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**COUNSEL FOR DEBTORS  
AND DEBTORS-IN-POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** §  
§ **CASE NO. 17-30584-bjh-11**  
**WHICKER ASSET MANAGEMENT,** §  
**LLC, *et al.*,** § **CHAPTER 11**  
§  
**Debtors.**<sup>1</sup> §

**DEBTORS’ AMENDED MOTION PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE FOR (i) APPROVAL OF BID PROCEDURES FOR THE SALE OF THE ASSETS, (ii) AUTHORIZATION TO USE THE ASSET PURCHASE AGREEMENT AS A STALKING HORSE AGREEMENT WITH ENGINTEERED PLASTIC COMPONENTS, INC. IN CONNECTION THEREWITH, AND (iii) TO SET RELATED AUCTION AND HEARING DATES**

TO THE HONORABLE BARBARA J. HOUSER,  
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Whicker Asset Management, LLC (“**WAM**”) and Whicker Real Estate Holdings, LLC (“**WREH**”)(collectively, the “**Debtors**”), debtors and debtors-in-possession in the above-captioned bankruptcy cases, hereby file this motion (the “**Motion**”) for Approval of Procedures for the sale of its assets and respectfully represent as follows:

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<sup>1</sup>The Debtors in these Chapter 11 cases are Whicker Asset Management, LLC and Whicker Real Estate Holdings, LLC

## **JURISDICTION AND VENUE**

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

2. The statutory authorities for the relief requested herein in are Sections 105(a) and 363(b) of the Bankruptcy Code.<sup>2</sup>

## **BACKGROUND**

### **A. The Debtors.**

3. On February 15, 2017 (the “**Petition Date**”), the Debtors each filed a voluntary petition for bankruptcy under chapter 11 of the Bankruptcy Code initiating these bankruptcy case (the “**Chapter 11 Cases**”). The Debtors continue to operate their business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On or about March 6, 2017, the United States Trustee filed its Appointment of Official Unsecured Creditors’ Committee (the “**Committee**”)[Docket No. 44].

5. The Debtors operate under the name GTM Plastics. GTM is a manufacturer of thermoplastic injection molding parts with capabilities for secondary operations in assembly, hot plate and sonic welding, pad printing and hot stamping. For over fifty years, GTM has been producing quality plastic products for various different industries, including the automotive industry, HVAC, medical field and sports industries. GTM’s reputation for providing quality products and exceptional customer service has made it an industry leader and landed it on Inc. 5000’s fastest growing companies multiple years in a row.

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<sup>2</sup> 11 U.S.C. §§ 101 *et. seq.*

6. In early 2017, the Debtors engaged in negotiations with its prepetition senior secured lender about a restructure of the Debtors' balance sheets. Due to terms of the Debtors' loan documents, the Debtors were facing a liquidity crisis and the prepetition secured lender would not advance further funds outside of a bankruptcy. After negotiating the terms by which the prepetition secured lender would lend post-petition, the Debtors' determined that the bankruptcy filings were necessary to continue operations and preserve going-concern value.

**B. The Marketing Process.**

7. Since the Petition Date, the Debtors have worked to maximize value and market GTM in the greatest way possible. Almost immediately after the Petition Date, the Debtors engaged Molding Business Services, Inc. ("**MBS**"), a business broker specializing in the marketing and sale of molding businesses, to assist them in marketing and selling of the Debtors' assets. On March 9, 2017, the Debtors filed their Application to Employ Molding Business Services, Inc. as Broker for the Debtors [Docket No. 57], and the Court entered the Order [Docket No. 103] approving MBS' employment on April 21, 2017.

8. Since its engagement, MBS has worked with the Debtors to create a number of marketing materials related to the sale of the Debtors' assets and has distributed and presented those materials to its various contacts and databases, which are estimated to include in excess of 2,600 potential purchasers. In response, approximately sixty-eight (68) confidentiality and non-disclosure agreements were signed. To assist with the presentation of data, MBS established a virtual data room that potential purchasers who signed non-disclosure agreements could view financials and other pertinent data. Since the Petition Date, approximately eighteen (18) potential purchasers have personally visited and toured the Debtors' facilities.

9. As a part of the marketing process, the Debtors, in conjunction with its legal advisors and MBS, established April 28, 2017 as the deadline for potential purchasers to submit bids if they wanted to be considered as the stalking horse. On or prior to April 28, 2017, the Debtors received five letters of interest, including a letter of interest from Engineered Plastic Components, Inc. (“**EPC**”, “**Purchaser**”, “**Proposed Buyer**”, or the “**Stalking Horse**”). In the Debtors’ and its advisor’s opinion, EPC is the best offer.

**C. The EPC LOI.**

10. Among other things, the letter of interest from EPC (the “**EPC LOI**”) provides that EPC will purchase substantially all of the assets (excluding cash) of the Debtors (the “**Assets**”) pursuant to a section 363 sale. The EPC LOI also requests that certain bid protections be included as a result of it being chosen as the stalking horse, which counsel to the Debtors and counsel to the Committee have considered and negotiated. The terms and agreements of the parties are put forth herein for Court approval.

**RELIEF REQUESTED**

11. By this Motion, the Debtors seeks entry of an order (the “**Bid Procedures Order**”):

- (a) approving procedures (the “**Bid Procedures**”) as set forth in **Exhibit A** for (i) submitting bids for the purchase of the Assets (as that term is defined herein), and (ii) conducting an auction (the “**Auction**”) with respect to the Assets if the Debtors receive a Qualified Bid other than the Stalking Horse Bid for the Assets;
- (b) approving the Asset Purchase Agreement (the “**APA**”) with the Purchaser, in the form attached hereto as **Exhibit B** for the purpose of establishing a minimum acceptable bid at which to begin the Auction;
- (c) providing the Proposed Buyer with a break-up fee of \$220,000.00 (the “**Break-Up Fee**”)(representing approximately 3.0% of the transaction value under the APA);

- (d) providing that if no Qualified Bid other than the Stalking Horse Bid is timely received by Bid Deadline (as that term is defined herein), the Debtors will not conduct an Auction and instead shall present the Stalking Horse Bid to the Court for approval at a hearing on **August 11, 2017 at 9:30 a.m. (CST)**, or such other date the Court may set to consider approval of the relief sought in the Sale Motion (the “**Approval Hearing**”);
- (e) providing that, should a Qualified Bid in addition to the Stalking Horse Bid be timely received, an Auction shall take place on **August 9, 2017 at 2:00 p.m. (CST)**, or at such other date, time and location determined by the Court at any hearing on this Motion and providing the procedures governing any Auction, as incorporated in the Bid Procedures attached hereto as **Exhibit A**;
- (f) setting **August 4, 2017 at 5:00 p.m. (prevailing Central Time)**(the “**Sale Motion Objection Deadline**”) as the deadline by which parties must object to the Sale Motion, including the proposed amounts necessary to cure any defaults for executory contracts or unexpired leases;
- (g) providing that the Court shall consider at the Approval Hearing either (a) the Stalking Horse Bid if no other Qualified Bids are timely received or (b) the best bid selected by the Debtors pursuant to the Bid Procedures; and
- (h) approving the form of notice, in the form attached hereto as **Exhibit C**, of the Approval Hearing, the Sale Motion Objection Deadline, and the proposed amount necessary to cure any defaults under any assumed and assigned executory contracts and unexpired leases.

#### **ASSETS TO BE SOLD**

12. The Debtors seek authority to auction and sell the following assets (as defined in the APA) owned by the Debtors, which are collectively referred to herein as the “**Assets**”, free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against in accordance with section 363 of the Bankruptcy Code:

- (a) the real property owned by WREH (the “**WREH Assets**”);
- (b) all Inventory;
- (c) all Accounts Receivable;
- (d) all Machinery and Equipment; Other Tangible Assets;
- (e) all Records;

(f) all Assumed Contracts; and

(g) all Goodwill.

13. Filed contemporaneously herewith is the Debtors' Motion Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 Approving the Sale of Debtors' Assets (the "**Sale Motion**"), in which the Debtors seek to sell the Assets to the Purchaser, or alternatively to the Successful Bidder (as defined herein).

### **BID PROCEDURES**

#### **A. Bid Procedures**

14. In order to maximize the value of the Assets, the Debtors seek to implement a competitive bidding process for the sale of the Assets. To govern the competitive bidding process, the Debtors intend to implement the Bid Procedures attached hereto as **Exhibit A**.

15. In order to accomplish such a process and maximize the value to the Debtors' bankruptcy estates, the Proposed Buyer has agreed to become the Stalking Horse Bidder. Except as expressly provided, the Bid Procedures cannot be amended or modified without the express written consent of the Proposed Buyer.

16. Among other things, the Bid Procedures require that a bid must: (1) include cash or substantially equivalent consideration that is in an amount not less than \$7.6 Million (the "**Minimum Topping Amount**"); (2) work from the APA, attached hereto as **Exhibit B**, and any conditions to closing of the marked-up APA version must not make closing materially less likely than a closing by the Stalking Horse; (3) identify the officer(s) or authorized agent(s) who will appear at the Auction on behalf of such bidder; (4) provide evidence, satisfactory to the Debtors and Debtors' counsel, in their reasonable discretion, of the bidder's financial wherewithal and

operational ability to consummate the proposed transaction; (5) include a statement of which, if any, executory contracts and unexpired leases it desires to assume at closing; (6) include a Good Faith Deposit of \$405,800; (7) provide a statement that such Bidder's offer is irrevocable until the earlier of August 30, 2017 or consummation of a transaction involving any other bidder; and (8) a statement that such Bidder shall not request nor be entitled to any break-up fee, expense reimbursement or similar type of payment. Only bids that meet all the requirements listed above shall be considered a "Qualified Bid." The Debtors believe that the Bid Procedures are appropriate and that a sale conducted pursuant to their terms will produce the highest and best bid for the Debtors and their estates in connection with the sale.

17. The Debtors further believe that the Bid Procedures provide an appropriate framework for selling the Assets in a uniform fashion and will enable the Debtors to review, analyze, and compare all bids received to determine which bid(s) are in the best interests of the Debtors, their estates, and creditors. **THE BID OF ANY BIDDER FAILING TO COMPLY WITH THE BIDDING PROCEDURES SHALL NOT BE ACCEPTED WITHOUT THE DEBTORS' CONSENT.**

**B. The Auction**

18. If a Qualified Bid in addition to the Stalking Horse Bid is received prior to the Bid Deadline (as defined herein below), the Debtors propose to hold an auction on **August 9, 2017 at 2:00 p.m. (CST)** at the offices of Pronske Goolsby & Kathman, P.C., 901 Main Street, Suite 610, Dallas Texas 75202, or such other location, date and time as may be determined by the Court and entered in the Bid Procedures Order. Only a bidder who submits a Qualified Bid (as defined in the Bid Procedures) by the Bid Deadline may participate at the Auction.

19. If no Qualified Bid other than the Stalking Horse Bid is timely received, the

Debtors will NOT conduct an Auction and instead may present the Stalking Horse Bid to the Court for approval at the Approval Hearing on **August 11, 2017 at 9:30 a.m. (CST)**, or such other date the Court may order.

20. Subject to the Bid Procedures, if there is a Bidder that submits a Qualified Bid other than the Stalking Horse Bid, the Debtors will accept bids on account of the Assets. Bidding will continue with respect to the Auction until the Debtors determine that they have received the highest and best bid for the Assets. The Debtors will then determine and announce, at the Auction, which bid has been determined to be the highest and best bid (the “**Successful Bid**”). The Debtors will also announce the “Backup Bid,” which bid has been determined to be the second highest and best bid. The Debtors will then close the auction. The successful bidder (the “**Successful Bidder**”) will be required, if hasn’t already done so, to enter into a definitive agreement, which shall be subject to approval of the Court at the Approval Hearing.

21. In determining the Successful Bid and Backup Bid the Debtors will use their business judgment.

**C. Notice Procedures**

22. Sale Notice: As soon as approved by the Court, the Debtors will immediately serve notice of the Auction and Approval Hearing (the “**Sale Notice**”) by first class mail on: (i) the Master Service List attached to this Motion; (ii) Creditor Matrix; (iii) the parties that have filed proofs of Claim in these Cases at the addresses set forth therein; (iv) all parties that have requested notice and/or filed a notice of appearance in this case; (v) counsel for the Proposed Buyer; (vi) each of the entities that signed NDAs, including each of the entities that submitted letters of intent as of the filing of this Motion; (vii) each of the entities listed as parties or counter-parties to executory contracts or unexpired leases listed on Exhibit 1 to the Sale Notice;



and (viii) counsel for any other Bidder as of that date (collectively, the “**Sale Notice Parties**”). A proposed form of the Sale Notice is attached hereto as **Exhibit C**. In addition to the above notice, the Debtors propose to place a notice in substantially the form attached hereto as **Exhibit D** (the “**Publication Notice**”), in the Southwest Edition of the *Wall Street Journal*, *Plastics News*, *Plastics News*, and such other newspapers or publications that this Court deems appropriate and are acceptable to the Potential Buyer. The Debtors assert that the Publication Notice and service of the Sale Notice as proposed herein is proper, due, timely, good and sufficient notice of, among other things, the entry of the Bid Procedures Order, the Bid Procedures, the Auction (if required under the Bid Procedures), the Sale Hearing, the Sale Motion, and the proposed Sale, and the procedure for objecting thereto, and no other or further notice is necessary.

23. **Assumption Notice**: In accordance with Bankruptcy Rule 2002, the Debtors must provide notice of the (i) potential assumption and assignment of executory contracts and unexpired leases and rights thereunder, (ii) the maximum amounts that the Debtors may pay to cure any defaults (collectively, the “**Cure Amounts**”), and (iii) the deadline to file objections to such assumption and assignment, maximum Cure Amounts, the existence of any defaults, and/or adequate assurance of future performance. Thus, the Debtors propose to include within, and attached to, the Sale Notice, a list of potential executory contracts and unexpired leases that may be assumed and assigned by the Debtors (the “**Desired 365 Contracts**”), along with maximum Cure Amounts related to each executory contract and unexpired lease and information as to the party or counterparty to each contract or lease. Due to complexities that often arise related to these types of amounts, the Debtors propose to (i) pay all valid and undisputed Cure Amounts as provided in the cure notices, and/or (ii) establish a cash reserve to satisfy disputed Cure Amounts upon approval by the Court. Furthermore, the Debtors submit that the information contained in

the Sale Notice, including the exhibit thereto, (a) contains the type of information required under Bankruptcy Rule 2002 that is currently known to the Debtors, and (b) is reasonably calculated to provide due, adequate and timely notice to all interested parties of (i) potential assumption and assignment of executory contracts and unexpired leases and rights thereunder, (ii) the maximum amount and manner offered to satisfy the Cure Amounts, (iii) the deadline to file objections to such assumption and assignment, applicable Cure Amounts, and the existence of any defaults and/or adequate assurance of future performance, and (iv) the Approval Hearing.

24. Information Provided to Interested Parties: The Debtors have either provided or will provide to all Bidders that have either expressed an interest in purchasing the Assets or whom the Debtors believe may have an interest in purchasing the Assets (each an “**Interested Party**” and, collectively the “**Interested Parties**”), certain information in connection with the proposed Sale, including, among other things, the proposed Bid Procedures and the APA. Should any Interested Party desire additional or further information, such Interested Party will be required, to the extent it has not already done so, to enter into a confidentiality and non-disclosure agreement satisfactory to the Debtors in their business judgment. Upon execution of the confidentiality agreement, the Interested Parties will be given access to other relevant and confidential information.

25. Good Faith Deposit: Bidders will be required to submit good faith deposits (the “**Good Faith Deposits**”) with the Debtors on or before **August 4, 2017 at 5:00 p.m. (CST)** (the “**Bid Deadline**”). Such Good Faith Deposit shall be equal to \$405,800.00. Good Faith Deposits of all Bidders shall be held in Debtors’ counsel’s IOLTA Trust Account for the Debtors’ benefit until the consummation of a transaction involving any other bidder for the Assets. If the Successful Bidder fails to consummate an approved Sale because of a breach or failure to

perform on the part of such Successful Bidder, the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit shall irrevocably become the property of the Debtors without affecting or reducing any of the Debtors' other rights or claims against such party. All other deposits will be returned to the respective Bidders within fourteen (14) days after closing.

### **OBJECTIONS AND RELATED PROCEDURES**

26. The Debtors request the following procedures be implemented with respect to the notices and relief requested herein:

a. Objections, if any, to the Sale Motion and/or the proposed assumption and assignment of the Desired 365 Contracts and rights thereunder, including but not limited to objections relating to any Cure Amounts, the existence of any defaults, and/or adequate assurances of future performance, must (a) be in writing, (b) state with specificity the nature of such objection, (c) if concerning a Cure Amount, set forth a specific default in the Desired 365 Contract and claim a specific monetary amount that differs from the Cure Amount (if any) specified by the Debtors in the Sale Notice (with appropriate documentation in support thereof), (d) comply with the Federal Rules of Bankruptcy Procedure, and (e) be filed with this Court and served upon the following parties in accordance with the Sale Notice on or before **August 4, 2017 at 5:00 p.m. (CST)**: (i) counsel for the Debtors at Pronske Goolsby & Kathman, P.C., Attn: Jason P. Kathman, 901 Main Street, Suite 610, Dallas, Texas 75202, (fax) 214-658-6509, jkathman@pgkpc.com, (ii) counsel for DIP Lender, BOKF, NA at MBT Law, Attn: Cliff Wade, 17330 Preston Road, Suite 250D, Dallas, Texas 75252, cliff.wade@mbl-law.com, (iii) counsel for United States Small Business Administration, Attn: Andrew Baka, 4300 Amon Carter Blvd., Suite 108, Fort Worth, Texas 76155, andrew.baka@sba.gov, (iv) counsel for the Official Committee of Unsecured Creditors, Neal Gerber & Eisenberg LLP, Attn. Nick Miller, Two North LaSalle Street, Suite 1700, Chicago, Illinois 60602-3801, nmiller@nge.com, (v) counsel for the Office of the United States Trustee, Attn: Meredyth Kippes, 1100 Commerce Street, Suite 976, Dallas, Texas 75242, meredyth.a.kippes@usdoj.gov.

b. The Debtors are authorized to amend the Sale Notice by amending the Cure Amounts at any time at least five (5) calendar days prior to the Approval Hearing by sending a new or amended Sale Notice; *provided, however*, that counterparties to any Desired 365 Contracts whose Cure Amounts are amended shall have at least five (5) calendar days from service of the Amended Sale Notice to properly object to such amendment to the Cure Amount. The Debtors are

authorized to amend the Sale Notice by adding or deleting Desired 365 Contract at any time prior to the Approval Hearing, and they shall use commercially reasonable efforts to affect the assumption and assignment of any such added Desired 365 Contract; *provided, however*, that counterparties to any such added Desired 365 Contracts shall have at least five (5) calendar days from service of the amended Sale Notice to property object to the assumption and assignment of their respective Desired 365 Contract and rights thereunder and the applicable Cure Amount.

c. Any Person (as defined in section 101 of the Bankruptcy Code) failing to timely file an objection to the Sale Motion shall be forever barred from objection to the Sale Motion, including the transferring of the Debtors' rights, title, and interest in, to and under substantially all of the Debtors' assets in accordance with the Asset Purchase Agreement or substantially similar definitive agreement free and clear of any and all liens, encumbrances, claims and other interest except as otherwise set forth in the Asset Purchase Agreement or other substantially similar definitive agreement, and will be deemed to consent to the Sale.

d. Any person failing to file an objection to any Cure Amounts set forth in the Sale Notice or the proposed assumption and assignment of the Debtors' rights, title and interest in, to and under Desired 365 Contracts shall be forever barred from objecting to the Cure Amounts and from asserting a claim for any cure or other amounts (or asserting any defaults exist under the Desired 365 Contracts as of the date of assumption) against either of the Debtors, their estates, the Potential Buyer or any of their respective affiliates (or such other Person that agrees to purchase the Assets that is approved by the Bankruptcy Court) with respect to its Desired 365 Contract arising prior to assumption and assignment of the Debtors; right, title and interest in, to and under the Desired 365 Contract and will be deemed to consent to the proposed assumption and assignment of the Desired 365 Contract and rights thereunder by such Sale.

#### **ASSET PURCHASE AGREEMENT AND BREAK-UP FEE**

27. The Debtors believe that to establish a floor price for the Assets and the terms of the sale, the Debtors will work from the terms of the APA entered into with the Proposed Buyer, substantially in the form attached hereto as **Exhibit B**, as the Stalking Horse Bid. Consistent with that belief, the Debtors believe that it is in the best interest of the estate to pay the Proposed Buyer a Break-up Fee, as provided for in this Motion, in the event that the Proposed Buyer is ultimately outbid at the Auction.

28. Any Bidder who wishes to submit a competing bid must work from the APA attached as **Exhibit B** as a form and provided that the conditions to closing of the mark-up APA version must make it not materially more contingent than the APA. The Debtors will not consider any bid that is not a mark-up of the Asset Purchase Agreement.

### **BASIS FOR RELIEF REQUESTED**

#### **A. The Bid and Auction Procedures Should be Approved.**

29. The Court should approve the Bid Procedures and Auction because they were determined using good business judgment. Bid procedures determined using good business judgment should be approved. *See In re The Bombay Co., Inc.*, Case No. 07-44084-dml-11, 2007 Bankr. LEXIS 3218, at \* 12 (Bankr. N.D. Tex. Sept. 26, 2007) (“The principal question the court thus faces is whether management of the Debtor in fact exercised good business judgment.”); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Once a valid business justification is articulated, a presumption of reasonableness arises in favor of the Debtor. *See In re Johns-Manville Corp.*, 60 B.R. 615-616 (Bankr. S.D.N.Y. 1986). Courts often show great deference to a debtor’s decision making in the context of applying the “business judgment” rule. *See Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981).

30. The Bid Procedures contemplated herein will ensure that the consideration paid for the Assets (a) is fair and reasonable, (b) is the highest and best offer, (c) will address the Debtors’ secured debts, and return a significant dividend to unsecured creditors, and (d) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code. In light of the foregoing, the Sale of the Assets pursuant to the proposed Bid Procedures constitutes a sound business decision.

31. The Bid Procedures will ensure that the bidding process with respect to the Auction is fair and reasonable and will yield the maximum value for the Debtors' estates and creditors. In addition, the Bid Procedures set deadlines for conducting an Auction and holding a hearing with respect to the Sale. As such, the Court should approve the Bid Procedures.

**B. The Break-Up Fee is Appropriate.**

32. In connection with the sale, the Debtors are seeking authorization to pay the Break-Up Fee described herein if the Proposed Buyer is not the Successful Bidder and the Debtors close a transaction with a Successful Bidder other than the Proposed Buyer. Break-up fees are normal and customary components in sales outside the ordinary course of business under section 363 of the Bankruptcy Code. As other courts have noted, break-up fees encourage bidding by “establish[ing] a bid standard or minimum for other bidders to follow...or attract[ing] additional bidders.” *See e.g. In re Integrated Resources, Inc.*, 147 B.R. 650, 662 (S.D.N.Y. 1992). In considering whether to approve a break-up fee, courts generally consider the following three factors: (1) the relationship between the initial bidder and the seller; (2) whether the fee is designed to encourage bidding; and (3) the size of the fee in relation to the purchase price. *See id.* at 657-663. “A break-up fee should constitute a fair and reasonable percentage of the proposed price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. ‘When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fee are generally permissible.’” *Id.* at 662. Further, where the break-up fee was not tainted by self-dealing and was the product of arm’s-length negotiations, a bankruptcy court should approve the break-up fee. *See Id.* at 658.

33. In this case, the break-up fee is equal to approximately 3.0 % of the proposed purchase price under the APA. Because of the highly competitive process that has already

occurred (five separate LOIs), the opportunity to be the stalking horse was a contributing factor in the higher proposals that the Debtors received. Furthermore, the percentage is certainly well within the magnitude of break-up fees approved in other cases in this district. *See In re Datavon, Inc.*, Case No. 02-38600-SAF-11 (Bankr. N.D. 2002)[Doc. 224](approving 3% break-up fee); *In re Mirant Corp.*, Case No. 03-46590 (Bankr. N.D. Tex. 2004)[Doc. No. 6092](approving 3% break-up fee); *In re Crusader Energy Group Inc.*, Case No. 09-31797 (Bankr. N.D. Tex. 2009)(approving 3% break-up fee).

34. The Break-Up Fee will enable the Debtors to secure the Proposed Buyer's bid, which will set an adequate floor for the Auction and, thus, insist that competing bids be materially higher or otherwise better than the Proposed Buyer's Bid, a clear benefits to the Debtors' bankruptcy estates. Accordingly, the Debtors should be authorized to offer the Break-up Fee as the Debtors deem necessary in their business judgment.

#### **WAIVER OF BANKRUPTCY RULE 6004(h)**

35. In order successfully implement the foregoing, and to move towards the Bid Deadline and Auction in the most expeditious way possible, the Debtors seek a waiver of the fourteen (14) day stay under Federal Rule of Bankruptcy Procedure 6004(h).

#### **NOTICE**

36. No trustee has been appointed in these Chapter 11 Cases. Notice of this Motion will be provided to: (i) counsel for the Official Committee of Unsecured Creditors; (ii) the Office of the United States Trustee; (iii) counsel to BOKF, NA dba Bank of Texas; (iv) counsel for the U.S. Small Business Administration; (v) counsel for the Proposed Buyer; and (vi) each of the parties listed on the attached Master Service List.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: June 27, 2017.

Respectfully submitted,

/s/ Jason P. Kathman

Melanie P. Goolsby

State Bar No. 24059841

Jason P. Kathman

State Bar No. 24070036

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**COUNSEL FOR DEBTORS AND  
DEBTORS-IN-POSSESSION**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on June 27, 2017, I caused to be served the foregoing pleading upon the parties on the Master Service List attached hereto via electronic and/or United States mail, first class delivery, and also via ECF email upon all parties accepting such service.

/s/ Jason P. Kathman

Jason P. Kathman



EXHIBIT A

Melanie P. Goolsby  
State Bar No. 24059841  
Jason P. Kathman  
State Bar No. 24070036  
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§  
**Debtors.**<sup>1</sup> §

**BID PROCEDURES**

Set forth below are the bid procedures (the “**Bid Procedures**”) to be employed in connection with the auction (the “**Auction**”) for the sale of the Assets.<sup>2</sup> If at least one Qualified Bid is received in addition to the Stalking Horse Bid prior to the Bid Deadline, at a hearing following the Auction (the “**Approval Hearing**”), the Debtors will seek entry of an order (the “**Sale Order**”) from the Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) authorizing and approving the sale of the Assets to the Successful Bidder pursuant to the Sale Motion and sections 105(a), 363 and 365 of the Bankruptcy Code.<sup>3</sup>

**I. ASSETS TO BE SOLD**

Except as otherwise provided in definitive documentation with respect to the sale, all of the Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances,

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<sup>1</sup>The Debtors in these Chapter 11 cases are Whicker Asset Management, LLC and Whicker Real Estate Holdings, LLC

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Debtors’ Amended Motion Pursuant to Section 105(a) and 363 of the Bankruptcy Code for (i) Approval of Bid Procedures for the Sale of the Assets, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Engineered Plastic Components, Inc. in Connection Therewith, and (iii) to Set Related Auction and Hearing Dates (the “**Bid Procedures Motion**”).

<sup>3</sup> 11 U.S.C. §§ 101 *et. seq.*

claims, charges, options, and interests thereon and there against in accordance with section 363(f) of the Bankruptcy Code:

- (a) the real property owned by WREH (the “**WREH Assets**”);
- (b) all Inventory;
- (c) all Accounts Receivable;
- (d) all Machinery and Equipment, Other Tangible Assets;
- (e) all Records;
- (f) all Assumed Contracts; and
- (g) all Goodwill

## **II. THE BID PROCESS**

The Debtors shall (i) provide reasonable assistance to Bidders in conducting their due diligence investigations, and (ii) receive offers from Bidders.

The Debtors may negotiate any offers made to purchase the Assets. Notwithstanding the foregoing, or anything to the contrary in the Bid Procedures Motion or Sale Motion, neither the Debtors nor its representatives shall be obligated to furnish any information of any kind to any person who does not execute a Confidentiality and Non-Disclosure Agreement.

### **Asset Purchase Agreement**

To facilitate the Auction and to assist the Debtors in assessing the terms of each bid, prospective bidders must work from the Asset Purchase Agreement to prepare their bids and mark all proposed changes to such agreement as part of their bid. The Asset Purchase Agreement (“**APA**”) is attached to the Bid Procedures Motion as **Exhibit B** and is also available on the main docket of this case.

### **Bid Deadline**

Except to the extent the Bankruptcy Court orders otherwise, any Bidder wanting to participate in the Auction must submit a Qualified Bid (as defined below) on or before **August 4, 2017, at 5:00 p.m. (CST)** (the “**Bid Deadline**”) in writing, to the following parties:

Whicker Asset Management LLC  
Whicker Real Estate Holdings, LLC  
c/o Jason P. Kathman  
PRONSKE GOOLSBY & KATHMAN, P.C.  
901 Main Street, Suite 610  
Dallas, Texas 75202  
Facsimile: (214) 658-6509  
Email: jkathman@pgkpc.com

BOKF, N.A. dba Bank of Texas  
c/o Cliff Wade  
MBL Law  
17330 Preston Road, Suite 250D  
Dallas, Texas 75252  
Email: cliff.wade@mbl-law.com

United States Small Business Administration  
c/o Andrew Baka  
4300 Amon Carter Blvd., Suite 108  
Fort Worth, Texas 76155  
Email: andrew.baka@sba.gov

The Official Committee of Unsecured Creditors  
c/o Nicholas Miller  
NEAL GERBER EISENBERG  
Two North LaSalle Street, Suite 1700  
Chicago, Illinois 60602-3801  
Email: nmiller@nge.com

Absent further order of the Bankruptcy Court, any Bid received by the foregoing parties shall be held in confidence and shared with no other entity prior to the Bid Deadline. If a Qualified Bid is received prior to the Bid Deadline, the Best Topping Bid (as defined below) shall be disclosed as soon as reasonably possible to any and all parties who submitted a Qualified Bid, including the Proposed Buyer. Counsel may share a Bid with its client's decision makers (who are subject to the preceding sentence).

A Bid received after the Bid Deadline shall not constitute a Qualified Bid without the Debtors' consent.

### **Stalking Horse Bid**

The Stalking Horse Bid is reflected in the APA and is the bid of Engineered Plastic Components, Inc. (the "**Proposed Buyer**" or "**Stalking Horse**"). For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid, and in the event an Auction is held pursuant to these Bid Procedures, the Proposed Buyer may bid at such Auction.

### **Qualified Bids**

All persons or entities wishing to participate in the Auction, must submit a Qualified Bid by the Bid Deadline (unless such deadline is extended by the Bankruptcy Court). To constitute a Qualified Bid, a bid must: (1) include cash or substantially equivalent consideration that is in an amount not less than \$7.6 Million (the “**Minimum Topping Amount**”); (2) contain a mark-up of the APA that reflects the Bidder’s proposed changes thereto, which must not include conditions that make a closing materially less likely than a closing by the Stalking Horse; (3) identify the officer(s) or authorized agent(s) who will appear at the Auction on behalf of such Bidder; (4) except as expressly permitted by these Bid Procedures, provide evidence, satisfactory to the Debtors and Debtors’ counsel, in their reasonable discretion, of the Bidder’s financial wherewithal and operational ability to consummate the proposed transaction including, but without limitation (a) evidence that the Bidder has unrestricted cash on hand to fund any cash portion of its bid; and (b) to the extent debt financing is a component of the bid, provide financing commitments that the Debtors and its advisors determine are feasible; (5) include a statement of which if any, executory contracts and unexpired leases it desires to assume at closing; (6) include the Bidder’s Good Faith Deposit (as defined below); (7) include a statement that such Bidder’s offer is irrevocable until the earlier of August 30, 2017 or consummation of a transaction involving any other bidder; and (8) a statement that such Bidder shall not request nor be entitled to any break-up fee, expense reimbursement or similar type of payment. Only bids that meet all the requirements listed above shall be considered a “Qualified Bid.” The Proposed Buyer is a Bidder who may participate in the Auction.

All Qualified Bids will be considered, but the Debtors (in consultation with the Committee) reserves its right to reject any or all bids in accordance with these Bid Procedures. Bids must contemplate sales that may be consummated on or soon after the date of the Approval Hearing.

### **Good Faith Deposits**

Qualified Bidders (other than the Proposed Buyer, which will place a Good Faith Deposit in escrow by the earlier of: (a) the date the APA is signed, and (b) twenty-four hours after entry of an order approving the Bid Procedures) will be required to submit a good faith deposit (a “**Good Faith Deposit**”) on or before the Bid Deadline. Such Good Faith Deposit shall be equal to \$405,800.00.<sup>4</sup> The Good Faith Deposits of all Bidders shall be held in Debtors’ counsel’s IOLTA Trust Account for the Debtors’ benefit until the consummation of a transaction involving the sale of the Assets. If the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit shall irrevocably become the property of the Debtors as liquidated damages and as the Debtors’ sole and exclusive remedy. All other deposits will be returned to the respective Bidders within seven (7) days after closing.

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<sup>4</sup> This deposit, if the Bidder is the Successful Bidder, will be credited, excluding accrued interest, against the purchase price.

### **Due Diligence**

The Debtors will afford any potential bidder the opportunity to conduct a reasonable due diligence review in the manner determined by the Debtors in their discretion. The Debtors will provide to all known potential bidders certain non-confidential information in connection with the proposed sale, including, among other things, these proposed Bid Procedures and the APA. If any interested parties desire additional information, such interested parties will be required to enter into a Confidentiality and Non-Disclosure Agreement, whereupon, the interested party will be given access to relevant and confidential information, subject to the Debtors' right to exclude such access for competitive concerns.

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

### **The Auction**

If a Qualified Bid other than the Stalking Horse Bid is timely received, the Auction will be conducted at the offices of Pronske Goolsby & Kathman, P.C., 901 Main Street, Suite 610, Dallas Texas 75202 commencing on **August 9, 2017 at 2:00 p.m. (CST)** to determine the highest and best bid for the Assets. Any bidder submitting a Qualified Bid may appear and submit its highest and best bid at the Auction. The Auction may be adjourned without further notice by announcement at the Auction. If no Qualified Bids other than the Stalking Horse Bid are timely received, the Debtor will not conduct an Auction and, instead, will present the Stalking Horse Bid to the Court for approval at the Approval Hearing. For the avoidance of doubt, in the event an Auction is held, representatives of BOKF, N.A. and the Official Committee of Unsecured Creditors, and their counsel, shall be permitted to attend such Auction.

### **Auction Procedures**

Before the start of the Auction, the Debtors will advise all Qualified Bidders of what they believe to be the highest and best Qualified Bid with respect to the Assets (the "**Best Topping Bid**"). If more than one Bidder submits equally Qualified Bids, then the Bidder who first submitted its equally Qualified Bid shall be deemed the Best Topping Bid to begin the Auction. Each additional bid shall be in minimum overbid increments of \$100,000.

Bidding will continue with respect to the Auction, with each topping bid publically announced and disclosed to all Qualified Bidders attending the Auction, until the Debtors (in consultation with the Committee) determine that they have received the highest and best bid for the Assets (the "**Successful Bid**"). After the Debtors (in consultation with the Committee) determine the Successful Bid, the Auction will be closed. The Debtors (in consultation with the

Committee) will then determine and announce which bid has been determined to be the second highest and best bid (the “**Backup Bid**”).

In determining which bid is the Successful Bid and which bid is the Backup bid, the Debtors (in consultation with the Committee) will use their business judgment.

### **III. RESERVATION OF RIGHTS**

#### **Determination of the Successful Bid**

Nothing herein to the contrary withstanding, the Debtors (in consultation with the Committee) reserve their rights to (i) determine in its reasonable discretion which bid is the Successful Bid and (ii) reject at any time prior to entry of a Court order approving an offer, without liability, any offer that the Debtors, in their reasonable discretion (in consultation with the Committee) deems to be (a) inadequate or insufficient, (b) contrary to the best interests of the Debtors and its estate, or (c) with the advice of counsel, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or procedures set forth therein or herein.

Subject to the provisions of the Bid Procedures, the selection of a Successful Bidder shall be within the reasonable business judgment of the Debtors (in consultation with the Committee) and subject to the approval of the Bankruptcy Court. The presentation of a particular bid to the Bankruptcy Court for approval shall not constitute the Debtors’ acceptance of the bid. The Debtors will be deemed to have accepted the bid only when the bid has been approved by the Bankruptcy Court at the Approval Hearing. At or before the Approval Hearing, the Debtors may impose, in a manner consistent with the Bid Procedures, such other terms and conditions on the Bidders as the Debtors may determine to be in the best interests of the Debtors, their estates and creditors.

#### **Closing with Backup Bidder**

If for any reason the entity or entities that submit(s) the Successful Bid fails to consummate the purchase of the Assets, the offeror of the Backup Bid (the “**Backup Bidder**”) will automatically be deemed to have submitted the highest and best bid, and the Debtors and such Backup Bidder are authorized to effect the sale of the Assets to such Backup Bidder as soon as is commercially reasonable. Following the Approval Hearing, (i) if such failure to consummate the purchase is the result of a breach by the Successful Bidder, Debtors reserve the right to seek all available damages from the defaulting Successful Bidder as modified by the terms of the APA, or any other agreement substantially similar to the APA reached pursuant to the Successful Bid and (ii) if such failure to consummate the purchase is the result of a breach by the Debtors, the Successful Bidder shall have no recourse against the Debtors other than for recovery of its Good Faith Deposit.

**Approval Hearing**

The Approval Hearing will be held on **August 11, 2017 at 9:30 a.m. (CST)**. The Approval Hearing will be held at the United States Bankruptcy Court for the Northern District of Texas, United States Courthouse, Earl Cabell Federal Building, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242, before the honorable Judge Barbara J. Houser, Chief United States Bankruptcy Judge. The Approval Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open Court or on the Court's docket.

EXHIBIT B

ASSET AND REAL ESTATE PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_, 2017 by and between Whicker Real Estate Holdings, LLC, a Texas limited liability company (“WREH”) and Whicker Asset Management, LLC dba GTM Plastics, a Texas limited liability company (“GTM” or “WAM”, and together with WREH, the “Company” or “Sellers”) and Engineered Plastic Components, Inc. (“EPC”) and The Knolls, LC, both Iowa corporations, or any affiliated company designated by EPC with its principal place of business at 4500 Westown Parkway, Suite 277, West Des Moines, IA 50266 (“Buyers”);

**RECITALS:**

A. WAM is engaged in the business of the manufacture and sale of plastic products (the “Business”);

B. On or about February 15, 2017, the Sellers commenced voluntary cases for bankruptcy under Chapter 11 fo the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). The bankruptcy cases are jointly administered under the case styled: *In re Whicker Asset Management, LLC et. al*, Case No. 17-30584-bjh-11 (the “Bankruptcy Case”);

C. Buyers desire to purchase certain assets and real estate of Sellers relating to the Business;

D. Sellers desire to sell certain assets and real estate to Buyer; and

E. Sellers and Buyers (collectively, the “Parties”) intend to effectuate the transaction contemplated herein through a sale approved pursuant to various provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et. seq* (the “Bankruptcy Code”), including sections 105, 363, and 365..

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**PURCHASE OF ASSETS**

1.1 **SALE AND PURCHASE OF WAM ASSETS:** On the Closing Date (as hereinafter defined), WAM shall sell, assign, transfer and convey to Buyers, and Buyers shall purchase and accept from WAM, on the terms and conditions set forth herein, all of WAM’s right, title and interest in and to the following described assets of WAM (collectively, the “WAM Assets”):

1.1.1. **Inventory.** All inventories of raw materials, work-in-progress and finished goods in existence on the Closing Date, a current list of which is set forth in Schedule 1.1.1 attached hereto (the “Inventory”);



1.1.2. Accounts Receivable. All of WAM's accounts receivable in existence on the Closing Date, including, but not limited to, trade accounts receivable and accounts due from affiliates, officers and employees of Seller, a current list of which is set forth in Schedule 1.1.2 attached hereto (the "Accounts Receivable");

1.1.3. Machinery and Equipment; Other Tangible Assets. All of WAM's furniture, fixtures, machinery, equipment, tools, supplies, stores, computer hardware and software, motor vehicles, and other similar miscellaneous tangible assets, including, but not limited to, the assets described on Schedule 1.1.3 attached hereto (the "Equipment");

1.1.4. Records. All customer lists, sales and purchase records, sales proposals, office records and other books and records relating in any way to the operation of the Business (the "Books and Records");

1.1.5. Intangibles. All of WAM's goodwill, going concern value, trade secrets, knowhow, processes, corporate names, trade names, trademarks, logos, patents, copyrights, or any applications for the above, including, but not limited to, the assets described on Schedule 1.1.5 attached hereto (the "Intangible Assets"). Notwithstanding the foregoing, Sellers shall retain the right to use the name "Whicker", and nothing in this Agreement is intended to be a transfer of the right to use the name "Whicker" for any present or future purpose;

1.1.6. Assumed Contracts. The contracts, agreements, leases, arrangements, customer orders, and commitments, included the contracts described on Schedule 1.1.6 attached hereto (the "Assumed Contracts");

1.1.7. Miscellaneous Assets. All other assets or properties of WAM, real or personal, tangible or intangible, which are used or usable in the operation of the Business (the "Miscellaneous Assets").

1.2 SALE AND PURCHASE OF WREH ASSETS: On the Closing Date, WREH shall sell, assign, transfer, and convey to Buyers, and Buyers shall purchase and accept from WREH, on the terms and conditions set forth herein, all of WREH's rights, title and interest in all real property and real property interests owned by WREH, including, but not limited to, the real property described on Schedule 1.2 attached hereto, together with all appurtenant easements and rights-of-way, buildings, improvements and fixtures located thereon (the "Real Estate");

1.3 EXCLUDED ASSETS. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the following assets of Sellers are not included in the Assets and the following assets shall be retained by Sellers:

1.3.1 Cash and cash equivalents.

1.4 ASSUMPTION OF LIABILITIES. Except as provided in the Assignment Agreement attached hereto as Exhibit D, Buyers do not assume any liabilities or obligations of Sellers.

1.5 TERMINATION OF EMPLOYEES. Buyers shall have no obligation to employ any employees of Sellers, but Sellers shall afford Buyers the opportunity to employ any employees of Sellers. Buyers do not assume any such obligations or liabilities and shall have no obligation or liability related to any employees of the Sellers arising prior to the Closing Date.

## **ARTICLE II** **PURCHASE PRICE**

2.1 PURCHASE PRICE. In full consideration for the purchase of both the WAM Assets and WREH Assets (collectively, the “Assets”), Buyers shall pay the aggregate amount of \$7,313,000.00 (the “Purchase Price”).

2.2 ALLOCATION OF PURCHASE PRICE. Buyers and Sellers will cooperate in good faith and use commercially reasonable efforts to agree, on or before the 90<sup>th</sup> day following the Closing Date, upon an allocation of the Purchase Price, first between WAM and WREH, and second among each class of the Assets. If Buyers and Sellers agree to such allocation, Buyers and Sellers agree to timely and properly prepare, execute and file with the Internal Revenue Service pursuant to Internal Revenue Code Section 1060 an IRS Form 8594 or any successor form thereto regarding the allocation of the Purchase Price in accordance with such agreed allocation; provided, however, that (a) Buyers’ cost for the Assets may differ from the total amount allocated hereunder to reflect the inclusion of the total cost of items (for example, capitalized acquisition costs) not included in the amount so allocated and (b) the amount realized by Sellers may differ from the total amount allocated hereunder to reflect transaction costs that reduce the amount realized for federal income Tax purposes. Except as required pursuant to applicable law, none of the Parties, directly or indirectly, through a subsidiary or Affiliate or otherwise, will take a position on any Tax Return or in any audit or examination by, or any judicial proceeding before, any taxing authority that is in any way inconsistent with such agreed allocation; provided, however, that none of Sellers, Buyers or any of their respective Affiliates shall be obligated to litigate any challenge to such allocation of the Purchase Price by any Governmental Authority. If Buyers and Sellers are unable to agree on an allocation of the Purchase Price within 90 days following the Closing, Buyers and Sellers may file their respective Tax Returns allocating the Purchase Price in the manner each such party believes appropriate, provided that such allocation is reasonable and in accordance with the Internal Revenue Code. Buyers and Sellers will promptly inform one another of any challenge by any taxing authority to any allocation made pursuant to this Section 2.2 and agree to consult and keep one another reasonably informed with respect to the status of, and any discussion, proposal or submission with respect to, such challenge.

2.3 PRORATIONS. Sellers and Buyers shall adjust and apportion all *ad valorem* property taxes and any other special assessments, utilities or other expenses that may be apportioned as of the Closing Date. All adjustments shall be made at the Closing or as soon as practicable thereafter.

**ARTICLE III**  
**CLOSING**

3.1 CLOSING DATE. The closing of the sale and purchase provided for herein (the “Closing”) shall take place at the offices of Pronske Goolsby & Kathman, P.C. on August 17, 2017, or at such other place, time and date as to which the Parties shall mutually agree (the “Closing Date”).

3.2 ITEMS TO BE DELIVERED AT CLOSING BY SELLER. At the Closing, Sellers shall deliver the following:

a. A Bill of Sale executed by WAM, and a Bill of Sale executed by WREH, in the form attached hereto as Exhibit A pursuant to which the applicable Seller sells, assigns and transfers to Buyers all of that Seller's right, title and interest in and to any and all of the Assets, excluding the Real Estate.

b. A Special Warranty Deed executed by WREH in the form attached hereto as Exhibit B, pursuant to which WREH sells, conveys and transfers to Buyers all of WREH's right, title and interest in and to the Real Estate.

3.3 INTENTIONALLY OMITTED

3.4 ITEMS TO BE DELIVERED AT CLOSING BY BUYERS. At the Closing, Buyers shall deliver the following:

a. The Purchase Price as set forth in Paragraph 2.1;

3.5 CEASE USE OF DBA. On the Closing Date, Sellers shall cease using the tradename “GTM Plastics” or any variant of “GTM”, and will, within a reasonable time after the Closing Date, file with the Office of the Secretary of State of Texas any documents necessary to communicate or indicate that “GTM Plastics” is no longer a valid tradename for the Sellers. Sellers shall cooperate with Buyers in signing and filing such assignments of names, authorizations to use names and other documents as may be necessary to fully transfer to Buyers all rights and benefits to the use of “GTM Plastics”.

3.6 FURTHER ASSURANCES. Sellers shall from time to time after the Closing, at the request of Buyers and without further consideration, execute and deliver such other instruments of conveyance, assignment and transfer and take such other action as Buyers may reasonably request to more effectively convey, assign, transfer to and vest in Buyers good and marketable title to and possession of the Assets. Sellers shall from time to time after Closing, without further consideration, deliver to Buyers all correspondence, orders, invoices, checks (properly endorsed), payments and other information or documents received by Sellers, whether or not directed to Sellers personally, and relating to the Assets.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES**

4.1 REPRESENTATIONS AND WARRANTIES OF SELLERS. Sellers represent and warrant to Buyers as follows:

4.1.1 Due Organization and Qualification. Sellers are each a limited liability company duly organized validly existing under the laws of the State of Texas.

4.1.2 Authorization. This Agreement and all agreements and instruments contemplated by this Agreement to which Sellers is a party or signatory have been duly authorized, executed and delivered by Sellers, and constitute the legal, valid and binding obligations of Sellers, enforceable in accordance with their terms.

4.1.3 Title to Assets. Sellers have, and upon conveyance transfer and assignment of the Assets to Buyers by Sellers at the Closing, Buyers will acquire and hold, good and marketable title in fee simple to the Real Estate, and good and merchantable title to all other of the Assets, whether real, personal or mixed, in each case, free and clear of any and all options, rights, pledges, mortgages, security interests, liens, charges, burdens, servitudes and other encumbrances whatsoever (hereinafter sometimes collectively referred to as "Encumbrances"), except as set forth in Schedule 4.1.3 and such Encumbrances as are placed on the Assets by Buyer.

4.1.4 Description of Assets. The Schedules attached to this Agreement are true, accurate and complete descriptions of the Assets to which they relate. The Assets constitute all assets used or usable in the Business, and are adequate to permit Buyers to continue the conduct of the Business, presently conducted, and no employee, associate or affiliate of Sellers has or claims any right or interest in any assets used or usable in the Business. There are no third Parties in possession of any portion of the Assets as lessees or otherwise, except as reflected on the applicable schedule listing such Asset. For the sake of clarity, unless otherwise specified in the Schedules, Sellers disclose and make clear that they do not own any of the molds used in the operation of the Business, and nothing in this Agreement shall be construed as Sellers asserting any ownership interest in such molds.

4.1.5 Condition of Assets. All of the tangible Assets are in good order, repair and operating condition subject, however, to the effect of ordinary wear and tear and depreciation arising from lapse of time or use with appropriate maintenance, except as noted on the applicable schedule hereto describing such Assets.

4.1.6 Contracts. True, correct and complete copies of the Assumed Contracts have heretofore been provided by Sellers to Buyers, and all such documents are genuine and in all respects what they purport to be. To the best of Sellers' understanding, there are no agreements, contracts, leases, licenses or pricing commitments, that extend after the Closing Date, except as set forth on Schedule 1.1.6. Each of the Assumed Contracts is valid and enforceable in accordance with its terms. Upon entry of the Sale Order (as defined

herein below), Sellers will not be in default of performance, observance or fulfillment of any material obligation, covenant or condition contained in the Assumed Contracts.

4.1.7 Employees. A true, correct and complete list of all persons employed by Sellers is set forth in Schedule 4.1.7 hereto, which exhibit contains true and correct information as to the positions, years of service and salaries of all such persons. Sellers have delivered to Buyers true, correct and complete copies of each agreement, plan or obligation, if any, providing for sick leave, salaries, wages, vacations, pensions, retirement benefits, profit-sharing, insurance, incentive, deferred compensation, bonus or other benefits or compensation for employees, whether written or oral and whether or not legally binding.

4.1.8 Absence of Litigation. Except as set forth on Schedule 4.1.8 attached hereto, there is no litigation, action, claim, proceeding or governmental investigation pending or, to Seller's knowledge, threatened against Sellers which may have an adverse effect upon the Assets, the business conducted by Sellers, the transactions contemplated by this Agreement or the ability of the Parties hereto to perform their respective obligations hereunder or under the agreements or instruments contemplated by this Agreement, nor is there any basis known for any such litigation, action, claim, proceeding or governmental investigation;.

4.1.9 Taxes. Sellers have filed all federal, state and local tax returns and reports required to be filed by Sellers with respect to any federal, state or local taxes, assessments, interest or penalties, and all such returns and reports are true, complete and accurate.

4.1.10 Ability to Carry Out Agreement. The execution and performance of this Agreement and the agreements and instruments contemplated by this Agreement do not and will not violate the provisions of the articles of incorporation or bylaws of Sellers or any note, indenture, mortgage, lease or other agreement or instrument to which Sellers are a party or by which Sellers is bound or result in the creation of any lien, charge or encumbrance upon the Assets. Notwithstanding the foregoing, to the extent the execution and performance of this Agreement violates any provision of any note, indenture, mortgage, lease or other agreement or instrument to which the Sellers are a party, either: (a) such counter-party to such document or agreement has either consented to execution and performance of this agreement, (b) such counter-party to such document or agreement received notice of the Sellers' motion in the Bankruptcy Cases to approve the transactions contemplated in this Agreement and such counter-party failed to object to the Seller's motion, or (c) the Bankruptcy Court (as defined herein below) has authorized the Sellers to execute and perform this Agreement.

4.1.11 Accounts Receivable. The Accounts Receivable are valid, genuine and existing, arose out of bona fide sales and delivery of goods or the performance of services, and are subject to no defenses, set-offs or counterclaims.

4.1.12 Environmental Matters. (a) There is no asbestos or asbestos containing materials in the buildings located on the Real Estate; (b) There does not now exist on, under

or within the Real Estate any discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or solid liquid or gaseous products or hazardous waste (collectively a "Spill") or any hazardous waste or toxic substance; (c) There does not now exist any condition, and the current or proposed operations are not likely to cause to exist any condition, upon the Real Estate or that would materially increase the possibility of (i) the occurrence of a Spill; (ii) the presence of hazardous waste or a hazardous or toxic substance; or (iii) a violation of any environmental laws or any other federal, state or local environmental law, regulation or ruling applicable to the property. As used in this context, Environmental Laws mean the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601-9675; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992K. Chapter 455B of the Iowa Code; or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or regulation, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect.

4.1.13 Insurance. The Assets are insured under various policies of general liability and other forms of insurance, all of which are described on Schedule 4.1.13, attached hereto. All such policies are in full force and effect in accordance with their terms, no notice of cancellation has been received, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default thereunder. Such policies are in amounts which are adequate in relation to the Assets and Facilities and all premiums to date have been paid in full.

4.1.14 Full Disclosure. No representation or warranty by Seller in this Agreement nor in any certificate, schedule, exhibit, letter or other instrument furnished or to be furnished to Buyers or its representatives pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained therein not misleading. There is no information of a material nature concerning the Assets or the business, operations, customers or employees of Sellers which has not heretofore been disclosed to Buyer or its representatives in writing.

4.2 REPRESENTATIONS AND WARRANTIES OF BUYER. Buyers represent and warrant to Sellers as follows:

4.2.1 Due Organization. Buyers are each a corporation duly organized, validly existing and in good standing under the laws of the state of its organization.

4.2.2 Authority. Buyers have the corporate power and authority to acquire the Assets and consummate the transactions provided for in this Agreement and this Agreement and all instruments and agreements contemplated by this Agreement to which Buyers are a party or signatory have been duly authorized, executed and delivered by Buyers and constitute the legal, valid and binding obligation of Buyers enforceable in accordance with their terms. All necessary corporate proceedings of Buyer have been taken

to authorize this Agreement and the agreements and instruments contemplated by this Agreement and all transactions contemplated hereby.

4.2.3 Absence of Litigation. There is no litigation, action, claim, proceeding or governmental investigation pending or, to Buyers' knowledge, threatened against Buyer which may have a materially adverse effect upon the transactions contemplated by this Agreement.

4.2.4 Ability to Carry Out Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not violate the provisions of the articles of incorporation or bylaws of Buyers or any note, indenture, mortgage, lease or other agreement or instrument to which Buyers are a party or by which either of the Buyers is bound.

4.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties made by the Parties in this Agreement or any exhibit, schedule, instrument or certificate provided hereunder shall survive the Closing for a period of ten years.

## ARTICLE V COVENANTS

5.1 NEGATIVE COVENANTS OF SELLERS. Except as may be otherwise expressly provided herein, from and after the date of the Agreement and until the Closing Date, with respect to the Assets and the operation of the Business, without the consent of Buyers, Sellers covenant and agree that they will not:

5.1.1 Creation of Obligations. Incur any obligation or liability, absolute or contingent, except current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business.

5.1.2 Encumbrances. Execute, grant or suffer any Encumbrance upon the Assets. Notwithstanding the foregoing, Buyers recognize and acknowledge that this provision shall not apply to the continuing effect of the replacement liens provided in certain financing orders entered by the Bankruptcy Court during the pendency of the Sellers' bankruptcy cases.

5.1.3 Disposition of Assets. Effect any sale, transfer, Encumbrance or other disposition of the Assets and properties which would otherwise be included in the Assets, except for sales of inventories in the ordinary course of business, and except for machinery, equipment, furniture and fixtures replaced with items of equivalent or greater value.

5.1.4 Assumed Contracts. Amend, modify, assign, transfer, grant or terminate any of the Assumed Contracts.

5.1.5 Employee Benefits. Grant any increase in the salaries of any employee of Sellers or make any increase in any other benefits to which such employees may be entitled unless such benefits result from a change in Seller's corporate benefit program applicable generally to all salaried employees of Seller.

5.1.6 Rights. Waive, modify or release any rights of material value to the Assets.

5.1.7 Extensions of Credit. Make loans or extensions of credit with respect to the operations of the Business, except in the ordinary course of business, which expressly includes use of the DIP facility approved in the Sellers' bankruptcy cases.

5.1.8 Termination of Operations. Without the written permission of the Buyers, terminate, discontinue, close or dispose of any part of the Assets or the operations of the Business.

5.1.9 Other Transactions. Enter into any other transaction or series of transactions other than in the ordinary course of business.

5.2 AFFIRMATIVE COVENANTS OF SELLERS. From and after the date of this Agreement and until the Closing Date, Sellers covenant and agree that they will:

5.2.1 Ordinary Course of Business. Carry on the operations of the Business only in the usual, regular and ordinary course consistent with good business practices and with prior practices.

5.2.2 Maintenance of Relationships. Use their best efforts to maintain and preserve their business organization, to retain their present employees and to maintain their present relationships with employees, customers, suppliers and others having business dealings with the Business.

5.2.3 Maintenance of the Assets. Maintain the Assets in existing operating repair and maintain the level of inventories in accordance with past practices of the Business.

5.2.4 Payment of Obligations in Ordinary Course. Pay and discharge all costs and expenses of carrying on the operation of the Business and of maintaining and operating the Assets as they become due and pay and discharge any such costs and expenses which at the date hereof are past due, unless contested in good faith.

5.2.5 Representations and Warranties. Use their best efforts to prevent the occurrence of any change or event which would prevent any of the representations and warranties of Sellers contained herein from being true in all material respects at and as of the Closing Date with the same effect as though such representations and warranties had been made at and as of the Closing Date.



5.2.6 Maintenance of Records. Maintain their books, accounts, including accounts receivable and records in the usual, regular and customary manner on a basis consistently applied.

5.2.7 Access to and Updating of Information. During reasonable business hours, afford to the officers, attorneys, accountants, and other authorized representatives of Buyers, free and full access to the Assets, the books and records of Sellers, and Sellers' employees in order that Buyers may have full opportunity to make a reasonable investigation with respect to the Business and the Assets.

5.2.8 Consents. As soon as practicable after the date of the Agreement and prior to the Closing, Sellers covenant and agree that they will use their best efforts to secure all waivers, orders, approvals or consents of third parties (including, without limitation, any waivers, orders, approvals or consents deemed necessary by Buyers) which are required to consummate the transactions contemplated hereby.

## **ARTICLE VI**

### **CONDITIONS TO CLOSING**

6.1 CONDITIONS TO BUYERS' OBLIGATION TO CLOSE. The obligations of Buyers under this Agreement are subject to the satisfaction, or the written waiver thereof by Buyers, of the following conditions on or prior to the Closing Date:

6.1.1 Representations and Warranties of Sellers. All of the representations and warranties of Sellers contained in this Agreement shall have been true and correct when made, and shall be true and correct in all material respects on and as of the Closing Date.

6.1.2 Covenants of Sellers. All of the covenants and agreements herein on the part of Sellers to be complied with or performed on or before the Closing Date, including, but not limited to, the execution and delivery of the documents or items to be delivered at Closing as set forth in Article III, shall have been fully complied with and performed.

6.1.3 Sellers' Certificate. There shall be delivered to Buyer a certificate dated as of the Closing Date and signed by the President or a Vice President of Sellers to the effect set forth in Sections 6.1.1 and 6.1.2, which certificate shall have the effect of a representation and warranty made by Sellers on and as of the Closing Date.

6.1.4 No Casualty Losses. The Assets shall not have suffered any destruction or damage by fire, explosion or other casualty or any taking by eminent domain of condemnation which has materially impaired the operation of the Business or otherwise had a material adverse effect upon the operations of the Business.

6.1.5 Certificate of Authorities. Sellers shall have furnished to Buyer (a) a certificate of the Secretary of State of Texas dated as of the date not more than thirty days prior to the Closing Date, attesting to the organization and existence of Sellers, (b) copies, certified by the Secretary or an Assistant Secretary of Sellers as of the Closing Date, of

Sellers' formation documents and all amendments thereto, and (c) a copy, certified by an authorized officer of Seller, of resolutions duly adopted by the Board of Directors of Seller duly authorizing the execution and delivery of the Agreement and the transactions contemplated hereby.

6.1.6 No Material Adverse Changes. There shall not have occurred any material adverse change in the business operations of the Business or in the Assets.

6.1.7 Consents. Sellers shall have obtained all orders, approvals or consents of third parties that shall be required to consummate the transactions contemplated hereby, including, without limitation, consents to the assignment of the contracts, agreements, leases, arrangements, commitments, licenses, permits, certificates, approvals, authorizations, memberships and franchises to be assigned to Buyers.

6.2 CONDITIONS TO SELLERS' OBLIGATION TO CLOSE. The obligations of Sellers under this Agreement are subject to the satisfaction, or the written waiver thereof by Sellers, of the following conditions on or prior to the Closing Date:

6.2.1 Representations and Warranties of Buyers. All of the representations and warranties of Buyers contained in this Agreement shall have been true and correct when made, and shall be true and correct in all material respects on and as of the Closing Date.

6.2.2 Covenants of Buyers. All of the covenants and agreements herein on the part of the Buyers to be complied with or performed on or before the Closing Date, including, but not limited to, the items to be delivered at Closing as set forth in Article III, shall have been fully complied with and performed.

6.2.3 Buyers' Certificates. There shall be delivered to Sellers a certificate(s) dated as of the Closing Date and signed by the President(s) of Buyers to the effect set forth in Sections 6.2.1 and 6.2.2 as they relate to Buyers, which certificate(s) shall have the effect of a representation and warranty made by Buyers on and as of the Closing Date

6.3 BANKRUPTCY APPROVAL. The obligations of Sellers and Buyers under this Agreement are subject to entry of an order by the Bankruptcy Court, pursuant to sections 105, 363, and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Assets to Buyers on the terms and conditions set forth herein, free and clear of all encumbrances, and the assumption and assignment of the Assigned Contracts to Buyers (the "Sale Order").

## **ARTICLE VII** **BREAK-UP FEE**

7.1 BREAK-UP FEE. Sellers agree that if an auction occurs, as specified in the Bid Procedures approved by the Bankruptcy Court, and Buyers are not the Successful Bidder (as that term is defined in the Bidding Procedures Order entered by the Bankruptcy Court), Buyers shall be entitled to a break-up fee in the amount of \$220,000.00 (the "Break-Up Fee"), payable by Seller, in consideration of and reimbursement for, among other things, the significant efforts and funds

expended by Purchaser in connection with its possible acquisition of the Assets. If payable pursuant to this Section 8.3(a), the Break-Up Fee shall be paid by Seller no later than one (1) Business Day following termination of this Agreement.

7.2 CONDITION PRECEDENT. Buyers represent to Sellers that Section 7.1 is a condition precedent to Buyers' execution of this Agreement and is necessary to ensure that Buyer will continue to pursue the proposed acquisition of the Assets. Sellers acknowledge that (i) Buyers would not have invested the effort in negotiating and documenting the transaction contemplated by this Agreement and incurred obligations to pay its outside advisors if Buyers were not entitled to the Break-Up Fee in accordance with the terms of this Agreement, and (ii) the Break-Up Fee, if payable hereunder, (A) constitutes actual and necessary costs and expenses of preserving Sellers' estates, within the meaning of Section 503(b) of the Bankruptcy Code, (B) is of substantial benefit to Sellers' bankruptcy estate by, among other things, establishing a bid standard or minimum for other bidders and placing estate property in a sales configuration mode attracting other bidders to a potential auction, (C) is reasonable and appropriate, including in light of the size and nature of the transaction contemplated by this Agreement and the efforts that have been or will be expended by Buyers, notwithstanding that the proposed transaction is subject to higher and better offers, and (D) was negotiated by the Parties at arm's-length and in good faith.

## **ARTICLE VIII** **MISCELLANEOUS**

8.1 EXPENSES. Each party to this Agreement shall pay its own expenses incidental to the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated hereby, including, but not limited to, the fees and expenses of their respective legal counsel, brokers and accountants. Sellers shall pay any sales, use or transfer taxes or fees in connection with the transactions contemplated hereby.

8.2 NEWS RELEASE. The Parties agree that they will cooperate with each other in the preparation of a joint news release announcing the transactions contemplated by this Agreement.

8.3 NOTICES. All notices, requests, demands claims and other communications required or permitted to be given hereunder shall be in writing and shall be sent by (a) personal delivery (effective upon delivery), (b) portable document format (.pdf) via email (effective upon transmission), (c) registered or certified mail, return receipt requested and postage prepaid (effective on the third day after being so mailed), or (d) overnight courier service (effective when received for), in each case addressed to the intended recipient as set forth below:

If to Sellers, to:

Whicker Real Estate Holdings, LLC (WREH) and Whicker Asset Management,  
LLC dba GTM Plastics (GTM)  
2405 South Shiloh Road  
Garland, Texas 75041  
Attention: Rick Whicker  
Email: [rick.whicker@gtmplastics.com](mailto:rick.whicker@gtmplastics.com)

With a copy (which shall not constitute notice) to:

Pronske Goolsby & Kathman, P.C.  
901 Main Street, Suite 610  
Dallas, Texas 75202  
Attention: Jason P. Kathman  
Email: [jkathman@pgkpc.com](mailto:jkathman@pgkpc.com)

If to Buyers, to:

Engineered Plastic Components, Inc. (EPC) and The Knolls, LC, or any affiliated company  
4500 Westown Parkway, Suite 277  
West Des Moines, IA 50266

Sellers or Buyers may change such party's address for receiving notices by giving written notice of such change to the other Parties in accordance with this Section 8.3.

8.4 ENTIRE AGREEMENT. This Agreement and the exhibits and schedules hereto constitute the entire agreement between the Parties hereto pertaining to the subject matters hereof, and supersede all negotiations, preliminary agreements and all prior and contemporaneous discussions and understandings of the Parties in connection with the subject matters hereof. All exhibits and schedules hereto are hereby incorporated into and made a part of this Agreement.

8.5 AMENDMENTS. No amendment, waiver, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by both the Sellers and Buyers or by their duly authorized agents. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect.

8.6 SEVERABILITY. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable, and, if, for any reason, a court finds that any provision of this Agreement is invalid, illegal or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written and shall be construed and enforced as so limited.

8.7 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The United States Bankruptcy Court for the Northern District of Texas shall have sole and exclusive jurisdiction to determine any disputes that may arise with respect to this Agreement. Buyers hereby consent to the jurisdiction of the United States Bankruptcy Court for the Northern District of Texas. The Parties agree that any disputes related to arising from this Agreement are core matters such that the United States Bankruptcy Court may enter final findings of facts and conclusions of law. To the extent it is otherwise determined that matters related to this Agreement are not core matters, or are not "arising in" or "arising under" the Bankruptcy Code, Buyers consent and agree, pursuant to 28 U.S.C. § 157(c),

to allowing the United States Bankruptcy Court to hear any disputes related to this Agreement and enter final findings of facts and conclusions of law.

8.8 HEADINGS AND CAPTIONS. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement, and such titles or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions.

8.9 GENDER AND NUMBER. Words and phrases herein shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context.

8.10 COUNTERPARTS. 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 and the same instrument, and in making proof hereof, it shall not be necessary to produce or account for more than one such counterpart.

8.11 BINDING EFFECT ON SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, heirs, successors and assigns; provided, however, none of the Parties to this Agreement may assign their rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, and in the event of any such assignment, all of the terms, covenants, agreements and conditions of this Agreement shall continue to be in full force and effect and the Parties hereto shall continue to remain respectively liable and responsible for the due performance of all of the terms, covenants, agreements and conditions of this Agreement which they are respectively obligated to observe and perform.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

Whicker Asset Management, LLC

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Richard Whicker,  
President

Whicker Real Estate Holdings, LLC

---

Richard Whicker,  
President

Engineered Plastic Components, Inc.

---

Reza Kargarzadeh,  
President

The Knolls, LC

---

Reza Kargarzadeh,  
Sole Member and Manager of The Knolls, LC

Exhibit A - Bill of Sale  
Exhibit B - General Warranty Deed  
Schedule 1.1.1 - Inventory  
Schedule 1.1.2 - Accounts Receivable  
Schedule 1.1.3 - Equipment  
Schedule 1.1.5 - Intangible Assets  
Schedule 1.1.6 - Assumed Contracts  
Schedule 1.2 - Real Property  
Schedule 4.1.3 - Encumbrances  
Schedule 4.1.7 - List of Employees  
Schedule 4.1.8 - Litigation  
Schedule 4.1.13 - Insurance

EXHIBIT C

Melanie P. Goolsby  
State Bar No. 24059841  
Jason P. Kathman  
State Bar No. 24070036  
PRONSKE GOOLSBY & KATHMAN, P.C.  
901 Main Street, Suite 610  
Dallas, Texas 75202  
(214) 658-6500 - Telephone  
(214) 658-6509 – Telecopier  
Email: mgoolsby@pgkpc.com  
Email: jkathman@pgkpc.com

**COUNSEL FOR DEBTORS  
AND DEBTORS-IN-POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:** §  
§ **CASE NO. 17-30584-bjh-11**  
**WHICKER ASSET MANAGEMENT,** §  
**LLC, et al.,** § **CHAPTER 11**  
§  
**Debtors.**<sup>1</sup> §

**NOTICE OF (A) APPROVAL OF BID PROCEDURES; (B) DEADLINE TO SUBMIT QUALIFIED BIDS; (C) SCHEDULING HEARING TO CONSIDER TO SALE MOTION; AND (D) PROCEDURES FOR FILING OBJECTIONS AND RESPONSES TO THE SALE MOTION, INCLUDING OBJECTIONS TO PROPOSED CURE AMOUNTS**

**TO ALL PARTIES IN INTEREST IN THE ABOVE-REFERENCED BANKRUPTCY CASES, PLEASE TAKE NOTICE:**

**Sale Motion.** On June 27, 2017, the Debtors filed their Motion Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 Approving the Sale of the Debtors’ Assets (the “**Sale Motion**”), which seeks to sell substantially all of the Debtors’ Assets<sup>2</sup> and assume and assign certain executory contracts and unexpired leases. In conjunction with the Sale Motion, the Debtors also filed their Amended Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Bid Procedures for the Sale of the Assets, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Engineered Plastic Components, Inc. in Connection Therewith, and (iii) to Set Related Auction and Hearing Dates (the “**Bid Procedures Motion**”), which seeks to approve certain bid procedures and protections related to the Sale Motion.

<sup>1</sup>The Debtors in these Chapter 11 cases are Whicker Asset Management, LLC and Whicker Real Estate Holdings, LLC

<sup>2</sup> Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Sale Motion, or Bid Procedures Motion, as applicable.

**Approval of Bid Procedures.** By order dated [REDACTED], 2017, (the “**Bid Procedures Order**”), the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) approved certain Bid Procedures related to a sale of substantially all of the Debtors’ assets, and set certain deadlines and dates related to the Auction of the Debtors’ Assets.

**Hearing on Sale Motion.** The Court will hold a hearing (the “**Approval Hearing**”) to consider the relief sought in the Sale Motion, before the Honorable Barbara J. Houser, Chief United States Bankruptcy Judge, at the United States Courthouse, Earl Cabell Federal Building, 1100 Commerce Street, 14<sup>th</sup> Floor, Dallas, Texas on **August 11, 2017 at 9:30 a.m. (CST)**. The Approval Hearing may be continued from time to time without further notice other than the announcement by the Debtors in open court of the adjourned date(s) at the Approval Hearing or any continued hearing.

**Proposed Cure Amounts.** The Sale Motion provides for the assumption and assignment of certain executory contracts and unexpired leases. Attached as **Exhibit 1** hereto are the amounts the Debtors assert are necessary to cure any defaults that may exist with executory contracts of unexpired leases that may be assumed. To the extent any party or counter-party to any of the listed executory contracts or unexpired leases disagrees with the proposed cure amounts, such parties are required to file an objection by the Sale Motion Objection Deadline. In the event that a party or counter-party does not object to the proposed cure amounts in Exhibit A, such parties shall be deemed to have waived their right to object to the amount necessary to cure pursuant to Section 365 of the Bankruptcy Code.

**IF YOU RECEIVE THIS NOTICE AND ARE A PARTY OR COUNTER-PARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OF THE DEBTORS, YOU SHOULD LOCATE YOUR NAME AND CONTRACT OR LEASE ON THE ATTACHED EXHIBIT A.**

**Objections to Sale Motion.** Objections or responses to the Sale Motion, if any, must (b) state with specificity the nature of such objection, (c) if concerning a Cure Amount, set forth a specific default in the Desired 365 Contract and claim a specific monetary amount that differs from the Cure Amount (if any) specified by the Debtors in the Sale Notice (with appropriate documentation in support thereof), (d) comply with the Federal Rules of Bankruptcy Procedure.

All objections and responses to the Sale Motion, including objections to the proposed cure amounts, must be filed with the Court and served upon the following parties (listed below) no later than **August 4, 2017 at 5:00 p.m. (Central Standard Time)** (the “**Sale Motion Objection Deadline**”). Failure to file a response or objection to the Sale Motion by the Sale Motion Objection Deadline, may result in your objection being barred.



<p>Whicker Asset Management, LLC                  Whicker Real Estate Holdings, LLC                  c/o Rick Whicker                  2405 S. Shiloh Road                  Garland, Texas 75041</p> <p><i>Debtors</i></p>	<p>Whicker Asset Management LLC                  Whicker Real Estate Holdings, LLC                  c/o Jason P. Kathman                  PRONSKE GOOLSBY &amp; KATHMAN, P.C.                  901 Main Street, Suite 610                  Dallas, Texas 75202                  Facsimile: (214) 658-6509                  Email: <a href="mailto:jkathman@pgkpc.com">jkathman@pgkpc.com</a></p> <p><i>Counsel for the Debtors</i></p>
<p>BOKF, N.A. dba Bank of Texas                  c/o Cliff Wade                  MBL Law                  17330 Preston Road, Suite 250D                  Dallas, Texas 75252                  Email: <a href="mailto:cliff.wade@mbl-law.com">cliff.wade@mbl-law.com</a></p> <p><i>Counsel to BOKF, N.A.</i></p>	<p>United States Small Business Administration                  c/o Andrew Baka                  4300 Amon Carter Blvd., Suite 108                  Fort Worth, Texas 76155                  Email: <a href="mailto:andrew.baka@sba.gov">andrew.baka@sba.gov</a></p> <p><i>Counsel for U.S. Small Business Administration</i></p>
<p>Official Committee of Unsecured Creditors                  c/o Nicholas Miller                  NEAL GERBER EISENBERG                  Two North LaSalle Street, Suite 1700                  Chicago, Illinois 60602-3801                  Email: <a href="mailto:nmiller@nge.com">nmiller@nge.com</a></p> <p><i>Counsel for Official Committee of Unsecured Creditors</i></p>	<p>Office of the United States Trustee                  Attn: Meredyth Kippes                  1100 Commerce Street, Room 976                  Dallas, Texas 75242</p> <p><i>United States Trustee</i></p>

Dated: July \_\_, 2017

Respectfully submitted,

*DRAFT*

Melanie P. Goolsby

State Bar No. 24059841

Jason P. Kathman

State Bar No. 24070036

**PRONSKE GOOLSBY &  
KATHMAN, P.C.**

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**COUNSEL FOR DEBTOR AND  
DEBTOR-IN-POSSESSION**

**IN RE WHICKER ASSET MANAGEMENT, LLC, et al.**  
**CASE NO. 17-30584-bjh-11**

Desired 365 Contracts

Row	Contract Type	Debtor Counterparty	Contract Counterparty/Notice Party	Contract Date	Contract Description	Cure Amount
1	Forklift Lease	Whicker Asset Management, LLC	De Lage Landen Financial Services, Inc. c/o Tim Veitz 1111 Old Eagle School Road Wayne, PA 19087	12/21/12	EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  DLL LEASE NUMBER: 100-100006105	\$797.60
2	Forklift Lease	Whicker Asset Management, LLC	De Lage Landen Financial Services, Inc. c/o Tim Veitz 1111 Old Eagle School Road Wayne, PA 19087	7/12/12	EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  DLL LEASE NUMBER: 25195199	\$728.54
3	Forklift Lease	Whicker Asset Management, LLC	De Lage Landen Financial Services, Inc. c/o Tim Veitz 1111 Old Eagle School Road Wayne, PA 19087	5/9/12	EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  DLL LEASE NUMBER: 25178832	\$729.89
4	Equipment Lease	Whicker Asset Management, LLC	Direct Capital Corporation 155 Commerce Way Portsmouth, NH 03801	2/13/15	MASTER LEASE AGREEMENT FOR LEASE OF MOLDING MACHINE  MASTER LEASE AGREEMENT NO. ML00368104	\$0.00
5	Forklift Lease	Whicker Asset Management, LLC	Equipment Depot 1400 S. Loop 12 Irving, TX 75060		EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  SERIAL NO: C232L-0973-9790	\$156.93
6	Vehicle Lease	Whicker Asset Management, LLC	Industrial Power Truck Leasing, LLC 712 N. Beach Street Fort Worth, TX 76111	2/18/13	VEHICLE LEASE FOR 2013 HINO 268 TRUCK  VIN NO. 5PVNE8JV4D4S52493	\$3,594.00
7	Warehouse Lease	Whicker Asset Management, LLC	LIT Industrial Texas LP	3/16/15	NON-RESIDENTIAL REAL PROPERTY LEASES FOR 80,000 SQUARE FOOT SPACE LOCATED AT 3353 MILLER PARK SOUTH, SUITE 200, GARLAND, TEXAS 75042	\$32,338.00
8	Equipment Lease	Whicker Asset Management, LLC	P & L Capital Corp., Inc. 4131 S. 143rd Circle Omaha, NE 68137	5/12/15	LEASE OF PHONE SYSTEM  LEASE NO: 201505-001	\$0.00
9	Equipment Lease	Whicker Asset Management, LLC	P & L Capital Corp., Inc. 4131 S. 143rd Circle Omaha, NE 68137	8/11/15	LEASE OF SECURITY SYSTEM  LEASE NO: 201508-003	\$0.00
10	Vehicle Lease	Whicker Asset Management, LLC	Penske Trust Leasing Co. LP PO Box 563 Reading, PA 19603-0563  Gary Kauwell 2675 Morgantown Road Reading, PA 19607	9/9/14	VEHICLE LEASE SERVICE AGREEMENT RELATED TO THE LEASE OF FREIGHTLINER M2 106	\$2,515.27
11	Service Contract	Whicker Asset Management, LLC	Safety-Kleen Systems 2600 North Central Expressway Suite 400 Richardson, TX 75080		SERVICE AGREEMENT RELATED TO CLEANING OF CERTAIN TOOLS AND SAFETY SYSTEMS	\$599.76
12	Equipment Lease	Whicker Asset Management, LLC	TM Acceptance Corp. 755 Greenleaf Ave. Elk Grove Village, IL 60007	7/15/11	EQUIPMENT LEASE RELATED TO TWO (2) MOLDING MACHINES  EQUIPMENT LEASE AGREEMENT NO: 3561	\$39,237.00
13	Forklift Lease	Whicker Asset Management, LLC	Wells Fargo Equipment Finance c/o John Conlon 300 Tri-State International Suite 400 Lincolnshire, IL 60069	3/22/13	EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  Agreement No. 301-9688528-002	\$241.93
14	Forklift Lease	Whicker Asset Management, LLC	Wells Fargo Equipment Finance c/o John Conlon 300 Tri-State International Suite 400 Lincolnshire, IL 60069	8/9/14	EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  Agreement No. 301-9688528-003	\$469.09
15	Forklift Lease	Whicker Asset Management, LLC	Wells Fargo Equipment Finance c/o John Conlon 300 Tri-State International Suite 400 Lincolnshire, IL 60069	9/19/14	EQUIPMENT LEASE AGREEMENT FOR CLARK C25C FORKLIFT  Agreement No. 301-9688528-004	\$517.64