

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

In re

TITHERINGTON DESIGN & MANUFACTURING,  
INC.,

Debtor.

Chapter 11  
Case No. 16-10705

**MOTION PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE  
AND BANKRUPTCY RULES 2002 AND 6004 FOR AN ORDER  
(I) AUTHORIZING THE AUCTION SALE OF THE DEBTOR'S ASSETS, FREE AND  
CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (II) APPROVING TERMS  
AND CONDITIONS OF SALE (INCLUDING BIDDING PROCEDURES), (III)  
SCHEDULING THE SALE HEARING, AND (IV) GRANTING RELATED RELIEF**

**TITHERINGTON DESIGN & MANUFACTURING, INC.** (the "Debtor"), specializes in part design and precision CNC milling and CNC lathe work as well as designing and manufacturing products for the plastic packaging industry and plastic injection molding for the manufacture of closures for containers used in the nutrition and nutraceutical industries. The Debtor submits this Motion ("Motion") for an order pursuant to Sections 105 and 363(b), (f), (m) and (n) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (hereinafter, the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (I) authorizing and scheduling a public auction sale of the Assets (the "Auction Sale"), and clear of all liens and encumbrances, if any, with such liens and encumbrances to attach to the net proceeds of sale; (II) approving terms and conditions of sale (including bidding procedures); (III) scheduling a hearing to consider the approval of the successful bids at the Auction Sale ("Sale Confirmation Hearing"); and (IV) granting related relief; and respectfully represent as follows:

**Preliminary Statement**

Subsequent to the filing of its petition, respective counsel for the Debtor and NBT Bank (“NBT”) entered into discussions for the sale of the Debtor’s assets. NBT holds a security interest in all or substantially all of the Debtor’s assets. Pursuant to the terms of the Final Stipulation Authorizing Use of Cash Collateral and Authorizing Adequate Protection (the “Cash Collateral Stipulation”) for NBT Bank, National Association (“NBT”), the Debtor was obligated to satisfy certain milestones with respect to the disposition of certain assets. Included among those requirements was that the Debtor obtain a stalking horse purchaser of the Assets and, if such offer was obtained, that the Debtor file a motion to approve that offer, subject to higher and better offers, by July 15, 2016 the Debtor was to file a motion pursuant to 11 U.S.C. §363 to approve that sale.

On September 12, 2016, the Court entered an order approving the sale of the Debtor’s machining equipment (the “Machining Equipment Sale Order”) to Capital Recovery Group, LLC (“CRG”). Subsequent to the Debtor’s solicitation of offers for its machining equipment, the Debtor’s principal determined that the wind down of the Debtor’s business and the liquidation of its remaining assets<sup>1</sup>, consisting of its plastic molding equipment (collectively, the “Assets”), was in its best interest and that of its estate and creditors as well. In furtherance of that plan, the Debtor filed its application to retain CRG as its auctioneer. That application is presently pending with the Court and its approval is anticipated by the return date of the within motion.

The relief requested in this Motion is being sought in multiple steps. At an initial hearing to be held on a date set by the Court in the proposed Order Shortening Time pursuant to Federal Rule of Bankruptcy Procedure 9006, the Debtor will request that an order be entered approving the proposed auction sale of the Debtor’s remaining equipment, including the sale and bid

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<sup>1</sup> The proposed auction sale does not include the Debtor’s real property.

procedures. The Motion further requests that the Court set a hearing date subsequent to the auction sale to approve the successful bids at such sale (the "Sale Order").

### **Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. The Debtor filed its petition for relief pursuant to Chapter 11 of 11 U.S.C. §101, *et seq.* on April 21, 2016 (the "Petition Date").

3. Since the filing of the Petition, the Debtor has remained a debtor in possession pursuant to 11 U.S.C. §§1107 and 1108. No trustee or examiner has been appointed. No Committee of Unsecured Creditors has been appointed in the case.

4. On June 1, 2016, the Court entered an order approving the Cash Collateral Stipulation. As noted above, pursuant to that stipulation the Debtor was obligated to obtain an offer for the sale of certain of the Debtor's assets, or otherwise retain an auctioneer to effect the sale of the Assets. Pursuant to the Machining Equipment Sale Order, CRG purchased the Debtor's machining equipment for the sum of \$107,500.00. Subsequent to that sale process, the Debtor's principal determined that proceeding with the liquidation of the remaining assets, consisting largely of plastic molding equipment, and winding up the business was in the best interests of the Debtor, its estate and creditors. Accordingly, the Debtor has retained CRG to conduct an auction of the remaining assets. The remaining assets are subject to the perfected security interest of NBT Bank ("NBT"). NBT has filed a claim in the amount of \$1,904,831.10, secured by a lien on all, or substantially all, of the Debtor's assets.

5. NBT has consented to the sale process pursuant to 11 U.S.C. §363(f)(2), and has further agreed to a carve-out from the sale proceeds in the amount of \$30,000.00 for the estate (the “Carve-Out”).

#### **Marketing Efforts for the Assets**

6. Pursuant to the terms of its retention application, CRG proposes to provide a multi-tiered marketing and advertising campaign with respect to the equipment to be sold. CRG’s employees have over fifty years’ experience in the valuation and/or disposition of industrial assets. It proposes to perform a comprehensive audit of the Debtor’s equipment to create a catalog of the assets to be sold. Advertising of the sale will include aggressive email, online telemarketing, direct mailing and targeted print advertising in local, regional, national and international publications with interests in the Debtor’s industry. It also proposes to provide liability insurance and require that its sub-contractors do the same, and that proof of such coverage is provided. CRG will also supervise the removal of equipment sold as well as any surplus equipment and leave the Debtor’s facility in a neat and orderly fashion.

7. CRG anticipates scheduling an auction of the Debtor’s equipment to occur in or about early to mid-November, 2016. This schedule will afford CRG sufficient time to inspect, catalog and advertise the sale to prospective purchasers

#### **Proposed Sale Procedures**

8. To ensure that maximum value is obtained in connection with the sale of the Assets, the Debtor is requesting that this Court enter the Auction Sale Order so as to provide for, among other things, advertising of the sale as determined by CRG in the exercise of its business judgment and the scheduling of an auction sale at a date and time determined by CRG in its discretion, but in no event on a date later than **November 15, 2016** (the “Auction Sale”).

In order to facilitate an orderly sale of the assets, CRG has prepared bidding procedures to be employed in the Auction Sale and terms and conditions of the sale of the Assets to the successful bidder. The proposed bidding procedures and terms and conditions of the Auction Sale (collectively, the “Terms and Conditions”) are attached as hereto as Exhibit “A”.

9. The salient provisions of the Auction Sale and the Terms and Conditions are summarized as follows:

- a. CRG will conduct the Auction Sale not later than November 15, 2016. The sale shall be conducted at the Debtor’s business address at 102 Sharron Avenue, Plattsburgh, New York. After the Auction Sale, the Debtor will determine which bid is the highest and best bid for the Assets.
- b. The Assets are being sold AS IS, WHERE IS, WITHOUT RECOURSE TO, REPRESENTATION BY, OR WARRANTIES BY, THE SELLER OF ANY KIND OR DESCRIPTION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AND WITHOUT CONTINGENCIES OF ANY KIND.
- c. Sales of the Assets shall be free and clear of all liens and encumbrances, with such liens and encumbrances attaching to the proceeds of sale to the same extent and priority as such liens had prior to the sale of the Assets.
- d. CRG shall have discretion to set bidding increments, and to arrange for remote bidding in the form of telephone or internet bidding, provided such bidders have qualified to participate in the auction in accordance with CRG’s policies and procedures.
- e. CRG may offer the Assets in lots as it seems appropriate in its experience and in the exercise of its business judgment.
- f. Successful bidders shall pay their respective bid amounts, plus a 15% buyer’s premium to CRG immediately following the conclusion of the Auction Sale.
- g. Pursuant to Bankruptcy Code § 363(k), any Lienholder may credit bid at the Auction Sale for so much of the Assets as subject to their respective Lien and up to the allowed amount of their secured claim.
- h. The Court shall conduct a hearing on **November 16, 2016 at 10:30 a.m.** to consider entering an Order approving the sales of the Assets to the successful bidders. The sales of the Assets are subject to approval by the Bankruptcy Court at the hearing (the “Sale Confirmation Hearing”).

- i. The successful bidder shall pay the bid price plus the buyer's premium immediately at the conclusion of the Auction Sale.
- j. In the event of a default by any successful bidder, at the sole option of the Debtor, the initial successful bidder's bid shall be deemed forfeited or withdrawn, and the Debtor shall be authorized to arrange for the sale of the particular item or items of Assets to the second highest bidder for such properties without any further notice. Except as expressly agreed by the Debtor, the Terms and Conditions shall govern in the event of a sale to the second highest bidder.
- k. The above is intended to be only a summary of the more salient terms of the Auction Sale. CRG's Terms and Conditions are annexed hereto as Exhibit A.

10. Following submission of the auctioneer's report as provided for in Local Rule 6005-1, the Debtor shall file a motion for entry of an order approving the auctioneer's report, allowing reimbursement of the auctioneer's expenses and allowing disbursement of such fees, payment of the Carve-Out to Nolan & Heller, LLP, and turnover of the balance of the sale proceeds to NBT Bank on account of its security interest in the Assets.

**Relief Requested And Legal Basis Therefor**

11. This Motion requests, pursuant to Sections 105 and 363(b), (f) and (m), of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, the entry of the Auction Sale Order, annexed hereto as Exhibit "B", including: (a) approval of the Auction Sale and Terms and Conditions, (b) providing notice of the Sale Approval Hearing, and (c) granting related relief.

**Notice of Bid Procedures and Terms and Conditions and Hearing to Approve the Same**

12. The Debtor will serve a copy of this Motion, together with all Exhibits, on the following parties (collectively, the "Bid Notice Parties"): (i) counsel for NBT Bank; (ii) counsel for Mold-Rite Plastics, LLC; (iii) any parties who have timely filed requests for notice under Bankruptcy Rule 2002 entered in this chapter 11 case prior to the mailing deadline; (iv) the Internal Revenue Service and the New York State Department of Taxation and Finance; and (v)

all persons or entities who can reasonably be identified on the basis of information currently practicably available as having expressed an interest in acquiring the Purchased Assets since the entry of the Cash Collateral Stipulation. It is respectfully submitted that such notice on the Bid Notice Parties is effective to provide notice of the request for the Auction Sale Order. The Debtor requests that the Court find that notice in this manner is sufficient and that no other further notice of the proposed Bid Procedures and the requested Bid Auction Sale Order is required.

**Service of Auction Sale Order and  
Notice of the Auction and Sale Approval Hearing**

13. On or before a date to be fixed by the Court (the "Mailing Deadline"), and after entry of the Auction Sale Order, pursuant to Bankruptcy Rule 2002(a) and (c) and 6004, copies of the Auction Sale Order and Terms and Conditions ("Notice of Sale") will be served upon the Bid Notice Parties and all known creditors of the Debtor's estate.

14. It is submitted that the notice above constitutes good and sufficient notice of the Auction, the Sale Approval Hearing and all matters and proceedings related thereto.

**The Relief Should be Granted in Accordance  
With Section 363(b) of the Bankruptcy Code**

15. In accordance with Bankruptcy Rule 6004(f)(1), sales of assets outside the ordinary course may be by private sale or public auction. The sales process provided for herein will enable the Debtor's estate to obtain the highest and best offer for the Assets, and is in the best interests of the estate, its creditors and all other constituencies.

16. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, Assets of the estate." 11 U.S.C. § 363(b)(1). To obtain court approval to sell Assets

under section 363(b), there must be a legitimate business justification for the proposed action. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). As the Court stated, "[w]here the debtor articulates a reasonable basis for its business decisions as distinct from a decision made arbitrarily or capriciously, courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Although Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for the court to authorize the sale or disposition of a debtor's assets, the United States Court of Appeals for the Second Circuit, as well as various courts in other jurisdictions that have construed this section, require that authorization for a sale or disposition of assets be based upon sound business judgment. *See In re Chateauguay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge determining a Section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (holding that "bankruptcy court can authorize a sale of all of a chapter 11 debtor's assets under section 363(b)(1) when a sound business purpose dictates such action"); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, that a good business reason exists for completing the sale, and that the transaction is in good faith). When valid business justification exists, the law vests the decision to use Assets outside of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken



was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

**The Sale of the Assets Is Supported By Valid Business Justifications**

17. The proposed sale of the Assets is supported by sound business justifications. As set forth above, the process was supported by the secured creditor, NBT, and is based upon the Debtor's business judgment that an orderly sale of the Assets is in the best interests of the Debtor's estate and would maximize the value of the Debtor's estate. The Debtor has determined that the current business environment in which the Debtor operates is not conducive to the Debtor proposing and confirming a plan of reorganization. Accordingly, the Debtor has proposed a sale of the Assets by auction. NBT has consented to this process and has agreed to the Carve-Out.

18. As described above, the Assets will be extensively marketed through CRG's advertising of the Auction Sale. Further, the deadlines provided for in the Cash Collateral Stipulation were proffered by NBT. In addition, an auction of the Assets will provide the best means of liquidation of the collateral and provide funds for the estate through the Carve-Out.

**The Purchased Assets Should Be Sold Free and Clear of Liens and Other Encumbrances and Interests**

19. It is requested that the Assets be sold free and clear of liens claims, interests, and other encumbrances pursuant to Section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and other encumbrances to attach to the sale proceeds as set forth below. Section 363(f) of the Bankruptcy Code provides:

The Trustee may sell Assets under subsection (b) or (c) of this section free and clear of any interest in such Assets of an entity other than the estate, only if-

- (1) applicable non bankruptcy law permits sale of such Assets free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such Assets is to be sold is greater than the aggregate value of all liens on such Assets;
- (4) such interest is in bona fide disputes; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). As Section 363(f) of the Bankruptcy Code is stated in the disjunctive, when selling Assets of the estate, it is only necessary to meet one of the five conditions of such section in order to be in compliance therewith.

20. As noted above, NBT, as the secured lender, has consented to the auction sale of the Assets as well as the Carve-Out. Thus, NBT has consented to the sale pursuant to 11 U.S.C. §363(f)(2). There are no other secured creditors with liens encumbering the Assets.

21. Accordingly, it is requested that the Assets be transferred to the Buyer free and clear of the Encumbrances, with such Encumbrances to attach to the sale proceeds of the Purchased Assets.

**The Successful Bidders Should Be Afforded All Protections Under Section 363(m) of the Bankruptcy Code As Good Faith Buyers**

22. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c.) of this section of a sale or lease of Assets does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such Assets in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S..C. § 363(m).

23. The Terms and Conditions of the Auction Sale provide for terms of inspection,

bidding, payment, and removal of assets. Notice of the Auction Sale will be provided via multiple media, including online notice, direct mail advertising and notice to prospective bidders on customer lists created and maintained by CRG. The Auction Sale will be conducted in a competitive bidding environment. Accordingly, all bidders will be dealt with at arm's length and in good faith within the meaning of Section 363(m) of the Bankruptcy Code. Accordingly, request will be made at the Sale Confirmation that the Court determine that the Successful Bidders, and to the extent applicable, any alternative bidder, are deemed to be acting in good faith and entitled to the protections of a good faith Buyer under Section 363(m) of the Bankruptcy Code. *In re Gucci*, 105 F.3d 837, 840 (2d Cir. 1997). *See also In re Oyster Bay Cove, Ltd.*, 196 B.R. 251, 254 (E.D.N.Y. 1996); *Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994); *In re UPI*, No. 91 B 13955 (FGC), 1992 U.S. Bankr. LEXIS 842, at \*3 (Bankr. S.D.N.Y. May 18, 1992); *In re Stein & Day, Inc.*" 113 B.R. 157. 162 (Bankr. S.D.N.Y. 1990).

**Request for Relief Under Bankruptcy Rule 6004(h)**

24. Rule 6004(h) of the Bankruptcy Rules provides any "order authorizing the use, sale, or lease of Assets other than cash collateral is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h) (emphasis added). Time is of the essence with respect to the moving the sale process to completion. Any order approving the sale in accordance with the Terms and Conditions should be effective immediately upon entry of such order by providing that the ten day stay period provided under both Bankruptcy Rules 6004 shall not apply.

**WHEREFORE**, it is respectfully requested that the Court (1) enter the Auction Sale Order and the Sale Order (a copy of which is annexed hereto as Exhibit "B", or in such form and substance as is appropriate in the circumstances and in the context of the proceedings) and (2) grant such other and further relief as is just.

**Dated:** September 26, 2016  
Albany, New York

**NOLAN & HELLER, LLP**

A handwritten signature in black ink, appearing to read "Francis J. Brennan", is written over a horizontal line.

Francis J. Brennan, Esq.  
*Attorneys for Debtor*  
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117531

**EXHIBIT “A”**

## **TERMS AND CONDITIONS OF SALE**

These Terms and Conditions of Sale ("Sale Terms") govern all items which are offered for sale by CAPITAL RECOVERY GROUP, LLC ("CRG") and any of its employees, agents, designees, affiliates, joint venture partners, and co-auctioneers (together with Capital Recovery Group, LLC, collectively, "CRG") to a buyer (the "Buyer") of any machinery, equipment or other personal property items offered by CRG and purchased by Buyer (collectively, the "Purchased Items"). The owner of the items upon which Buyer will be bidding may be owned either by CRG or by another entity who has retained CRG to sell such items (the "Owner"). CRG reserves the right to modify these Sale Terms at any time and any such modification shall become part of these Sale Terms. By registering at the auction, onsite or online, the Buyer agrees that it has read and fully understands these Sale Terms and agrees to be bound by these Sale Terms.

**1. Payment.** If Buyer is the winning bidder for the Purchased Items, full payment of the purchase price for the Purchased Items due to CRG (the "Purchase Price"), must be made in United States Dollars, and must be made on the day of sale as set forth in the invoice sent to Buyer at the end of the auction (the "Invoice"). Payment is due and payable in cash, by cashier's check, wire transfer, company check payable to CRG. For any Purchased Items paid in cash with a value of \$10,000 or greater, Buyer is required to complete United States Treasury Form Number 8300 and return it to CRG at the time of purchase. Buyer shall pay CRG a late penalty on all amounts over 30 days past due computed at the greater of (i) 18% per annum, and (ii) the maximum rate permitted by applicable Connecticut law. If Buyer fails to pay the Purchase Price in accordance with these Sale Terms, Buyer agrees that it remains responsible for payment of the Purchase Price and CRG shall have the right to commence all legal actions against Buyer for collection of the entire Purchase Price amount. Buyer shall also be liable for any and all costs and expenses incurred by CRG arising out of or in connection with CRG's efforts to collect any unpaid amounts hereunder including, without limitation, attorney or collection agency fees and expenses. No forbearance, indulgence, or delay by CRG in taking any action hereunder shall be deemed a waiver of any rights of CRG hereunder. Until CRG has received payment in full of the Purchase Price, the Rigger Equipment Removal and Site Access Agreement executed by the rigger named therein, CRG, the owner of the Real Property and Buyer (the "Rigger Removal Agreement"), if applicable, and any other documents required by CRG, Buyer shall have no right to dismantle or remove any of the Purchased Items from the real property located at the auction site (the "Real Property").

**2. Taxes.** Prices do not include any federal, state or local taxes, which are in addition to the Purchase Price and must be paid by Buyer where applicable and may be added by CRG to the Invoice unless Buyer furnishes CRG with an acceptable tax exemption certificate. In addition, any and all foreign duties and taxes are also the responsibility of Buyer and Buyer hereby indemnifies and holds CRG harmless from any and all claims, costs, expenses and liability incurred by CRG resulting from Buyer's failure to pay any foreign duties and taxes. If an acceptable tax exemption certificate is not submitted at the time of payment, Buyer may submit said exemption certificate within ten (10) business days to CRG, and the tax originally paid will be refunded back to the Buyer. The failure of CRG to include any such federal, state or local taxes does not excuse the Buyer from responsibility for paying any such taxes and Buyer hereby indemnifies and holds CRG harmless from any and all claims, costs, expenses and liability incurred by CRG resulting from Buyer's failure to pay any federal, state or local taxes.

**3. Buyer's Premium.** CRG will charge and retain a non-negotiable buyer's commission ("Buyer's Premium") on the proceeds of any sale based on the final and accepted bid for the Purchased Items. The Buyer's Premium will be 15% for onsite bidders and 18% for online bidders. If applicable, there will be an additional 3.5% handling charge on the total invoice for all credit card transactions. The Buyer's Premium will be posted on the Real Property and announced prior to the auction.

**4. Title.** Title shall pass to Buyer upon the satisfactory completion of all of the following: (i) CRG's receipt of full payment for the Purchased Items in accordance with these Sale Terms; (ii) the Purchased Items have been removed from the Real Property in compliance with the Rigger Removal Agreement, if applicable; (iii) all damage, if any, to the Real Property and to any other personal property located at the Real Property caused by removing the Purchased Items has been repaired to the satisfaction of CRG and the owner of the Real Property; (iv) Buyer shall not be in breach of any of items set forth in these Sale Terms.

**5. INSPECTION. BUYER SHALL BE DEEMED TO HAVE RELIED ENTIRELY UPON ITS OWN INSPECTIONS AND INVESTIGATIONS OF ALL OF THE ITEMS UPON WHICH BUYER WILL BE BIDDING AND/OR PURCHASING. BUYER HEREBY ACKNOWLEDGES THAT BUYER AND BUYER'S AGENTS OR REPRESENTATIVES HAVE HAD THE OPPORTUNITY TO INSPECT, OR HAVE INSPECTED, ALL OF THE ITEMS UPON WHICH BUYER WILL BE**

**BIDDING AND/OR PURCHASING. BUYER AGREES THAT BY SUBMITTING A BID FOR ANY ITEM, BUYER SHALL BE DEEMED TO HAVE INSPECTED ALL OF THE ITEMS UPON WHICH BUYER WILL BE BIDDING AND/OR PURCHASING. AFTER A SALE OF PURCHASED ITEMS HAS BEEN CONFIRMED, THE BUYER SHALL BE DEEMED TO HAVE INSPECTED ALL PURCHASED ITEMS AT THE TIME OF SALE CONFIRMATION.**

**6. Acceptance by Buyer.** Buyer agrees that its acceptance of the Purchased Items shall constitute an acknowledgment by Buyer that the Purchased Items satisfies any and all obligations of CRG hereunder. Buyer may not revoke its acceptance for any reason whatsoever.

**7. Safety Standards.** Buyer expressly assumes all responsibility to obtain all safety equipment and to meet all applicable local, state and federal laws, regulations and standards in removing any of the Purchased Items. Buyer further agrees to comply with the Rigger Removal Agreement, if applicable.

**8. Removal of Purchased Items.** Purchased Items can only be removed from the Real Property within the removal time as announced at the sale and as indicated on the Invoice (the "Removal Deadline"). No Purchased Items can be removed, segregated, or dismantled by Buyer before the conclusion of the auction. Prior to removal of any Purchased Items, the entire Invoice for all Purchased Items must be paid in full in order to gain access to the Real Property. Buyer must present a representative of CRG with an original Invoice marked "PAID" and a fully executed Rigger Removal Agreement, if applicable.

**9. Failure to Remove Purchased Items/Bankruptcy.** If Purchased Items are not removed by the Removal Deadline (i) such Purchased Items will be deemed abandoned by the Buyer, (ii) Buyer shall forfeit all monies paid to CRG for such Purchased Items, and (iii) Buyer shall forfeit any rights to such Purchased Items. In addition, Buyer shall be responsible for all damages suffered by CRG, including, but not limited to, any dismantling, transportation, storage or other costs, including attorneys' fees and expenses incurred by CRG as a consequence of Buyer's failure to remove such Purchased Items. Buyer hereby grants to CRG a security interest in the Purchased Items to secure Buyer's obligation to remove the Purchased Items from the Real Property not later than the Removal Deadline and in compliance with the terms of the Rigger Removal Agreement, if applicable. Buyer hereby authorizes CRG the right to file and/or record such documents and financing statements as are necessary or useful to perfect such security interest in the Purchased Items as provided in this Section 9, and Buyer shall execute and deliver to CRG such documents as requested in connection therewith. In the event Buyer fails to remove the Purchased Items on or before the Removal Deadline, CRG shall have the right to foreclose its security interest in the Purchased Items by a public or private sale in accordance with applicable law. In addition, in the event any one or more of the following shall occur, any and all obligations of CRG hereunder, including without limitation, any obligations to Buyer in respect of the Purchased Items shall immediately terminate and without further action by CRG: (a) Buyer files a voluntary petition in bankruptcy or a bankruptcy petition is filed against Buyer; (b) Buyer becomes insolvent or makes an assignment for the benefit of its creditors; or (c) Buyer discontinues its business or a receiver is appointed for Buyer or its business.

**10. Integration; Modifications.** Buyer acknowledges that these Sale Terms, the Invoice, the Rigger Removal Agreement, if applicable, a bill of sale, if applicable, and all attachments and exhibits hereto and thereto, (a) are the only terms and conditions of sale for the Purchased Items, (b) are intended by the parties as a complete and exclusive statement of the terms of their agreement in respect of the Purchased Items, and (c) supersede all prior agreements, written or oral in respect of the auction and Purchased Items, except for any and all announcements made by the auctioneer on the day of the auction concerning the Sale Terms, which Buyer acknowledges and agrees to be bound. Any variation from the terms hereof contained in the Buyer's acceptance of the Purchased Items is hereby rejected.

**11. Auction Registration; Deposit.** To register for any live auction onsite, bidders must provide a refundable deposit in the amount determined by CRG and either posted onsite or requested by a CRG representative, in the form of cash, cashier's check, wire transfer or company check payable to CRG. The foregoing amount shall be increased, as determined by CRG, to an amount warranted by the value of the sale, but in no event greater than 25% of the Purchase Price, if Buyer is the successful bidder of the Purchased Items which shall be paid at the time Buyer becomes the winning bidder of the Purchased Items. If Buyer is the winning bidder for the Purchased Items, the refundable deposit set forth in the first sentence of this Section 11 shall become non-refundable and such amount together with the increased deposit set forth in the second sentence of this Section 11, shall be applied toward payment of the Purchase Price and the provisions of Section 1 will control. To register for the online component of any live auction conducted by bidspotter.com, bidders will be required to submit a valid VISA, MasterCard, or American Express credit card and complete the online registration information. The credit card will not be charged except in the event of failure to pay.

**12. Online Bids.** CRG will accept bids from Buyers who wish to bid, but cannot attend the auction. The bids must be placed online at [www.bidspotter.com](http://www.bidspotter.com). All bids will be recorded and synced with those bids received onsite in real time, with the highest bid price, winning the item(s), regardless of being placed online or onsite. Any taxes and/or Buyer's Premium will be added to the winning bid price. Buyers who choose to bid at any auction online using bidspotter.com shall do so at their own risk. CRG cannot guarantee the transmission of online bids when situations or circumstances beyond CRG's control interfere with the normal operation of bidspotter.com. CRG has no responsibility or liability for items lost at auction due to any system malfunction of bidspotter.com. It is the responsibility of the Buyer to follow instructions of bidspotter.com to properly operate the online bidding system.

**13. Bidding.** If any dispute arises between two or more bidders, the auctioneer has the right in its sole and absolute discretion to determine the winning bidder or to re-offer and resell the item or lot in dispute. CRG shall have no liability arising from any dispute between two bidders. CRG reserves the right to group one or more lots into one or more selling items or lots, or to add to or delete items or lots at its sole discretion. CRG reserves the right to set the bidding increments. CRG also reserves the right to reject any bid which is only a fractional advance over the preceding bid. CRG, or the owners, reserves the right to set and/or to modify a minimum price.

**14. Hazardous Materials.** Buyer acknowledges that Purchased Items may contain Hazardous Materials. **BUYER HEREBY INDEMNIFIES, DEFENDS, PROTECTS AND HOLDS HARMLESS, THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, ACTIONS, CAUSES OF ACTION, COSTS AND JUDGMENTS, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, ARISING FROM OR RELATING TO ANY RELEASE OF ASBESTOS, PCBS OR OTHER HAZARDOUS MATERIALS IN CONNECTION WITH THE REMOVAL AND TRANSPORTATION OF THE PURCHASED ITEMS FROM THE REAL PROPERTY.** As used in these Sale Terms "Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity," (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million. As used in these Sale Terms, "Indemnified Parties" means collectively CRG, the owner of the Real Property, the Owner and their respective managers, officers, directors, shareholders, members, agents, attorneys, employees, successors and assigns.

**15. Buyer's Responsibility and Indemnity.** Buyer acknowledges the Real Property where items upon which Buyer may be bidding are located, held or presented for inspection, may be potentially dangerous places which may include noxious, corrosive and pressurized substances being present, heavy equipment being operated, and live electric circuits. Buyer and its agents and representatives present at the Real Property before, during or after an auction shall be deemed to be present at their own risk. Buyer further acknowledges that CRG shall have no liability for any injuries sustained to Buyer and its agents and representatives, nor damages to or loss of property which may occur from any cause whatsoever. Removal of Purchased Items shall be at the sole expense, risk and liability of the Buyer. In addition, all freight and insurance charges are the responsibility of Buyer unless otherwise agreed by CRG and Buyer in writing. Buyer shall be responsible for and pay all expenses, losses and damages that may arise from the removal and transportation of the Purchased Items from the Real Property, and all losses, damages, debts and liabilities incurred by Buyer in connection with Buyer's purchase and removal of the Purchased Items and all other expenses relating or incidental thereto. **BUYER HEREBY INDEMNIFIES, DEFENDS, PROTECTS AND HOLDS HARMLESS, THE INDEMNIFIED PARTIES FROM AND AGAINST ALL SUITS, CLAIMS, COSTS, DAMAGES AND EXPENSES, INJURIES TO ANY PROPERTY OR PERSONS (INCLUDING DEATH) INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, ARISING OUT OF OR IN CONNECTION WITH BUYER'S ATTENDANCE AT THE AUCTION, VISITS TO THE REAL PROPERTY, PURCHASE, OWNERSHIP, DISMANTLING, REMOVAL FROM THE REAL PROPERTY, TRANSPORTATION, REASSEMBLY, USE AND/OR RESALE OF THE PURCHASED ITEMS, OR THE PERFORMANCE OF ANY OF THE OBLIGATIONS OF BUYER.**

**16. No Warranties.** Neither CRG nor the Owner make any representations, warranties or guarantees, expressed or implied, as to the genuineness, authenticity, quantity, quality, condition, usability, salability, weight, measure, count, make, model, year, age, mechanical condition, performance, description, or other specifications of any items upon which Buyer will be bidding or in any lot(s). Neither CRG nor the Owner shall be liable for any fault or defect in any lot(s). CRG shall not be held liable for any inaccurate, incomplete or incorrect description, of any items or lot(s) upon which Buyer will be bidding, or in any media pertaining to the auction, whether in a catalog,



advertisement, website listing, or otherwise. Descriptions of items are prepared FOR GUIDE PURPOSES ONLY and shall not be relied upon by the Buyer for accuracy or completeness.

**BUYER ACKNOWLEDGES THAT NO REPRESENTATIVE OF CRG HAS AUTHORITY TO MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PURCHASED ITEMS.**

**THE PURCHASED ITEMS SOLD BY CRG HEREUNDER ARE SOLD "AS IS", "WHERE IS", AND WITHOUT REPRESENTATION, WARRANTY OR RECOURSE OF ANY KIND OR NATURE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL IMPLIED OR EXPRESS WARRANTIES ARISING UNDER THE UNIFORM COMMERCIAL CODE OR UNDER ANY OTHER APPLICABLE LAW INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY CRG AND OWNER IN THEIR ENTIRETY. IN ADDITION, CRG AND OWNER MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE TITLE, POSSESSION, QUIET ENJOYMENT, LOCATION OR COMPLETENESS OF THE PURCHASED ITEMS.**

**17. Default/Non-Compliance.** In addition to the matters set forth in Section 1 above, if Buyer fails to pay the Purchase Price for any of the Purchased Items, CRG may resell such items at a public or private sale without further notice. If, at such a sale, such item(s) is sold for a lesser price; the defaulting Buyer will be responsible to pay for the difference together with all charges, fees and/or expenses, including but not limited to, the cost of removal and resale of the abandoned item(s), commissions, and legal fees incurred by CRG as a result of resale.

**18. Limitation of CRG's Liability.** CRG shall not be liable to Buyer for any damages, including, without limitation, incidental, consequential, exemplary, treble or special damages or damages for breach of contract, tort (including negligence), strict liability, patent infringement or otherwise arising out of or in any way related to the (i) auction, (ii) Purchased Items or any act or omission of CRG concerning the Purchased Items, (iii) removal and/or delivery of any Purchased Items from the Real Property, or (iv) dismantling, removal, transport, reassembly, use, operation, maintenance, or repurchase and/or resale of the Purchased Items by any person.

**19. Acts of Others.** CRG is not responsible for the acts or omissions of (i) of any party who provided any items to the auctioneer for sale, (ii) owner or lessor of the Real Property, or (iii) any party who provides services to the auctioneer and/or Buyer, including, but not limited to telecommunication, internet bidding services, removal, rigging, or shipping, of Purchased Items.

**20. Headings.** The section headings in these Sale Terms are inserted for convenience only and are not intended to modify or define any term or provision of these Sale Terms.

**21. Governing Law; Jurisdiction.** THESE SALE TERMS SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CONNECTICUT WITHOUT GIVING EFFECT TO PROVISIONS FOR CHOICE OF LAW THEREUNDER. EACH OF THE PARTIES HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THESE SALE TERMS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE COURTS AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE HARTFORD COUNTY, CONNECTICUT.

**22. Severability.** If any provision of these Sale Terms is deemed illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, shall not be affected.

**EXHIBIT “B”**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

In re

TITHERINGTON DESIGN & MANUFACTURING,  
INC.,

Debtor.

Chapter 11  
Case No. 16-10705

**ORDER GRANTING MOTION PURSUANT TO SECTIONS 105 AND 363 OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002 AND 6004 FOR  
AN ORDER (I) AUTHORIZING THE AUCTION SALE OF THE DEBTOR'S  
PERSONAL ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND  
ENCUMBRANCES, (II) APPROVING TERMS AND CONDITIONS OF SALE  
(INCLUDING BIDDING PROCEDURES), (III) SCHEDULING THE SALE  
CONFIRMATION HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the Motion of TITHERINGTON DESIGN & MANUFACTURING, INC.,  
the Debtor and Debtor-in-Possession in the above-captioned Chapter 11 bankruptcy case  
for an order pursuant to Sections 105 and 363(b), (f), (m) and (n) of Title 11 of the United  
States Code, 11 U.S.C. §§ 101, et seq. (hereinafter, the "Bankruptcy Code") and Rules

2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (I) authorizing and scheduling a public auction sale of the Assets (the "Auction Sale"), free and clear of all liens and encumbrances, if any, with such liens and encumbrances to attach to the net proceeds of sale; (II) approving terms and conditions of sale (including bidding procedures); (III) scheduling a hearing to consider the approval of the successful bids at the Auction Sale ("Sale Confirmation Hearing"); and (IV) granting related relief; and there having been no objection to the relief requested in the Motion; and upon the hearing held on October \_\_\_\_, 2016; and upon the consent of secured creditor NBT Bank, and sufficient cause appearing therefore, it is

HEREBY ORDERED THAT:

1. The Motion is hereby granted in all respects<sup>1</sup>.
2. The Debtor is hereby authorized to sell the Assets (as more particularly described in the Motion) at the Auction Sale conducted by Capital Recovery Group, Inc. ("CRG").
3. All sales of the Assets shall be free and clear of all liens and encumbrances, with such liens and encumbrances, to the extent valid, to attach to the proceeds of sale, pursuant to Bankruptcy Code sections 363(f) and (h), subject to the provisions of this Order and final approval by this Court at the Sale Confirmation Hearing.
4. CRG shall maintain a surety bond in an amount sufficient and otherwise in form and substance acceptable to the United States Trustee, and shall comply with Local

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<sup>1</sup> Capitalized terms shall have the meanings given them in the Motion, unless otherwise defined herein.

Bankruptcy Rule 6005-1 regarding timely filing of the Auctioneer's report and turnover of sale proceeds.

5. The Auction Sale shall be conducted by CRG in accordance with the Terms and Conditions<sup>2</sup> at a date and time determined by CRG in its discretion, but in no event on a date later than **November 15, 2016** (the "Auction Sale") at 102 Sharron Avenue, Plattsburgh, New York.

6. Payment of all winning bids shall be paid by the Successful Bidders at the conclusion of the Auction Sale in accordance with the Terms and Conditions.

7. The Debtor is hereby authorized and directed to take such steps and execute such documents as may be reasonably necessary to effectuate and implement the terms of this Order and the Auction Sale.

8. Except as otherwise provided herein, all proceeds of the Auction Sale shall be held in escrow by Nolan & Heller, LLP until further Order of this Court.

9. Nothing herein or pursuant to the Terms and Conditions shall preclude NBT Bank from credit bidding pursuant to 11 U.S.C. §363(k).

10. The Sale Confirmation Hearing to approve the Auction Sale to the Successful Bidders, and to resolve any objections to, or matters arising in connection with, the Auction Sale, shall be held before the United States Bankruptcy Court, James T. Foley Courthouse, 445 Broadway, Suite 306, Albany, New York on **November 16, 2016 at 10:30 a.m.**

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<sup>2</sup> References in this Order to the Terms and Conditions shall mean the Terms and Conditions attached to the Motion at Exhibit "A".

11. No later than two business days after its entry, the Debtor shall serve this Order on the following parties (collectively, the "Bid Notice Parties"): (i) counsel for NBT Bank; (ii) counsel for Mold-Rite Plastics, LLC; (iii) any parties who have timely filed requests for notice under Bankruptcy Rule 2002 entered in this chapter 11 case prior to the mailing deadline; (iv) the Internal Revenue Service and the New York State Department of Taxation and Finance; and (v) all persons or entities who can reasonably be identified on the basis of information currently practicably available as having expressed an interest in acquiring the Purchased Assets since the entry of the Cash Collateral Stipulation, which shall be deemed to be sufficient notice of the Auction Sale and the Sale Hearing.

12. The Court retains jurisdiction regarding all matters arising from or related to the Auction Sale and the implementation of this Order.

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