

Requested Expense Reimbursement

15. In connection with the Asset Purchase Agreement, the Debtor seeks approval of a capped expense reimbursement (the "Expense Reimbursement"). Specifically, if (i) the Asset Purchase Agreement is terminated as a result of a breach by the Debtor, or (ii) the Debtor accepts a bid from an alternative bidder, then the Debtor shall pay to Stalking Horse bidder, reimbursement of actual and documented out-of-pocket expenses incurred in connection with the transaction, up to a maximum of 2% of the Purchase Price (the "Expense Reimbursement"). The Debtor's obligation to pay the Expense Reimbursement shall constitute an administrative expense of the kind specified in § 503(b)(1) of the Bankruptcy Code, shall constitute a carve out from any and all encumbrances on the Purchased Assets (which carve out shall transfer to any and all encumbrances on the proceeds thereof at the closing) and shall not be subject to secured claims of any party, and, notwithstanding any other order of the Bankruptcy Court. The deposit made by the Stalking Horse (the "Deposit") shall be held in the IOLTA trust account with Debtor's counsel and shall not be intermingled with, or deemed to be, an asset of the estate. The Deposit shall not be subject to any adverse claims or liens against the Debtor. The Debtor shall return the Deposit and pay the Expense Reimbursement to Stalking Horse upon the earliest to occur of: (i) the closing of an alternative transaction; and (ii) the termination of the Asset

Purchase Agreement except as a result of a breach by the Stalking Horse.

16. The Debtor believes that the Expense Reimbursement is appropriate under the circumstances as a cost of ensuring that the Debtor's bankruptcy estate maximizes value for the Purchased Assets, while also providing the Debtor with the opportunity to continue its marketing efforts. The Debtor believes that the amount of the cap on the Expense Reimbursement is imminently reasonable for a transaction of the type and size contemplated, and in light of the attendant risks present in this case.

17. The determination of whether a stalking horse fee/expense arrangement should be allowed is based on whether the fees and expenses are necessary to preserve the value of the estate. *In re O'Brien Environmental Energy, Inc.*, 181 F.3d 527, 534 (3d Cir. 1999). Courts have evaluated such arrangements under the business judgment rule standard. *Cottle v. Storer Communications, Inc.*, 849 F.2d 570 (11th Cir. 1988); *CRTF Corp. v. Federated Dep't Stores*, 683 F.Supp. 422 (S.D.N.Y. 1988); *In re Integrated Res., Inc.*, 147 B.R. 650, 657 (S.D.N.Y. 1992), *appeal dismissed by* 3 F.3d 49 (2d Cir. 1993); *see also In re Twenver, Inc.*, 149 B.R. 954 (Bankr. D. Colo. 1992). The considerations that underlie a debtor's business judgment to pay a break-up fee or expense reimbursement are relevant to the Court's determination of the request. *Id.*

18. It is well-established that "[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 Integrated Res., Inc.*, 147 B.R. at 658. In the instant case, the proposed Expense Reimbursement and bid protections have been the product of good faith, arm's-length negotiations between the Debtor and Tagos. The proposed Expense Reimbursement is based on actual expenses incurred and is within the spectrum of "break-up fees" approved by bankruptcy courts in chapter 11 cases

throughout the country. See e.g., *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y., April 8, 2004) (court approved break-up fee equal to 5% of the purchase price); *In re TransCom USA Management Co., L.P.*, Case No. 01-35158 (KKB) (Bankr. S.D. Tex., February 12, 2002) (court approved a break-up fee of more than 3.6% of the purchase price for the assets); *In re Ameriserve*, Case No. 00-0358 (PJW) (Bankr. D. Del., September 27, 2000) (court approved a break-up fee of 3.64% or \$4,000,000 in connection with \$110,000,000 sale).

Accordingly, the Debtor requests that the Court (i) approve the Motion as set forth above; and (ii) grant the Debtor other just relief.

Dated: December 5, 2016.

Respectfully submitted,

LAW OFFICES OF PETER JOHNSON

/s/ Peter Johnson

By: _____

PETER JOHNSON
Eleven Greenway Plaza, Suite 2820
Houston, Texas 77046
Telephone (713) 961-1200
Telefax (713) 552-1433
pjohnson@pjlaw.com
SBT #10778400 FB#2475
Attorney for Debtor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly served by United States first class mail to all parties listed on the attached Service List and by electronic transmission to all registered ECF users appearing in the case on December 5, 2016.

/s/ Peter Johnson

Peter Johnson

LBR 9013 Service List

Kubco Decanter Services, Inc., Debtor Case 16-34581

*indicates electronic service-LBR 1001(b)- (Admin Proc CMF/ECF- III-E)

PARTY AGAINST WHOM RELIEF IS SOUGHT AND COUNSEL:

N/A

DEBTOR:

Kubco Decanter Services, Inc	8031 Breen Road	Houston, TX 77064-8417	
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TRUSTEE:

None Appointed

COMMITTEE:

None Appointed

PARTIES FILING NOTICE OF APPEARANCE:

Christine A March*	United States Trustee Office	515 Rusk Ave, RM 3516	Houston, TX 77002	christine.a.march@usdoj.gov
Tara L Grundemeier*	Atty Harris County Tax	P.O. Box 3064	Houston, TX 77253-3064	houston_bankruptcy@publicans.com
Recovery Management Systems Corporation	Synchrony Bank	25 SE 2nd Avenue, S 1120	Miami, FL 33131-1605	
Michael J. Smith*	Atty for Amegy Bank	4646 Wild Indigo, Suite 110	Houston, Texas 77027	msmith@csrslaw.com
Richard L Fuqua, II*	Atty for Clay Breen, LLC			fuqua@fuqualegal.com
R Christopher Naylor*	Atty for Ford Motor Credit Company LLC			king@dntlaw.com

UNITED STATES TRUSTEE:

Christine A March*	United States Trustee Office	515 Rusk Ave, RM 3516	Houston, TX 77002	christine.a.march@usdoj.gov
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PARTIES ON WHOM COURT HAS ORDERED NOTICE:

IRS-Special Proc Branch	Bkry Sect-Mail Code 5022HOU	1919 Smith	Houston, TX 77002
Internal Revenue Service	P.O. Box 21126	Philadelphia, PA 19114	

20 LARGEST UNSECURED CREDITORS:

AMERICAN EXPRESS	P.O. BOX 650448	DALLAS, TX 75265-0448	
APPLIED INDUSTRIAL TECH	22510 NETWORK PLACE	CHICAGO, IL 60673-1225	
B-W GRINDING SERVICES	P.O. 1571	HOUSTON, TX 77251-1571	
CLAY BREEN, LLC	9821 KATY FREEWAY, SUITE 87	HOUSTON, TX 77024-1265	
ENSTEP TECHNOLOGY	9659 N SAM HOUSTON PKWY ESTE 150, #233		HUMBLE, TX 77396-1290
HOPE MACHINE WORKS	9116 WINDFERN	HOUSTON, TX 77064-7744	
HOU-TEX PRECISION MACH	PO BOX 765	GALENA PARK, TX 77547-0765	
METALTECH SERVICE CENTER	P.O. BOX 751089	HOUSTON, TX 77275-1089	
RAINBOLT & ALEXANDER INC	19 BRIAR HOLLOW LANE STE 1	HOUSTON, TX 77027-2832	
REV-TECH	P.O. BOX 3346	DES MOINES, IA 50316-0346	
ROMA FLUID SOLUTIONS	S. DE R.L. DE C.V.	ALLENDE	N.L. MEXICO, 67350
SKF USA, INC.	P.O. BOX 7247	PHILADELPHIA, PA 19170-8092	
SUPERIOR SHOT PEENING	13930 LUTHE RD	HOUSTON, TX 77039-1810	
SVADLENAK, SEE & CO. P.C.	1600 TOWNHURST	HOUSTON, TX 77043-3227	
TMD MAGALLANES MACHINE	PO BOX 2382	NEW CANEY, TX 77357-2382	
WESSO INC.	13639 POPLAR CIRCLE	CONROE, TX 77304-1672	
WILCO DELIVERY SERVICES	P.O. BOX 2861	HOUSTON, TX 77252-2861	
WILLIS ELECTRICAL SALES	10060 WEST GULF BANK RD #	HOUSTON, TX 77040-3161	
M-I SWACO	P.O. BOX 732135	DALLAS, TX 75373-2135	
AMERICAN SPINCAST	A.K.A AMSTOCK SUPPLY	P.O. BOX 769	BELTON, TX 76513-0769

Kubco Decanter Services, Inc., Debtor Case 16-34581

PERSONAL PROPERTY LISTING

EXHIBIT A

ASSET	DATE ACQUIRED	DESCRIPTION	MODEL NUMBER	SERIAL NUM	COST
203	10/7/09	DELL COMPUTER/MIKE			\$ 1,377.42
216	6/21/11	DELL SERVER/BACK-UP/	POWER EDGE T610	SBS2008SP2	\$ 31,852.62
218	8/15/11	DELL LATITUDE LAPTOP/DOCKING STATION	E6520		\$ 2,941.99
219	8/15/11	DELL MINI TOWER COMPUTER	OPTIPLES 790 I5		\$ 1,077.00
222	11/15/11	DELL OPTIPLEX COMPUTER W/23" MONITOR	DELL		\$ 2,010.20
243	2/23/12	OFFICE FURNITURE	Inv111215/11134		\$ 25,694.22
103	9/20/99	Victor 20" Lathe	2080S	CC8805005	\$ 21,271.13
104	9/20/99	Victor 29" Lathe	29120T	9956	\$ 29,227.50
105	9/22/99	12 1/2 x 58" Mill	JF-5VSL	990734	\$ 14,072.50
106	9/22/99	10 x 54" Mill	JF-4VS	980735	\$ 11,366.25
107	9/22/99	10 x 54" Mill	JF-4VS	980736	\$ 11,366.25
123	10/1/99	JIB CRANE			\$ 3,220.44
124	10/1/99	JIB CRANE			\$ 3,220.44
125	11/1/99	Victor 35" Lathe	PA-35120 6"	99100140	\$ 62,005.60
126	11/1/99	Victor 45" Lathe	PA-45120	99100141	\$ 65,383.00
127	10/1/99	Welding Positioner	Aronson 2000	77616	\$ 5,683.13
129	10/1/99	Radial Arm Drill		5E-99	\$ 11,907.50
145	10/16/00	Miller Dimension Mig Welder 452		452 LA255537/KK019841	\$ 4,250.00
153	2/13/01	RADIAL DRILL PRESS	CINCINATI BICK		\$ 4,500.00
165	12/30/03	GEAR UNIT TEST STAND		KDS-0213	\$ 10,327.70
172	1/7/05	BAL SYSTM,CABLE,LTOP COMPUTER/W PRINTER			\$ 12,010.00
173	3/18/05	HYPERTHERM MAX 1650 PLASMA MACHINE			\$ 4,800.00
183	1/19/06	Bridgeport Series II Milling Machine		2788	\$ 9,750.00
185	3/28/06	USED BALANCING MACHINE	MODEL B50		\$ 14,194.00
187	5/18/06	EASY BALANCE SYSTEM W/NOTEBOOK COMPUTER			\$ 11,497.31
201	8/12/07	TEST PUMP COMPLETE			\$ 4,758.57
202	3/31/06	RESEARCH/DEVELOPMENT KHV-9300	KHV-9300		\$ 78,865.68
212	12/23/10	WELDER			\$ 5,599.00
214	2/10/11	WELDING MACHINE FOR BOLTS/STUDS	N4000		\$ 10,975.00
223	2/8/12	WELDING MACHINE, 450 25 F	450 25 F		\$ 7,656.47

ASSET	DATE ACQUIRED	DESCRIPTION	MODEL NUMBER	SERIAL NUM	COST
230	11/16/12	150 HP VFD - TEST UNIT			\$ 9,531.00
234	9/30/09	AUTOMATIC BALANCER ANALYZER			\$ 12,305.00
238	8/14/14	LATHE 2480T W/SPECIAL PACKAGE	2480T		\$ 34,160.00
	1/15/06	WHOLENBERG-HANNOVER LATHE			\$ 52,500.00
	1/15/12	HYSTER FORKLIFT			\$ 31,000.00
	1/15/12	HYSTER FORKLIFT			\$ 25,500.00
240	11/19/14	HYSTER 60 FORKLIFT	HYSTER 60	D187V22383Y	\$ 4,000.00
EQUIPMENT SUB TOTAL					\$ 651,856.92
	VAR	INVENTORY*			\$ 984,801.00
*Subject to minor adjustments for post-petition sales/purchases					TOTAL PERSONAL PROPERTY COST \$ 1,636,657.92

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
Kubco Decanter Services, Inc. § **CASE NO. 16-34581**
§
DEBTOR § (CHAPTER 11)

ORDER APPROVING (I) SALE PROCEDURE, FORM OF ASSET PURCHASE AGREEMENT AND FORM OF NOTICE; AND (II) BID PROTECTIONS
(Docket No. ____)

The Court has considered the Debtor’s Expedited Motion to Approve (i) Sale Procedure, Form of Asset Purchase Agreement and Form of Notice; and (ii) Bid Protections (the “Motion”). The Court finds that notice of the motion is sufficient under the circumstances; the requested relief is appropriate; and the bid protections are reasonable and consistent with the proper exercise of the Debtor’s business judgment. Accordingly, it is

ORDERED THAT:

1. The relief requested in the Motion, including approval of the Expense Reimbursement (as defined in the Motion), is **GRANTED**.
2. The form of Asset Purchase Agreement attached as **Exhibit 1** is approved, subject to the sale procedures set forth below.
3. **Notice of Auction and Sale Hearing.** Within three (3) business days following the entry of an order approving this Motion, the Debtor will serve by first-class mail a notice of the proposed sale containing the date of the Auction and Sale Hearing to: (i) all potential purchasers previously identified by the Debtor; (ii) all other potentially interested parties identified by the Debtor; (iii) the Office of the United States Debtor; (iv) all parties who are known to possess or assert a lien, claim, encumbrance or interest in or upon any of the assets; and (v) all applicable United States, state and local regulatory or taxing authorities, recording offices or any governmental entity which have a reasonably known interest in the relief requested.
4. **Qualified Bidders.** Only Qualified Bidders may participate in the bidding process. To become a Qualified Bidder, a potential bidder must on or before 5:00 p.m. Central Time on _____, 2016, (i) deposit with the Debtor the sum of \$15,000 (each, the “Alternative Buyer’s Deposit”) which deposit shall be nonrefundable unless such Qualified Bidder is not the highest and best offer as determined by the Court; (ii) submit to the Debtor an unqualified and binding cash bid of at least \$500,000, plus the assumption of assumed liabilities, along with an executed written agreement substantially in the form of the Asset Purchase Agreement (“Qualified Bids”); and (iii) provide financial and other information to the Debtor

that allow them to make a reasonable determination as to such bidder's ability to consummate a sale as contemplated herein. The first bid received by the Debtor exceeding \$600,000, shall be deemed to be a Qualified Bidder and a party in interest for all purposes. Such first bidder shall be deemed the "Stalking Horse" bidder. If no other Qualified Bidders are identified, the Asset Purchase Agreement between the Debtor and first bidder shall be deemed the Highest and Best Bid (as defined below). The Debtor shall be responsible for conducting the bid, auction, and sale processes.

5. **Notice of Qualified Bidders.** On or before 5:00 p.m. Central Time on October 11, 2016, the Debtor shall file a notice with the Court identifying all Qualified Bidders and attaching copies of all bids that were timely received. The Debtor shall serve a copy of the notice and the corresponding bids on all Qualified Bidders by electronic mail.

6. **Credit Bidding.** Amegy Bank of Texas ("Amegy") is the only known creditor with a perfected security interest in the assets being sold pursuant to the APA. Amegy Bank, at its sole election, will be allowed to credit bid up to the balance owed to Amegy on the date of the Court Order determining the highest and best bid.

7. **Auction.** If one or more timely Qualified Bids are received, an open auction for the Purchased Assets will be conducted on _____, 2016, commencing at _____.m. Central Time in Courtroom 600, Bob Casey Federal Courthouse, 515 Rusk, Houston, Texas. Only Qualified Bidders may participate in the auction. All Qualified Bidders, or their authorized representatives, must be physically present at the auction. At the commencement of the auction, the Debtor shall announce the bidding order, which shall be based on: (i) the amount of the Qualified Bidder's bid (from low to high); and (ii) if Qualified Bids are identical, the time the Qualified Bids were delivered to the Debtor (the first such received identical bid going first in the auction); provided, however, that the Stalking Horse bidder shall bid last in any bidding round in which it participates. Minimum overbid increments at the auction shall be in the amount of not less than \$25,000.

8. **Selection of the Highest and Best Bid.** At the conclusion of the auction, the Debtor will announce the highest and best Qualified Bid (the "Highest and Best Bid") and the next highest and best Qualified Bid (the "Back-Up Bid"). The Debtor will seek approval of the Highest and Best Bid at the Sale Hearing. If for any reason, the Qualified Bidder submitting the Highest and Best Bid fails to timely consummate the purchase of the Purchased Assets, the Debtor may seek to consummate a sale based on the Back-Up Bid without further approval by the Court. The Back-Up Bid and the obligation of the party submitting such bid to consummate the purchase of the Purchased Assets shall remain open and in full force until the close of a sale of the Purchased Assets to the party making the Highest and Best Bid or the party making the Back-Up Bid.

9. **Sale Hearing.** The Court will conduct a hearing on _____, 2016, at _____.m. to confirm the sale to the Highest and Best Bidder. If for any reason the Highest and Best Bidder fails to close the sale, the Debtor may seek to consummate a sale based on the Back-Up Bid without further order of the Court.

10. **Return of Deposits.** Within two business days after the conclusion of the auction

described above, the Debtor shall return by check the full amount of the Alternative Buyer's Deposit submitted by each party that is not selected as submitting the Highest and Best Bid or the Back-Up Bid. If the sale of the Purchased Assets is consummated with the party submitting the Highest and Best Bid, the Alternative Buyer's Deposit of the party that is declared the Back-Up Bid shall be returned by check transfer within two business days after the closing of the sale to the party submitting the Highest and Best Bid. In the event that closing does not occur by the date specified by the Back-Up Bidder in its bid, it shall be entitled (at its option) to return of its deposit, in which case it shall no longer have the status of Back-Up Bidder. If the Stalking Horse bid is neither the Highest and Best Bid nor the Back-Up Bid, then its deposit shall be returned within twenty-four (24) hours of the conclusion of the auction.

11. This Order shall be effective and enforceable immediately upon entry.

SIGNED this ____ day of _____, 2016.

**THE HONORABLE JEFF BOHM,
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT
"1"

ASSET PURCHASE AGREEMENT

by and among

AS PURCHASER

and

THE BANKRUPTCY ESTATE OF KUBCO DECANter SERVICES, INC., DEBTOR

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

CASE 16-35481

AS SELLER

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEFINITIONS 1
ARTICLE II	PURCHASE AND SALE OF ASSETS 4
2.1	Purchase and Sale of Assets 4
2.2	Excluded Assets 5
2.3	Assumed Liabilities 6
2.4	Excluded Liabilities 6
ARTICLE III	GOOD FAITH DEPOSIT 6
ARTICLE IV	PURCHASE PRICE; CLOSING 7
4.1	Purchase Price 7
4.2	Payment of Purchase Price 7
4.3	Closing 7
4.4	Seller's Deliveries 8
4.5	Purchaser's Deliveries 8
ARTICLE V	REPRESENTATIONS AND WARRANTIES OF SELLER 10
5.1	Organization and Authority 10
5.2	Capacity; Enforceability 11
5.3	Brokers' Fees 11
ARTICLE VI	REPRESENTATIONS AND WARRANTIES OF PURCHASER 11
6.1	Organization 11
6.2	Due Authorization 11
6.3	No Conflict 12
6.4	Governmental Authorities; Consents 12
6.5	Financial Confirmation 12
6.6	Brokers 12
ARTICLE VII	INTERIM COVENANTS OF SELLER 12
7.1	Maintenance and Operation 12
ARTICLE VIII	CLOSING CONDITIONS 13
8.1	Closing Conditions 13
8.2	Conditions to the Obligation of Seller 13
8.3	Conditions to the Obligation of Purchaser 13
ARTICLE IX	POST-CLOSING COVENANTS 14
9.1	Post-Closing Access 14
9.2	Records After the Closing 14
9.3	Further Assurances 14
ARTICLE X	TERMINATION 14
10.1	Right of Termination 14
10.2	Effect of Termination 15

ARTICLE XI	BANKRUPTCY	15
11.1	Bankruptcy Filing	15
11.2	Stalking Horse Provisions.....	16
ARTICLE XII	MISCELLANEOUS	17
12.1	Fees and Expenses	17
12.2	Notices, Etc.....	17
12.3	Amendments, Waivers, Etc.....	18
12.4	Assignment; Binding Agreement.....	18
12.5	Entire Agreement	18
12.6	No Third Party Beneficiaries	19
12.7	Governing Law; Venue.....	19
12.8	Waiver of Jury Trial.....	19
12.9	Severability	19
12.10	Headings	19
12.11	Counterparts; Facsimiles.....	19
12.12	Interpretation.....	20

EXHIBITS

Exhibit A	Form of Bill of Sale and Assignment and Assumption Agreement
Exhibit B	Form of Certification of Non-Foreign Status
Exhibit C	Scheduled Personal Property

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “*Agreement*”), dated October 10, 2016 (the “*Effective Date*”), is by and among THE BANKRUPTCY ESTATE OF KUBCO DECANTER SERVICES, INC., Debtor Case 16-34581 a Texas Corporation (“*Kubco*”) and _____ (“*Purchaser*”). Purchaser and Seller may each be referred to herein as a “*Party*” or collectively as the “*Parties*”.

WITNESSETH:

WHEREAS, Kubco was engaged in the business of sale and manufacturing a full range of centrifuge products, including new and re-manufactured equipment, as well as parts and complete centrifuge related services creating a one-stop shop for all of the centrifuge product and service needs of its customers, or such products and processes related thereto (the “*Business*”);

WHEREAS, Kubco was the subject of a voluntary petition (the “*Case*”) under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “*Bankruptcy Court*”). The order for relief was granted on September 9, 2016 and Kubco has continued to operate as Debtor-in-Possession (“*Seller*”);

WHEREAS, subject to the terms and conditions of this Agreement and pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and the applicable Federal Rules of Bankruptcy Procedure, Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, certain assets and liabilities of Kubco and Seller as further described in this Agreement.

NOW, THEREFORE, in consideration of the recitals and the mutual representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

ARTICLE I DEFINITIONS

1.1. **Definitions.** Unless otherwise defined elsewhere in this Agreement, the following terms shall have the meanings specified in this Article I:

“*Affiliate*” shall mean, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such first Person. For purposes hereof, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“*Agreement*” has the meaning set forth in the preamble of this Agreement.

“*Assigned Permits*” has the meaning as set forth in Section 2.2

“*Assumed Liabilities*” has the meaning as set forth in Section 2.3.

“*Bankruptcy Code*” has the meaning set forth in the recitals of this Agreement.

“**Bankruptcy Court**” has the meaning set forth in the recitals of this Agreement.

“**Bidding Procedures Order**” has the meaning set forth in Section 11.2.

“**Bill of Sale**” has the meaning set forth in Section 4.5(a).

“**Break-Up Fee**” has the meaning set forth in Section 11.4.

“**Business**” has the meaning set forth in the recitals of this Agreement.

“**Business Day**” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banks located in the State of Texas are authorized or obligated by law or other governmental action to close.

“**Case**” has the meaning set forth in the recitals of this Agreement.

“**Kubco**” has the meaning set forth in the preamble of this Agreement.

“**Closing**” means the consummation of the Transactions contemplated by this Agreement pursuant to the terms and conditions hereof.

“**Closing Date**” has the meaning set forth in Section 4.3.

“**Closing Payment**” has the meaning set forth in Section 4.2(b).

“**Contract**” means any contract, agreement, license, sublicense, lease, sublease, subcontract, note, indenture, commitment, memorandum of understanding or purchase order, whether written or oral, and each amendment, supplement, or modification (whether written or oral) thereto in each Case as currently in effect.

“**Current Tax Year**” shall mean the tax year in which this transaction closes.

“**Deposit**” has the meaning set forth in Section 3.1.

“**Effective Date**” has the meaning set forth in the preamble of this Agreement.

“**Excluded Assets**” has the meaning set forth in Section 2.2.

“**Excluded Liabilities**” has the meaning set forth in Section 2.4.

“**Governmental Authority**” means any government or political subdivision thereof or any authority, agency, commission, tribunal, ministry, board, bureau, court, tribunal or other body, domestic or foreign, exercising any administrative, taxing, regulatory or other governmental or quasi-governmental function.

“**Intellectual Property**” means any and all of the following in any jurisdiction: (a) trademarks and service marks, including trademarks filed by Kubco for the following : “Kubco”, “Kubco.....” and all filings, applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (c) trade secrets and confidential know-how; (d) patents and patent applications, (e) email addresses, websites, URLs, and internet domain name registrations and access to Kubco’s website, Vimeo site, LinkedIn site, and any other websites representing Kubco or sharing Kubco content; (f) all

intellectual property (g) all marketing material including but not limited to letterhead, presentations, pamphlets, videos and displays related to the Business, Kubco, or products and services of Kubco; and (h) all other intellectual property and intellectual property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

“**Law**” or “**Laws**” means all federal, state, local or foreign laws, legislation, statutes, constitutions, rules, regulations, codes, edicts, orders, judgments, decrees, ordinances, or legally-binding directives, guidance or pronouncements of any Governmental Authority.

“**Leasehold**” shall mean the current location of the Seller’s tangible assets, 8031 Breen Road, Houston, Texas 77064.

“**Liens**” has the meaning set forth in Section 2.1.

“**Owned Tangible Property**” has the meaning set forth in Section 2.1(b).

“**Party**” and “**Parties**” have the meanings set forth in the preamble of this Agreement.

“**Permit**” means a license, permit, certificate, exemption, franchise, approval, consent, registration, filing, accreditation or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority or under any Law and which is required for the operation of the Business.

“**Permitted Liens**” means (a) all rights reserved to or vested in any Governmental Authority to control or regulate the Purchased Assets and Business and all obligations and duties under all Laws or under any Permit issued by any Governmental Authority, (b) Liens for Taxes not yet delinquent or being contested in good faith by appropriate procedures, (c) Liens as a matter of law securing Assumed Liabilities .

“**Person**” means any individual, company, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, trust, estate, association, organization, Governmental Authority or other legal entity.

“**Prevailing Bidder**” has the meaning set forth in Section 11.3.

“**Purchase Price**” has the meaning set forth in Section 4.1.

“**Purchased Assets**” has the meaning set forth in Section 2.1.

“**Purchaser**” has the meaning set forth in the preamble of this Agreement.

“**Removal Date**” shall mean thirty (30) days after Closing Date.

“**Sale Order**” has the meaning set forth in Section 11.3.

“**Seller**” has the meaning set forth in the preamble of this Agreement.

“**Taxes**” means federal, state, local, foreign and other income, sales, use, transfer, ad valorem, franchise, withholding, payroll, property, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest or penalties thereon.

“**Transactions**” means the purchase and sale of the Purchased Assets, the assignment and assumption of the Assumed Liabilities, the execution and delivery of this Agreement and the other Transaction Documents, the related events and transactions contemplated hereby and thereby and the performance by the Parties of their respective covenants and obligations hereunder and thereunder.

“**Transaction Documents**” means this Agreement, the agreements and documents listed in Sections 4.4 and 4.6 of this Agreement and any other agreement, instrument, notice or other document contemplated by this Agreement.

“**Transfer**” has the meaning set forth in Section 2.1.

ARTICLE II

PURCHASE AND SALE OF ASSETS

■ **Purchase and Sale of Assets.** At the Closing, Seller will sell, assign, transfer, convey and deliver (“**Transfer**”) to Purchaser, free and clear of all liens, claims, options, warrants, charges, security interests, pledges, mortgages or other encumbrances whatsoever (“**Liens**”), and Purchaser will purchase and accept from Seller, on the terms and subject to the conditions hereinafter set forth, all of the rights, title and interests of Seller in and to all assets own by the Seller that are not Excluded Assets (hereinafter defined) under this Agreement, including but not limited to the following assets (collectively, the “**Purchased Assets**”):

■ the **Intellectual Property** owned by Kubco, whether or not issued, abandoned or pending, (the “**Purchased Intellectual Property**”);

(b) all furniture, equipment, including all of Kubco’s testing equipment, spray and mixing equipment, and personal protective equipment, furnishings, supplies, fixtures, materials, inventory, tools, computer hardware, computer equipment, and other tangible personal property owned by Seller which is used in the Business, including, but not limited to, those set forth in Exhibit “C.”(collectively, the “**Owned Tangible Property**”);

(c) All Kubco inventory and any previous iterations of this product in all forms of packaging. This includes all inventory held at 8031 Breen Road, Houston, Texas 77064, or held by any member, manager, officer, or employee and elsewhere.

(d) all of Sellers rights to access marketing materials including, but not limited to, printed materials, website, linkedin and vimeo;

(e) all customer lists and potential customer target list;

(f) all telephone numbers and facsimile numbers;

■ all assumed names, goodwill and trade names of Seller;

■ all deposits, credits, advances, prepayments and rebates that relate to the Purchased Assets;

■ all rights, demands, claims, causes of action, rights of recovery, credits, allowances, rebates, recoupment or rights of setoff or subrogation or defenses of Seller against

any Person, to the extent that they relate to the Purchased Assets and are not otherwise included in the Excluded Assets defined hereunder.

all assets, properties and rights of Seller and Seller's Affiliates used in or relating to their respective businesses other than the Business;

all books, records and other documents, or copies thereof, whether in hard copy, electronic or other format, unless (i) related to employees or employee-related or employee benefit-related files or records and any other books and records which Seller is prohibited from disclosing or transferring to Purchaser under applicable Law and are required by applicable Law to retain in their possession, (ii) they cannot be transferred under Laws relating to privacy or health, (iii) Seller is not permitted to transfer pursuant to confidentiality agreements with others, or (iv) related to assets, liabilities or obligations retained by Seller, including the Excluded Assets, Excluded Liabilities and any accounts receivable of Seller (Provided, the Purchaser shall be entitled to a copy of records identified in this subsection [iv.]); and

all of Sellers' rights under the Transaction Documents and the other agreements, certificates and instruments to be executed in connection with, or pursuant to, this Agreement.

to the extent available, all books and records relating exclusively to the Purchased Assets, including equipment maintenance and warranty information;

to the extent legally assignable, the rights of Seller to manufacturers' warranties and indemnities to the extent relating to the Purchased Assets, other than warranties and indemnities relating to any Excluded Assets; and

to the extent legally assignable and subject to subsequent acceptance by Purchaser in its sole discretion and applicable requirements of transfer, all Permits of Seller used in the Business related to the Purchased Assets (collectively the "Assigned Permits").

Excluded Assets. Other than the Purchased Assets described in Section 2.1, Purchaser expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets, properties, rights or interests of Seller of any nature, and all such other assets, properties, rights and interests are expressly excluded from the Purchased Assets (collectively, the "**Excluded Assets**") and nothing herein shall be deemed to Transfer any of the Excluded Assets to Purchaser. Purchaser acknowledges that any such Excluded Assets remain assets of Seller and no right, title or interest therein shall pass to Purchaser by reason of any Transaction Document or otherwise. The Excluded Assets include, but are not limited to, the following assets, properties, rights and interests of Seller:

all cash and cash equivalents, bank accounts, investments, investment accounts, securities and certificates of deposit;

(b) all accounts receivable, notes receivable, negotiable instruments, chattel paper and other receivables together with any fees or charges accrued thereon;

(c) all motor vehicles, aircraft, boats and yachts;

(d) all leased or licensed equipment, machinery and other tangible, including copiers, printers, telephone systems, paper shredding bins, water systems, water coolers, ice machines and gas tanks;

(e) all Permits issued to Seller and used in the Business that are not Assigned Permits; and

(f) Kubco's interest in the leasehold located at 8031 Breen Road, Houston, Texas 77064.

■ **Assumed Liabilities.** Subject to the terms and conditions set forth herein, Purchaser shall assume and agree to pay, perform and discharge when due all liabilities and obligations arising out of or relating to the Purchased Assets on or after the Closing (collectively, the "**Assumed Liabilities**"), including the following:

■ all liabilities and obligations for Taxes relating to the Purchased Assets and the Assumed Liabilities for any taxable period ending after the Closing Date; and

(b) all other liabilities and obligations arising out of or relating to Purchaser's ownership and operation of the Purchased Assets on or after the Removal Date.

2.4. **Excluded Liabilities.** Purchaser shall not assume and shall not be responsible to pay, perform or discharge any of the following liabilities or obligations of Seller (collectively, the "**Excluded Liabilities**"):

■ any liabilities or obligations arising out of or relating to Seller's ownership and operation of the Purchased Assets prior to the Closing;

(b) any liabilities or obligations arising out of the Seller's occupation of its leasehold incurred prior to the Removal Date;

(c) any liabilities or obligations relating to or arising out of the Excluded Assets; and

(d) any liabilities or obligations for (i) Taxes relating to the Purchased Assets and the Assumed Liabilities for any taxable period ending on or prior to the Closing Date and (ii) any other Taxes of Seller for any taxable period.

ARTICLE III DEPOSIT

■ Within three Business Days of the Effective Date, Purchaser shall deposit with the Law Office of Peter Johnson, Attorney for Kubco, a good faith deposit in the amount of FIFTEEN THOUSAND Dollars (\$15,000.00) (the "**Deposit**") which shall be held in trust by Law Office of Peter Johnson. If the Transactions are consummated by Purchaser in accordance with the terms of this Agreement and the other Transaction Documents, the Deposit will be applied against the Purchase Price in the manner provided in Section 4.2(b).

■ If this Agreement is terminated pursuant to Section 10.1(a), Section 10.1(b), Section 10.1(d), Section 10.1(e), Section 10.1(f) or Section 10.1(g), the Deposit shall be refunded to Purchaser.

(b) If this Agreement is terminated pursuant to Section 10.1(c), the Deposit shall be paid to Seller.

(c) If this Agreement is not terminated pursuant to Section 10.1(a), Section 10.1(d), Section 10.1(e), Section 10.1(f) or Section 10.1(g) and Seller has otherwise fulfilled the covenants and obligations of Seller to be performed under this Agreement, and the Transactions are not consummated as a result of the wrongful failure by Purchaser to consummate the Closing, the Deposit shall be paid to Seller as a non-completion fee.

(d) If this Agreement is not terminated pursuant to Section 10.1(a), Section 10.1(d), Section 10.1(e), Section 10.1(f) or Section 10.1(g) and Purchaser has otherwise fulfilled all of the covenants and obligations of Purchaser to be performed under this Agreement and the other Transaction Documents and the Transactions are not consummated solely as a result of the wrongful failure of Seller to consummate the Closing, the Deposit shall be refunded to Purchaser as Purchaser's sole and exclusive remedy therefor.

Except for a refund of the Deposit to Purchaser as expressly provided in this Section 3.1 and payment of the Break-Up Fee as provided in Section 11.4, in no event shall Seller be liable for damages of any kind for failure to consummate the Transactions.

ARTICLE IV PURCHASE PRICE; CLOSING

■ **Purchase Price.** In consideration for the Transfer by Seller to Purchaser of the Purchased Assets, Purchaser shall pay and deliver, or cause to be paid and delivered on Purchaser's behalf, to Seller an aggregate price determined as a result of duly concluded bankruptcy auction of:

\$ _____ (the "**Purchase Price**") plus the assumption of the Assumed Liabilities. The Purchase Price shall be paid as provided in Section 4.2 and allocated to the Purchased Assets pursuant to an order of the Bankruptcy Court regarding the same

Payment of Purchase Price. Purchaser shall pay and deliver to Seller the following:

■ the Deposit shall be paid to Seller in accordance with Section 3.1; and

(b) the Purchase Price less the amount of the Deposit (such net amount, the "**Closing Payment**"), shall be paid by Purchaser to Kubco Decanter Services, Inc., Debtor Case 16-34581, at the Closing by wire transfer of immediately available funds, which Closing Payment shall be held pending further order of the Bankruptcy Court regarding the allocation of the Purchase Price.

■ **Closing.** Unless this Agreement is otherwise terminated as provided herein, the Closing will take place on the third (3rd) Business Day after the Sale Order entered by the Bankruptcy Court approving the sale of the Purchased Assets to Purchaser becomes final and non-appealable, or on such other date or at such other time and place as may be mutually agreed by Seller and Purchaser (the "**Closing Date**"), which Closing shall occur at the Law Offices of Peter Johnson, 11 Greenway Plaza, Suite 2820, Houston, Texas 77046, or, if mutually agreed by the Parties, remotely by the exchange of counterpart signature pages by facsimile or other electronic means (including portable document format). All proceedings to be taken and all documents to be executed and delivered by the Parties at the Closing shall be deemed to have been taken, executed and delivered simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered. The Closing shall be effective as of 12:01 a.m. (Central time) on the Closing Date.

Removal of Purchased Assets. Purchaser shall remove the Purchased Assets from the Sellers leasehold on or before the Removal Date, unless prior to such date the Purchaser enters into an agreement with the Owner of the Sellers Leasehold for the extended use of such Leasehold.

■ **Seller's Deliveries.** At the Closing, Seller shall deliver or cause to be delivered to Purchaser each of the following items, all in form and substance reasonably satisfactory to Purchaser:

■ a Bill of Sale and Assignment substantially in the form attached hereto as Exhibit A (the "**Bill of Sale**"), duly executed by the Seller and dated the Closing Date;

(b) such other instruments of sale, assignment, assumption and Transfer as Purchaser and Seller may reasonably deem necessary or desirable to evidence and effect the Transfer of the Purchased Assets to, and assumption of the Assumed Liabilities by, Purchaser, duly executed by the Seller and dated the Closing Date; and,

(c) such other documents, certificates and instruments reasonably necessary or appropriate to fully consummate the Transactions, duly executed by the requisite Seller and dated the Closing Date.

■ **Purchaser's Deliveries.** At the Closing, Purchaser shall deliver or cause to be delivered to Seller each of the following items, all in form and substance reasonably satisfactory to Seller:

■ the Closing Payment, by wire transfer of immediately available funds to the bank account(s) designated by Kubco, therefor;

(b) the Bill of Sale, duly executed by Purchaser and dated the Closing Date;

(c) such other instruments of sale, assignment, assumption and Transfer as Purchaser and Seller may reasonably deem necessary or desirable to evidence and effect the Transfer of the Purchased Assets to, and assumption of the Assumed Liabilities by, Purchaser, duly executed by Purchaser and dated the Closing Date;

(d) a certificate of Purchaser, substantially in the form of Exhibit B, duly executed by the Secretary or Assistant Secretary thereof and dated the Closing Date, certifying (i) the resolutions of Purchaser authorizing the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the Transactions by Purchaser, (ii) the certificate of formation or similar organizational document of Purchaser, (iii) the bylaws or similar company agreement of Purchaser, in each Case as being correct and complete and then in full force and effect, and (iv) the incumbency of the officers of Purchaser executing the Transaction Documents;

(e) such other documents, certificates and instruments reasonably necessary or appropriate to fully consummate the Transactions, duly executed by Purchaser and dated the Closing Date.

■ **Prorations.** The following shall be prorated between Seller and Purchaser as of the Closing Date (on the basis of the actual number of days elapsed over the applicable period):

■ all personal property Taxes, if any, in respect of the Owned Tangible Property on the basis of the tax year (the "**Current Tax Year**") in which the Closing occurs (with Seller, on the one hand, and Purchaser, on the other hand, each being responsible for a pro rata share of

such Taxes based upon the number of days in such tax year occurring before the Closing Date, in the Case of Seller, and on or after the Closing Date, in the Case of Purchaser). If the Closing Date shall occur before the tax rate or assessment is fixed for the Current Tax Year, the apportionment of such Taxes at the Closing shall be based upon a reasonable estimate agreed upon by Purchaser and Seller. If any assessments on the Owned Tangible Property are payable in installments, then the installment for the current period shall be prorated (with Purchaser being allocated the obligation to pay any installments due after the Closing Date). In no event shall Seller be charged with or be responsible for any increase in the Taxes in respect of the Owned Tangible Property resulting from the Transactions contemplated hereby.

(b) The prorations and payments under this Section shall be made on the basis of a written statement submitted to Purchaser by Seller prior to the Closing. In the event any such prorations or apportionments shall prove to be incorrect for any reason, the Parties shall not be entitled to an adjustment to correct the same.

■ Condition of Assets. AS A MATERIAL PART OF THE CONSIDERTAION FOR SELLER ENTERING INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS PURCHASER EXPRESSLY ACKNOWLEDGES, REPRESENTS, WARRANTS AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN ARTICLE V AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OF THE PURCHASED ASSETS AND ASSUMED LIABILITIES ARE CONVEYED TO PURCHASER, AND PURCHASER IS ACCEPTING THE SAME, AS OF THE CLOSING DATE, ON AN “AS IS, WHERE IS” BASIS “WITH ALL FAULTS” AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY, AND NEITHER SELLER NOR ANY AFFILIATE OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER AND SELLER’S AFFILIATES AND REPRESENTATIVES DO NOT MAKE, AND EXPRESSLY DISCLAIM AND SPECIFICALLY NEGATE, ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, CONDITIONS AND GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE PURCHASED ASSETS, BUSINESS AND ASSUMED LIABILITIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, INCLUDING ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, CONDITIONS AND GUARANTEES WITH RESPECT TO: (A) THE USE, VALUE, INCOME POTENTIAL, EXPENSES, MAINTENANCE, OPERATION, TRANSFERRABILITY, DESCRIPTION, LOCATION, CHARACTERISTICS OR CONDITION OF THE PURCHASED ASSETS OR ANY PORTION THEREOF, INCLUDING AS TO QUALITY, SUITABILITY, TENANTABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC PURPOSE OR A PARTICULAR PURPOSE, GOOD AND WORKMANLIKE CONSTRUCTION, ACCURACY, QUIET ENJOYMENT, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE; (B) THE NATURE, QUALITY OR CONDITION OF THE PURCHASED ASSETS, INCLUDING THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR TOXIC SUBSTANCES OR CONDITIONS, WHETHER OR NOT OBVIOUS, VISIBLE OR APPARENT; (C) THE SUITABILITY OF THE PURCHASED ASSETS FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT; (D) THE COMPLIANCE OF OR BY THE PURCHASED ASSETS OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING THE ENVIRONMENTAL CONDITION OF THE OWNED REAL PROPERTY AND THE PRESENCE OF, ABSENCE OF OR CONTAMINATION BY HAZARDOUS MATERIALS, OR THE COMPLIANCE OF THE LEASED REAL PROPERTY WITH ALL

REGULATIONS OR LAWS PERTAINING TO HEALTH, SAFETY OR THE ENVIRONMENT, INCLUDING THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE CLEAN WATER ACT, THE TEXAS HEALTH AND SAFETY CODE AND THE TEXAS WATER CODE, EACH AS MAY BE AMENDED FROM TIME TO TIME, AND INCLUDING ANY AND ALL REGULATIONS, RULES OR POLICIES PROMULGATED THEREUNDER; (E) THE PRESENCE OF ANY ENDANGERED OR THREATENED SPECIES ON THE LEASED REAL PROPERTY, AS WELL AS THE SUITABILITY OF THE LEASED REAL PROPERTY AS HABITAT FOR ANY OF THOSE SPECIES; (F) THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES; (G) THE TRUTH ACCURACY OR COMPLETENESS OF ANY MATERIALS, FINANCIAL INFORMATION OR OPERATING DATA OR OTHER INFORMATION DELIVERED OR MADE AVAILABLE TO PURCHASER IN CONNECTION WITH THE TRANSACTIONS (INCLUDING DILIGENCE MATERIALS PROVIDED TO PURCHASER); OR (H) OTHERWISE WITH RESPECT TO THE PURCHASED ASSETS, BUSINESS OR ASSUMED LIABILITIES. WITHOUT LIMITING THE FOREGOING, SELLER DOES NOT WARRANT OR REPRESENT THAT ANY LICENSED MATERIALS OR SERVICES WILL MEET PURCHASER'S DATA PROCESSING OR OTHER REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OR THAT THE USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE OR MEET ANY PERFORMANCE OR RELIABILITY STANDARDS. PURCHASER FURTHER EXPRESSLY ACKNOWLEDGES, REPRESENTS, WARRANTS AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT, INVESTIGATE AND EXAMINE THE PURCHASED ASSETS, BUSINESS AND ASSUMED LIABILITIES, PURCHASER IS PURCHASING THE PURCHASED ASSETS AND ASSUMING THE ASSUMED LIABILITIES SOLELY PURSUANT TO ITS OWN INDEPENDENT INVESTIGATION, EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE THEREOF, AND PURCHASER IS RELYING SOLELY ON INSPECTIONS OF THE PURCHASED ASSETS AND DETERMINATIONS OF THE VALUE OF THE PURCHASED ASSETS AND USES TO WHICH THE PURCHASED ASSETS MAY BE PUT AS MADE BY PURCHASER AND PURCHASER'S OWN AGENTS, EMPLOYEES, ATTORNEYS, CONSULTANTS, CONTRACTORS AND OTHER PROFESSIONAL ADVISORS OR REPRESENTATIVES, AND PURCHASER IS NOT RELYING UPON ANY REPRESENTATIONS OR STATEMENTS OF ANY KIND (WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR OTHERWISE) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) OR ANY INFORMATION WHICH MAY HAVE BEEN PROVIDED OR MAY BE PROVIDED (OR PURPORTEDLY PROVIDED) BY OR ON BEHALF OF SELLER OR ANY OF SELLER'S AFFILIATES, AGENTS, EMPLOYEES, ATTORNEYS, CONSULTANTS, CONTRACTORS OR OTHER PROFESSIONAL ADVISORS OR REPRESENTATIVES. The acknowledgements and agreements of Purchaser set forth in this Section shall be set forth in the Bill of Sale and shall survive the Closing and shall not be merged therein.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby makes the following representations and warranties to Purchaser:

■ **Authority.** Subject to ARTICLE XI and any orders of the Bankruptcy Court, all corporate or equivalent action on the part of Seller necessary for the authorization, execution and delivery of this Agreement and the other Transaction Documents, and the performance of all obligations of Seller hereunder and thereunder, has been taken.

■ **Capacity; Enforceability.** Subject to ARTICLE XI and any orders of the Bankruptcy Court,

■ Seller has full power and authority to execute and deliver this Agreement and the other Transaction Documents and to consummate the Transactions contemplated hereby and thereby; and

(b) this Agreement and the other Transaction Documents have been duly and validly executed and delivered by the Seller and (assuming the due authorization, execution, and delivery by the other Parties hereto) constitute a valid and legally binding obligation of Seller, enforceable against Seller in accordance with their terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and except that the provisions of this Agreement and the other Transaction Documents will only be enforceable to the extent approved by the Bankruptcy Court.

■ **Delivery of Purchased Assets.** Seller shall provide in the Sale Order a provision that orders any prior officer, director or employee of Kubco to deliver any of the Purchased Assets in their possession or control to Purchaser. Such Sale Order shall also provide that Purchaser is a "good faith" purchaser and entitled to the protection of 11 U.S.C. § 363(m).

■ **Broker's Fees** Seller does not have any liability to pay any fee, commission, bonus or other compensation to any broker, finder or investment banker retained by or on behalf of Seller in connection with the Transactions for which Purchaser could become liable.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby makes the following representations and warranties to Seller:

■ **Organization.** Purchaser is a LIMITED LIABILITY COMPANY/Corporation duly organized, validly existing and in good standing under the Laws of State of Texas and has all requisite power and authority to own, operate and lease the properties and assets now owned, operated and leased by it and to carry on its business as currently conducted.

■ **Authorization.** Purchaser has all requisite power and authority to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations hereunder and thereunder. The execution and delivery by Purchaser of this Agreement and the other Transaction Documents and the performance of its obligations hereunder and thereunder have been duly and validly authorized by Purchaser, and no other action on the part of Purchaser is necessary. This Agreement and each Transaction Document has been duly and validly executed and delivered by Purchaser and is, or will be upon execution thereby, a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as the enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally and (ii) Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and except that the provisions of this Agreement and the other Transaction Documents will only be enforceable to the extent approved by the Bankruptcy Court.

■ **No Conflict.** The execution and delivery of this Agreement and the other Transaction Documents by Purchaser and the consummation by it of the Transactions contemplated hereby and thereby does not and will not violate any provision of, or result in the breach of, any applicable Law, the certificate of incorporation, bylaws, or equivalent organizational documents of Purchaser, or any agreement, indenture or other instrument to which Purchaser is a party or by which Purchaser may be bound, or of any order, writ, injunction, judgment or decree applicable to Purchaser, or violate, terminate or result in the termination of any such agreement, indenture or instrument, or result in the creation of any Lien upon any of the properties or assets of Purchaser or constitute an event which, after notice or lapse of time or both, would result in any such violation, breach, acceleration, termination or creation of a Lien or result in a violation or revocation of any required Permit from any Governmental Authority or other Person, except to the extent that the occurrence of any of the foregoing would not have a material adverse effect on the ability of Purchaser to enter into and perform its obligations under this Agreement and the other Transaction Documents.

■ **Governmental Authorities; Consents.** Other than Bankruptcy Court approval, no material consent, approval or authorization of, or designation, declaration or filing with, any Governmental Authority or other third party is required on the part of Purchaser with respect to Purchaser's execution or delivery of this Agreement or the other Transaction Documents or the consummation of the Transactions.

■ **Financial Confirmation.** Purchaser has the financial wherewithal and presently available funds to make payment of the Purchase Price and fully perform its obligations under this Agreement and the other Transaction Documents, and the Closing is not conditioned or contingent on Purchaser obtaining third-party financing, and in performance of all such obligations, Purchaser will comply with any applicable Law.

■ **Broker's Fees.** Purchaser does not have any liability to pay any fee, commission, bonus or other compensation to any broker, finder or investment banker retained by or on behalf of Purchaser in connection with the Transactions for which any Seller could become liable.

■ **Good Faith.** Purchaser is a "good faith" purchaser as such term is used in the Bankruptcy Code and court decisions thereunder. Purchaser is entitled to protections of section 363(m) of the Bankruptcy Code with respect to the Purchased Assets. Purchaser has negotiated and entered into this Agreement in good faith.

■ **"As Is, Where Is".** Except as specifically set forth in ARTICLE V, Seller make no representations or warranties with respect to the Purchased Assets and Assumed Liabilities, and Purchaser acknowledges that it has conducted such investigations and made such inquiries as it has deemed necessary or desirable to satisfy itself as to the condition, operations, and prospects of the Purchased Assets and Assumed Liabilities.

ARTICLE VII INTERIM COVENANTS

Until the Closing Date or the sooner termination of this Agreement:

■ **Maintenance and Operation.** Subject to ARTICLE XI and any orders of the Bankruptcy Court, Seller shall use commercially reasonable efforts to maintain the Purchased Assets in a manner consistent with the practices employed during the pendency of the Cases or any other bankruptcy proceedings of Seller.

ARTICLE VIII CLOSING CONDITIONS

Closing Conditions. Subject to ARTICLE XII and Seller's right to consummate a Transfer of the Purchased Assets to a third party buyer other than Purchaser, Purchaser and Seller each covenant and agree to use commercially reasonable efforts to obtain the satisfaction of the conditions to Closing set forth in this ARTICLE VIII.

■ **Conditions to the Obligation of Seller.** The obligation of Seller to consummate the Transactions and to take any other action required to be taken by Seller, or any of them, at the Closing or thereafter is subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived in writing by Seller in whole or in part:

■ All representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects (except that any such representation or warranty that is qualified by a reference to materiality shall be, to the extent so qualified, true and correct in all respects) as of the Closing Date as if made on the Closing Date (unless such representation or warranty is expressly made as of an earlier date, in which Case as of such date). Purchaser shall have performed and complied in all material respects with all the covenants, conditions and agreements contained in this Agreement required to be performed and complied with by it at or prior to the Closing.

(b) All documents and other items described in Section 4.6 required to have been delivered by Purchaser to Seller under this Agreement at or prior to the Closing shall have been delivered, to the reasonable satisfaction of Seller.

(c) No court of competent jurisdiction or any other Governmental Authority shall have issued an order, decree or ruling or taken any action restraining, enjoining or otherwise prohibiting or making illegal the Transactions, or seeking to obtain damages or impose penalties in respect thereof.

(d) The Bankruptcy Court shall have entered the Sale Order approving the sale of the Purchased Assets to Purchaser which order shall not have been rendered ineffective by any court of competent jurisdiction and such Sale Order has become final and not subject to appeal.

■ **Conditions to the Obligation of Purchaser.** The obligation of Purchaser to consummate the Transactions and to take any other action required to be taken by Purchaser at the Closing or thereafter is subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived in writing by Purchaser in whole or in part:

■ All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects (except that any such representation or warranty that is qualified by a reference to materiality shall be, to the extent so qualified, true and correct in all respects) as of the Closing Date as if made on the Closing Date (unless such representation or warranty is expressly made as of an earlier date, in which Case as of such date). Seller shall have performed and complied in all material respects with all of their covenants, conditions and agreements contained in this Agreement required to be performed and complied with by them at or prior to the Closing.

(b) All documents and other items described in Section 4.4 required to have been delivered by Seller to Purchaser under this Agreement at or prior to the Closing shall have been delivered, to the reasonable satisfaction of Purchaser.

(c) No court of competent jurisdiction or any other Governmental Authority shall have issued an order, decree or ruling or taken any action restraining, enjoining or otherwise prohibiting or making illegal the Transactions, or seeking to obtain damages in respect thereof.

(d) The Bankruptcy Court shall have entered the Sale Order approving the sale of the Purchased Assets to Purchaser which order shall not have been rendered ineffective by any court of competent jurisdiction and such Sale Order has become final and not subject to appeal.

ARTICLE IX POST-CLOSING COVENANTS

■ **Post-Closing Access.**

■ Purchaser acknowledges that, subsequent to the Closing, Seller may need access to information, documents or computer data in the control or possession of Purchaser for purposes of (i) concluding the Transactions, (ii) pursuing the administration of and legal actions in the Case or other Bankruptcy proceedings of Seller, (iii) for audits, investigations, compliance with governmental requirements, regulations and requests, and (iv) the prosecution or defense of third party claims. Accordingly, Purchaser agrees that upon reasonable notice, during normal business hours it will make available to Seller and their representatives, including counsel and accountants, commercially reasonable access to, and the right to make copies of, such documents and information as may be reasonably available relating to the Purchased Assets and Assumed Liabilities.

(b) Purchaser acknowledges that, as of the Closing, certain Excluded Assets may be in possession of officers and employees of the Seller. In the event that Purchaser is prevented from possession of any of the Purchased Assets, Seller agrees to take possession of such Purchased Assets and deliver them to the Purchaser.

■ **Records After the Closing.** After the Closing, Purchaser shall keep and preserve all documents, computer data, and other records and information of Seller existing as of the Closing and which constitute a part of the Purchased Assets for a period of five (5) years, or longer if required to do so under applicable federal or Texas Law. At the request of the Seller, the Purchaser shall make such records available to the extent required by the Seller to (i) comply with laws and regulations; (ii) defend claims made against the Seller by third parties; and (iii) collect or otherwise administer Excluded Assets.

■ **Further Assurances.** From time to time after the Closing, each Party shall, without further consideration, execute and deliver or cause to be executed and delivered to the other Parties such additional instruments, and shall take such other action, as the other Parties may reasonably request to carry out the Transactions in accordance with this Agreement and the Transaction Documents or any order of the Bankruptcy Court.

ARTICLE X TERMINATION

Right of Termination. Subject to the provisions of this Agreement, this Agreement may be terminated at any time prior to the Closing as follows:

■ by the mutual agreement of Purchaser and Seller;

(b) by Purchaser, if Seller has breached any representation, warranty or covenant in this Agreement such that the condition in Section 8.3(a) cannot be satisfied, *provided*, that Purchaser has notified Seller in writing of the breach and if curable the breach shall have continued without cure for ten (10) Business Days after the notice of breach, and such breach has not been waived by Purchaser;

(c) by Seller, if Purchaser has breached any representation, warranty or covenant in this Agreement such that the conditions in Section 8.2(a) cannot be satisfied, *provided*, that Seller has notified Purchaser in writing of the breach and if curable the breach shall have continued without cure for ten (10) Business Days after the notice of breach, and such breach has not been waived by Seller;

(d) by Purchaser or Seller, if any court of competent jurisdiction or any other Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the Transactions, and such order, decree, ruling or action shall be final and non-appealable;

(e) by Purchaser or Seller, in the event that the Bankruptcy Court issues any order, writ, judgment, decree or injunction approving or permitting the consummation of a Transfer of the Purchased Assets to a third party buyer other than Purchaser, *provided*, that Purchaser is not designated as a back-up to such third party buyer; or

(f) by Purchaser or Seller, upon consummation of a Transfer of the Purchased Assets to a third party buyer other than Purchaser;

■ by Purchaser or Seller, if the Bankruptcy Court determines not to enter the Sale Order approving the Transfer of the Purchased Assets to Purchaser.

■ **Effect of Termination.** A right of termination under Section 10.1 may be exercised by Purchaser or Seller, as the Case may be, by giving written notice thereof to the other Parties at any time prior to the Closing. If Purchaser or Seller, as the Case may be, terminate this Agreement under Section 10.1, this Agreement shall terminate and become void, the Transactions shall be abandoned and the obligations and liabilities of the Parties shall terminate, as of the date of such termination, except that (i) the obligations set forth in Section 3.1, Section 11.4 and Section 12.1 shall survive any such termination and (ii) other than as set forth in Section 3.1 and Section 11.4 and subject to Section 12.3, no exercise by a Party of its right to terminate under Section 10.1 shall prejudice such Party's rights against the other Party for a breach occurring prior to any such termination of a representation, warranty or covenant (but only to the extent such breach would result in a failure of the condition set forth in Section 8.2(a), in the Case of a breach by Purchaser, or Section 8.3(a), in the Case of a breach by Seller).

ARTICLE XI BANKRUPTCY

Bankruptcy Filing. The Parties acknowledge that the Seller is a Debtor Estate under the under the Bankruptcy Code in Bankruptcy Court. PURCHASER AND SELLER ACKNOWLEDGE THAT THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS AND THE CONSUMMATION OF THE TRANSACTIONS ARE EXPRESSLY SUBJECT TO AND CONDITIONED ON BANKRUPTCY COURT APPROVAL, AND THAT THE PROVISIONS OF

THIS AGREEMENT WILL ONLY BE ENFORCEABLE TO THE EXTENT APPROVED BY THE BANKRUPTCY COURT.

11.2. **Possible Auction.** Purchaser acknowledges that in connection with the Cases and related bankruptcy proceedings Seller contemplates that there may be an auction for the Purchased Assets, and that the Bankruptcy Court may ultimately approve a sale to a third party buyer other than Purchaser. If Seller, in its sole discretion, determines that an auction should be conducted, Seller will file a motion seeking a Bankruptcy Court order approving bidding procedures (the “*Bidding Procedures Order*”) that will govern any such auction, as well as related matters such as payment of the Break-Up Fee.

■ **Sale Order.** Seller will seek an order from the Bankruptcy Court (the “*Sale Order*”) authorizing the Transfer of the Purchased Assets, pursuant to Section 363 of the Bankruptcy Code, to the bidder with the offer that Seller determines to be the highest and best offer for the Purchased Assets (the “*Prevailing Bidder*”). Seller will use commercially reasonable efforts to obtain entry of the Sale Order (a) as soon as reasonably practicable following the date hereof if no auction is conducted or (b) as soon as reasonably practicable following the completion of an auction if an auction is conducted. Seller will request that the Sale Order contain standard bankruptcy sale provisions, including language providing that the Prevailing Bidder is a purchaser in good faith for fair value within the meaning of Section 363(m) of the Bankruptcy Code and entitled to the protection of Section 363(m) of the Bankruptcy Code. Seller will further request that the Sale Order provide that the consideration for the Purchased Assets set forth herein, if Purchaser is the Prevailing Bidder, constitutes reasonably equivalent value and fair consideration. The Sale Order shall provide Seller with authority to complete the Transfer of the Purchased Assets and consummation of the Transactions and contain a provision that any prior officer, director or employee of Kubco is directed to deliver any of the Purchased Assets in their possession or control to Purchaser on demand. Seller will request that the Sale Order provide that the Prevailing Bidder is not a successor to Seller and, to the maximum extent permitted by applicable Law, will not be subject to successor liability. Purchaser, if the Prevailing Bidder, shall promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of funding and performance by Purchaser of its obligations under this Agreement and the other Transaction Documents and demonstrating that Purchaser is a good faith buyer under the Bankruptcy Code. Upon the entry of the Sale Order, Purchaser, if the Prevailing Bidder, shall use commercially reasonable efforts to take all steps necessary to consummate the Transactions in accordance with this Agreement and the other Transaction Documents. Purchaser acknowledges that this Agreement and the Transaction Documents may be modified from time to time during Bankruptcy Court hearings or otherwise during the sale process.

■ **Stalking Horse Provisions.** Purchaser acknowledges that in connection with the Cases and related bankruptcy proceedings Seller contemplates that there may be an auction for the Purchased Assets, and that the Bankruptcy Court may ultimately approve a sale to a third party buyer other than Purchaser. Purchaser may be designated as the stalking horse bidder in any such auction. Subject to Bankruptcy Court approval, in the event that Purchaser is not the Prevailing Bidder in an auction for the Purchased Assets, if designated as the stalking horse bidder, Purchaser would be entitled to reimbursement of actual and documented (to Seller’s reasonable satisfaction) out-of-pocket expenses of up to 2% of the Purchase Price incurred by Purchaser in connection with the negotiation of this Agreement and the other Transaction Documents (the “*Break-Up Fee*”). If Purchaser receives a Break-Up Fee as approved by the Bankruptcy Court, Purchaser may not claim any additional damages based upon, resulting from or relating to the negotiation, execution, performance, non-performance or breach of, or otherwise related to or arising from, this Agreement, the other Transaction Documents or the Transactions. As a condition of payment and upon receipt of the Break-Up Fee, Purchaser hereby irrevocably and unconditionally releases, quits and forever discharges Seller and Seller’s Affiliates and

representatives of and from any and all claims, causes of action or other assertions of liability of any nature arising out of, based upon, resulting from or relating to the negotiation, execution, performance, non-performance or breach of, or otherwise related to or rising out of, this Agreement, the other Transaction Documents or the Transactions. Notwithstanding the foregoing, if designated as the stalking horse bidder, Purchaser will not be entitled to any Break-Up Fee and will be deemed to have waived its right to seek any Break-Up Fee if this Agreement is terminated pursuant to Section 10.1(a), Section 10.1(c), Section 10.1(d), or Section 10.1(g). A Break-Up Fee shall only be payable from the sale proceeds upon the consummation of a sale of the Purchased Assets to a third party buyer other than Purchaser. If Purchaser is not designated as the stalking horse bidder, Purchaser shall not be entitled to the Break-Up Fee or any other claim for reimbursement of expenses.

ARTICLE XII MISCELLANEOUS

12.1. **Charges and Expenses.** Except as expressly provided in the Bidding Procedures Order with respect to payment of the Break-Up Fee and in Section 11.4, each Party will pay its own fees, expenses and disbursements and those of its agents, representatives, financial advisors, accountants and counsel, including all fees and commissions, incurred in connection with the negotiation, execution, delivery and performance of this Agreement and the other Transaction Documents, and any amendments hereto or thereto, and the consummation of the Transactions.

12.2. **Notices, Etc.** All notices, requests, demands or other communications required by or otherwise with respect to the Transaction Documents shall be in writing and shall be deemed to have been duly given to any Party when delivered in person, sent by registered or certified mail (postage prepaid) or sent by a nationally recognized overnight courier service that provides a receipt of delivery, in each case to the following addresses:

IF TO PURCHASER:

Email:

and with a copy to:

IF TO SELLER:

Russel O'Brien, VP
Kubco Decanter Services, Inc.
Debtor Case 16-34581
8031 Breen Road
Houston, TX 77064
E-mail: robrien@kubco.com

and with copies to:

Peter Johnson
Law Offices of Peter Johnson
11 Greenway Plaza, Suite 2820
Houston, Texas 77046
Telephone: 713-961-1200
Email: pjohnson@pjlaw.com

or to such other address as such Party shall have designated by notice so given to each other Party in accordance with this Section 12.2.

■ **Limitation.** In no event shall Seller be liable to Purchaser or any other Person for any special, incidental, exemplary, indirect, consequential or punitive damages or for specific performance of this Agreement.

■ **Amendments, Waivers, Etc.** This Agreement may not be amended, changed, supplemented, waived or otherwise modified except by an instrument that is both (a) in writing signed by Purchaser and Seller and (b) approved by the Bankruptcy Court. The failure of any Party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect of this Agreement at Law or in equity, or to insist upon compliance by any other Party hereto with its obligations hereunder, and any custom or practice of the Parties at variance with the terms of this Agreement, shall not constitute a waiver by such Party of its right to exercise any such or other right, power or remedy or to demand such compliance.

■ **Assignment; Binding Agreement.** Purchaser shall not have the right to assign this Agreement without the prior written consent of Seller. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and permitted assigns. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

12.6. **Entire Agreement.** This Agreement and the other Transaction Documents, including the Exhibits and Schedules attached hereto and thereto, embody the entire agreement and understanding between the Parties relating to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements, understandings, representations and warranties, both oral and written, relating to such subject matter. There are no representations, warranties or covenants by the Parties hereto relating to such subject matter other than those expressly set forth in this Agreement.

12.7. **No Third Party Beneficiaries.** This Agreement and the other Transaction Documents are not intended to be for the benefit of, and shall not be enforceable by or confer any legal or equitable right, benefit, claim or remedy of any nature on, any Person that is not a party hereto.

12.8. **Governing Law; Venue.** Except to the extent governed by Bankruptcy Law, this Agreement and the other Transaction Documents and all disputes hereunder and thereunder shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas, without regard to principles of conflict of laws, and without reference to any rules of construction regarding the party responsible for the drafting of this Agreement. The Bankruptcy Court shall have exclusive jurisdiction of any action or proceeding relating to, or arising under or in connection with, this Agreement and the Transaction Documents and the Parties each consent to personal jurisdiction of the Bankruptcy Court and waive any objection to the Bankruptcy Court's jurisdiction. Any action or proceeding not subject to the subject matter jurisdiction of the Bankruptcy Court and relating to, or arising under or in connection with, this Agreement and the Transaction Documents shall be instituted in any state court within Harris County, Texas, or the federal courts having jurisdiction over such county and the Parties hereby submit to such jurisdiction. Service of any summons and complaint or other process in any such action or proceeding may be made by registered or certified mail directed to the Parties as set forth in Section 12.2, and service so made shall be deemed to be completed upon the earlier of actual receipt or three (3) days after the same shall have been posted as aforesaid, the Parties hereby waive personal service of any such action or proceeding.

12.9. **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.9.

12.10. **Severability.** Any term or provision of this Agreement that is illegal, invalid or unenforceable in any situation in any jurisdiction shall not affect the legality, validity or enforceability of the remaining terms and provisions of this Agreement or the legality, validity or enforceability of the offering term or provision in any other situation or in any other jurisdiction.

█ **Headings.** The name assigned this Agreement and the section captions and headings used herein are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

█ **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies each signed by less than all, but together signed by all, the parties hereto. A signed copy of this Agreement delivered by facsimile, email or other electronic means shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

■■■■ **Interpretation.** For purposes of this Agreement, unless the context otherwise requires or unless otherwise specified (a) the words “include” “includes” and “including” mean “including, without limitation,” (b) the terms “hereof,” “herein,” and “herewith” and words of similar import shall be construed to refer to this Agreement as a whole (including all of the Exhibits and Schedules hereto) and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits and Schedules of this Agreement, (c) the masculine gender shall also include the feminine and neutral genders, and vice versa, (d) provisions shall apply, when appropriate, to successive events and transactions, (e) all capitalized terms defined herein are equally applicable to both the singular and plural forms of such terms, and (f) references to a statute, rule or regulation mean such statute, rule or regulation as amended from time to time and includes any successor legislation thereto and any rules or regulations promulgated thereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be duly executed as of the Effective Date.

PURCHASER:

NAME:
TITLE:

SELLER:

Bankruptcy Estate of Kubco Decanter Services, Inc.,
Debtor
Case 16-34581

RUSSEL O'BRIEN, VP
AUTHORIZED AGENT OF DEBTOR-IN-POSSESSION

Bill of Sale and Assignment and Assumption Agreement Date:

December ____, 2015

Seller: THE BANKRUPTCY ESTATE OF KUBCO DECANter SERVICES, INC., Debtor
Case 16-34581 a Texas Corporation referred to herein sometimes as ("**Kubco**")

Seller's Mailing Address: Law Offices of Peter Johnson, 11 Greenway Plaza, Suite 2820,
Houston, Texas 77046

Purchaser:

Purchaser's Mailing Address:

Asset Purchase Agreement: That certain Asset Purchase Agreement dated _____ between Seller and Purchaser and approved by Order of the United States Bankruptcy Court, a copy of which is attached hereto and incorporated herein for all purposes ("APA#):

Purchased Assets:

1. the Intellectual Property owned by Kubco, whether or not issued, abandoned or pending, (the "Purchased Intellectual Property");
2. all furniture, equipment, including all of Kubco's testing equipment, spray and mixing equipment, and personal protective equipment, furnishings, supplies, fixtures, materials, inventory, tools, computer hardware, computer equipment, and other tangible personal property owned by Seller which is used in the Business, including, but not limited to, those set forth in Exhibit "C." to the attached APA (collectively, the "Owned Tangible Property");
3. All Kubco inventory and any previous iterations of this product in all forms of packaging. This includes all inventory held at 8031 Breen Road, Houston, Texas 77064, or held by any member, manager, officer, or employee and elsewhere.
4. all of Seller's rights to access marketing materials including, but not limited to, printed materials, website, linkedin and vimeo;
5. all customer lists and potential customer target list;
6. all telephone numbers and facsimile numbers;
7. all assumed names, goodwill and trade names of Seller;
8. all deposits, credits, advances, prepayments and rebates that relate to the Purchased Assets;
9. all rights, demands, claims, causes of action, rights of recovery, credits, allowances, rebates, recoupment or rights of setoff or subrogation or defenses of Seller against any Person, to the extent that they relate to the Purchased Assets and are not otherwise included in the Excluded Assets defined hereunder.
10. all assets, properties and rights of Seller and Seller's Affiliates used in or relating to their respective businesses other than the Business;
11. all books, records and other documents, or copies thereof, whether in hard copy, electronic or other

format, unless (i) related to employees or employee-related or employee benefit-related files or records and any other books and records which Seller is prohibited from disclosing or transferring to Purchaser under applicable Law and are required by applicable Law to retain in their possession, (ii) they cannot be transferred under Laws relating to privacy or health, (iii) Seller is not permitted to transfer pursuant to confidentiality agreements with others, or (iv) related to assets, liabilities or obligations retained by Seller, including the Excluded Assets, Excluded Liabilities and any accounts receivable of Seller (Provided, the Purchaser shall be entitled to a copy of records identified in this subsection [iv.]); and

12. all of Sellers' rights under the Transaction Documents and the other agreements, certificates and instruments to be executed in connection with, or pursuant to, this Agreement.
13. to the extent available, all books and records relating exclusively to the Purchased Assets, including equipment maintenance and warranty information;
14. to the extent legally assignable, the rights of Seller to manufacturers' warranties and indemnities to the extent relating to the Purchased Assets, other than warranties and indemnities relating to any Excluded Assets; and
15. to the extent legally assignable and subject to subsequent acceptance by Purchaser in its sole discretion and applicable requirements of transfer, all Permits of Seller used in the Business related to the Purchased Assets (collectively the "Assigned Permits").

Excluded Assets:

Other than the Purchased Assets described above, Purchaser expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets, properties, rights or interests of Seller of any nature, and all such other assets, properties, rights and interests are expressly excluded from the Purchased Assets (collectively, the "Excluded Assets") and nothing herein shall be deemed to Transfer any of the Excluded Assets to Purchaser. Purchaser expressly acknowledges that certain Excluded Assets may be physically located at and within the Facility as of Closing, and Purchaser acknowledges that any such Excluded Assets remain assets of Seller and no right, title or interest therein shall pass to Purchaser by reason of any Transaction Document or otherwise. The Excluded Assets include, but are not limited to, the following assets, properties, rights and interests of Seller:

1. all cash and cash equivalents, bank accounts, investments, investment accounts, securities and certificates of deposit;
2. all accounts receivable, notes receivable, negotiable instruments, chattel paper and other receivables together with any fees or charges accrued thereon;
3. all motor vehicles, aircraft, boats and yachts;
4. all leased or licensed equipment, machinery and other tangible, including copiers, printers, telephone systems, paper shredding bins, water systems, water coolers, ice machines and gas tanks;
5. all Permits issued to Seller and used in the Business that are not Assigned Permits; and
6. Kubco's interest in the leasehold located at 8031 Breen Road, Houston, Texas 77064.

Assumed Liabilities.

Subject to the terms and conditions set forth herein, Purchaser shall assume and agree to pay, perform and discharge when due all liabilities and obligations arising out of or relating to the Purchased Assets on or after the Closing (collectively, the "**Assumed Liabilities**"), including the following:

1. all liabilities and obligations for Taxes described in the Asset Purchase Agreement relating to the Purchased Assets and the Assumed Liabilities for any taxable period ending after the date hereof; and
2. all other liabilities and obligations arising out of or relating to Purchaser's ownership and operation of

the Purchased Assets on or after the Removal Date defined in the APA.

Excluded Liabilities.

Purchaser shall not assume and shall not be responsible to pay, perform or discharge any of the following liabilities or obligations of Seller (collectively, the “**Excluded Liabilities**”):

1. any liabilities or obligations arising out of or relating to Seller’s ownership and operation of the Purchased Assets prior to the Closing;
2. any liabilities or obligations arising out of the Seller’s occupation of its leasehold incurred prior to the Removal Date;
3. any liabilities or obligations relating to or arising out of the Excluded Assets; and
4. any liabilities or obligations for (i) Taxes relating to the Purchased Assets and the Assumed Liabilities for any taxable period ending on or prior to the Closing Date and (ii) any other Taxes of Seller for any taxable period.

Condition of Assets.

AS A MATERIAL PART OF THE CONSIDERTAION FOR SELLER ENTERING INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS PURCHASER EXPRESSLY ACKNOWLEDGES, REPRESENTS, WARRANTS AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN **Error! Reference source not found.** AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OF THE PURCHASED ASSETS AND ASSUMED LIABILITIES ARE CONVEYED TO PURCHASER, AND PURCHASER IS ACCEPTING THE SAME, AS OF THE CLOSING DATE, ON AN “AS IS, WHERE IS” BASIS “WITH ALL FAULTS” AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY, AND NEITHER SELLER NOR ANY AFFILIATE OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER AND SELLER’S AFFILIATES AND REPRESENTATIVES DO NOT MAKE, AND EXPRESSLY DISCLAIM AND SPECIFICALLY NEGATE, ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, CONDITIONS AND GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE PURCHASED ASSETS, BUSINESS AND ASSUMED LIABILITIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, INCLUDING ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, CONDITIONS AND GUARANTEES WITH RESPECT TO: (A) THE USE, VALUE, INCOME POTENTIAL, EXPENSES, MAINTENANCE, OPERATION, TRANSFERRABILITY, DESCRIPTION, LOCATION, CHARACTERISTICS OR CONDITION OF THE PURCHASED ASSETS OR ANY PORTION THEREOF, INCLUDING AS TO QUALITY, SUITABILITY, TENANTABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC PURPOSE OR A PARTICULAR PURPOSE, GOOD AND WORKMANLIKE CONSTRUCTION, ACCURACY, QUIET ENJOYMENT, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE; (B) THE NATURE, QUALITY OR CONDITION OF THE PURCHASED ASSETS, INCLUDING THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR TOXIC SUBSTANCES OR CONDITIONS, WHETHER OR NOT OBVIOUS, VISIBLE OR APPARENT; (C) THE SUITABILITY OF THE PURCHASED ASSETS FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT; (D) THE COMPLIANCE OF OR BY THE PURCHASED ASSETS OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING THE ENVIRONMENTAL CONDITION OF THE OWNED REAL PROPERTY AND THE PRESENCE OF, ABSENCE OF OR CONTAMINATION BY HAZARDOUS MATERIALS, OR THE COMPLIANCE OF THE LEASED REAL PROPERTY WITH ALL REGULATIONS OR LAWS PERTAINING TO HEALTH, SAFETY OR THE ENVIRONMENT, INCLUDING THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE CLEAN WATER ACT, THE TEXAS HEALTH

AND SAFETY CODE AND THE TEXAS WATER CODE, EACH AS MAY BE AMENDED FROM TIME TO TIME, AND INCLUDING ANY AND ALL REGULATIONS, RULES OR POLICIES PROMULGATED THEREUNDER; (E) THE PRESENCE OF ANY ENDANGERED OR THREATENED SPECIES ON THE LEASED REAL PROPERTY, AS WELL AS THE SUITABILITY OF THE LEASED REAL PROPERTY AS HABITAT FOR ANY OF THOSE SPECIES; (F) THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES; (G) THE TRUTH ACCURACY OR COMPLETENESS OF ANY MATERIALS, FINANCIAL INFORMATION OR OPERATING DATA OR OTHER INFORMATION DELIVERED OR MADE AVAILABLE TO PURCHASER IN CONNECTION WITH THE TRANSACTIONS (INCLUDING DILIGENCE MATERIALS PROVIDED TO PURCHASER); OR (H) OTHERWISE WITH RESPECT TO THE PURCHASED ASSETS, BUSINESS OR ASSUMED LIABILITIES. WITHOUT LIMITING THE FOREGOING, SELLER DOES NOT WARRANT OR REPRESENT THAT ANY LICENSED MATERIALS OR SERVICES WILL MEET PURCHASER'S DATA PROCESSING OR OTHER REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OR THAT THE USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE OR MEET ANY PERFORMANCE OR RELIABILITY STANDARDS. PURCHASER FURTHER EXPRESSLY ACKNOWLEDGES, REPRESENTS, WARRANTS AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT, INVESTIGATE AND EXAMINE THE PURCHASED ASSETS, BUSINESS AND ASSUMED LIABILITIES, PURCHASER IS PURCHASING THE PURCHASED ASSETS AND ASSUMING THE ASSUMED LIABILITIES SOLELY PURSUANT TO ITS OWN INDEPENDENT INVESTIGATION, EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE THEREOF, AND PURCHASER IS RELYING SOLELY ON INSPECTIONS OF THE PURCHASED ASSETS AND DETERMINATIONS OF THE VALUE OF THE PURCHASED ASSETS AND USES TO WHICH THE PURCHASED ASSETS MAY BE PUT AS MADE BY PURCHASER AND PURCHASER'S OWN AGENTS, EMPLOYEES, ATTORNEYS, CONSULTANTS, CONTRACTORS AND OTHER PROFESSIONAL ADVISORS OR REPRESENTATIVES, AND PURCHASER IS NOT RELYING UPON ANY REPRESENTATIONS OR STATEMENTS OF ANY KIND (WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR OTHERWISE) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) OR ANY INFORMATION WHICH MAY HAVE BEEN PROVIDED OR MAY BE PROVIDED (OR PURPORTEDLY PROVIDED) BY OR ON BEHALF OF SELLER OR ANY OF SELLER'S AFFILIATES, AGENTS, EMPLOYEES, ATTORNEYS, CONSULTANTS, CONTRACTORS OR OTHER PROFESSIONAL ADVISORS OR REPRESENTATIVES.

Consideration and Transfer:

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Seller, Seller does hereby sell, assign, transfer, convey and deliver ("**Transfer**") to Purchaser, free and clear of all liens, claims, options, warrants, charges, security interests, pledges, mortgages or other encumbrances whatsoever ("**Liens**"), and Purchaser does hereby purchase and accept from Seller, on the terms and subject to the conditions hereinafter set forth, all of the rights, title and interests of Seller in and to all assets owned by the Seller that are not Excluded Assets (herein defined) under this Agreement, including but not limited to the Purchased Assets, save and except the Excluded Assets.

To have and to hold the Purchased Assets to Purchaser and Purchaser's heirs, successors, and assigns forever. Seller binds Seller and Seller's heirs and successors to warrant and forever defend all and singular the Purchased Assets to Purchaser and Purchaser's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Seller agrees to execute and deliver any additional documents and to perform any additional acts reasonably necessary or appropriate to carry out the intent of this bill of sale in transferring the Purchased Assets to Purchaser.

When the context requires, singular nouns and pronouns include the plural.

SELLER:

Bankruptcy Estate of Kubco Decanter Services, Inc., Debtor
Case 16-34581

RUSSEL O'BRIEN, VP
AUTHORIZED AGENT OF DEBTOR-IN-POSSESSION

PURCHASER:

STATE OF TEXAS)

COUNTY OF HARRIS)

This instrument was acknowledged before me on _____, 2016, by Russel O'Brien, VP and Authorized Agent for the Bankruptcy Estate of Kubco Decanter Services, Inc., Case 16-34581 referred to herein sometimes as ("Kubco").

Notary Public, State of Texas
My commission expires: _____

STATE OF TEXAS)

COUNTY OF HARRIS)

This instrument was acknowledged before me on _____, 2016, by _____, as the _____ of _____, a _____ company, on behalf of said company.

Notary Public, State of Texas
My commission expires: _____

Exhibit "B"

CERTIFICATE OF SECRETARY

I certify that:

I am the duly qualified and acting Secretary of _____ (the "Company"), a duly organized and existing _____.

The following is a true and correct copy of resolutions adopted by the Managers by Written Unanimous Consent of the Managers of the Company, without a meeting, on and which consent was filed in the minute book of the Company.

RESOLVED, that the Company enter into and purchase on terms and conditions set out in that certain Asset Purchase Agreement by and between the Company as Purchaser and THE BANKRUPTCY ESTATE OF KUBCO DECANter SERVICES, INC., Debtor Case 16-34581 a Texas Corporation ("*Kubco*") as Seller, all of the Purchased Assets of Kubco as described therein according to the terms of the agreement attached hereto as Exhibit "1" and incorporated herein by reference (the "Agreement");

RESOLVED, that a true and correct copy of the Certificate of Formation of the Corporation is attached hereto as Exhibit "2", and incorporated herein by reference;

RESOLVED, that a true and correct copy of the existing company agreement for the Company is attached hereto as Exhibit "3" and incorporated herein by reference;

RESOLVED, that the below listed individuals are officers of the Company and that _____, as _____ of the Company is authorized to execute any and all documents on behalf of the Company including the "Transaction Documents" described in the Agreement, on behalf of the Company and as its act and deed with full authority.

The resolutions are in conformity with the Certificate of Formation and Company Agreement of the Company, have not been modified or repealed, and are now in full force and effect.

Date:



Kubco Decanter Services, Inc., Debtor Case 16-34581

PERSONAL PROPERTY LISTING

ASSET	DATE ACQUIRED	DESCRIPTION	MODEL NUMBER	SERIAL NUM	COST
203	10/7/09	DELL COMPUTER/MIKE			\$ 1,377.42
216	6/21/11	DELL SERVER/BACK-UP/	POWER EDGE T610	SBS2008SP2	\$ 31,852.62
218	8/15/11	DELL LATITUDE LAPTOP/DOCKING STATION	E6520		\$ 2,941.99
219	8/15/11	DELL MINI TOWER COMPUTER	OPTIPLES 790 I5		\$ 1,077.00
222	11/15/11	DELL OPTIPLEX COMPUTER W/23" MONITOR	DELL		\$ 2,010.20
243	2/23/12	OFFICE FURNITURE	Inv111215/11134		\$ 25,694.22
103	9/20/99	Victor 20" Lathe	2080S	CC8805005	\$ 21,271.13
104	9/20/99	Victor 29" Lathe	29120T	9956	\$ 29,227.50
105	9/22/99	12 1/2 x 58" Mill	JF-5VSL	990734	\$ 14,072.50
106	9/22/99	10 x 54" Mill	JF-4VS	980735	\$ 11,366.25
107	9/22/99	10 x 54" Mill	JF-4VS	980736	\$ 11,366.25
123	10/1/99	JIB CRANE			\$ 3,220.44
124	10/1/99	JIB CRANE			\$ 3,220.44
125	11/1/99	Victor 35" Lathe	PA-35120 6"	99100140	\$ 62,005.60
126	11/1/99	Victor 45" Lathe	PA-45120	99100141	\$ 65,383.00
127	10/1/99	Welding Positioner	Aronson 2000	77616	\$ 5,683.13
129	10/1/99	Radial Arm Drill		5E-99	\$ 11,907.50
145	10/16/00	Miller Dimension Mig Welder 452		452 LA255537/KK019841	\$ 4,250.00
153	2/13/01	RADIAL DRILL PRESS	CINCINATI BICK		\$ 4,500.00
165	12/30/03	GEAR UNIT TEST STAND		KDS-0213	\$ 10,327.70
172	1/7/05	BAL SYSTM,CABLE,LTOP COMPUTER/W PRINTER			\$ 12,010.00
173	3/18/05	HYPERTHERM MAX 1650 PLASMA MACHINE			\$ 4,800.00
183	1/19/06	Bridgeport Series II Milling Machine		2788	\$ 9,750.00
185	3/28/06	USED BALANCING MACHINE	MODEL B50		\$ 14,194.00
187	5/18/06	EASY BALANCE SYSTEM W/NOTEBOOK COMPUTER			\$ 11,497.31
201	8/12/07	TEST PUMP COMPLETE			\$ 4,758.57
202	3/31/06	RESEARCH/DEVELOPMENT KHV-9300	KHV-9300		\$ 78,865.68
212	12/23/10	WELDER			\$ 5,599.00
214	2/10/11	WELDING MACHINE FOR BOLTS/STUDS	N4000		\$ 10,975.00
223	2/8/12	WELDING MACHINE, 450 25 F	450 25 F		\$ 7,656.47

ASSET	DATE ACQUIRED	DESCRIPTION	MODEL NUMBER	SERIAL NUM	COST
230	11/16/12	150 HP VFD - TEST UNIT			\$ 9,531.00
234	9/30/09	AUTOMATIC BALANCER ANALYZER			\$ 12,305.00
238	8/14/14	LATHE 2480T W/SPECIAL PACKAGE	2480T		\$ 34,160.00
	1/15/06	WHOLENBERG-HANNOVER LATHE			\$ 52,500.00
	1/15/12	HYSTER FORKLIFT			\$ 31,000.00
	1/15/12	HYSTER FORKLIFT			\$ 25,500.00
240	11/19/14	HYSTER 60 FORKLIFT	HYSTER 60	D187V22383Y	\$ 4,000.00
EQUIPMENT SUB TOTAL					\$ 651,856.92
	VAR	INVENTORY*			\$ 984,801.00
*Subject to minor adjustments for post-petition sales/purchases					TOTAL PERSONAL PROPERTY COST \$ 1,636,657.92