

MOTION

Overbid procedure (if any): Public auction sale to the highest bidder at a date within
45 days of entry of an order granting the Motion.
(See attached Sale Motion for additional details.)

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

April 2, 2014 at 11:00 am
Video Hearing Room 126
US Bankruptcy Court, 3420 Twelfth Street,
Riverside, CA 92501

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

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Date: 3/12/2014

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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

10
11 In re
12 **APOGEE CONTAINERS, INC.**
13 Debtor.

Case No. 6:13-bk-30034-SC

Chapter 7

CHAPTER 7 TRUSTEE’S MOTION FOR ORDER:

- 14 (1) **APPROVING THE SALE AND AUCTION OF PERSONAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES;**
15
16 (2) **APPROVING EMPLOYMENT OF TAUBER-ARONS, INC. AS TRUSTEE’S AUCTIONEER;**
17
18 (3) **APPROVING THE PAYMENT OF AUCTIONEER’S COMMISSION; AND**
19 (4) **GRANTING RELATED RELIEF;**
20 **MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS IN SUPPORT THEREOF**

Hearing:

Date: April 2, 2014

Time: 11:00 a.m.

Place: Video Hearing Room 126

US Bankruptcy Court

3420 Twelfth Street, Riverside CA

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1 **TO THE HONORABLE SCOTT CLARKSON, UNITED STATES BANKRUPTCY**
2 **JUDGE; OFFICE OF THE UNITED STATES TRUSTEE AND ALL INTERESTED**
3 **PARTIES:**

4 **I. SUMMARY OF ARGUMENT**

5 A. Cisneros, the Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
6 Apogee Containers, Inc. (“Debtor”), brings this Motion for Order: (1) Approving the Sale and
7 Auction of Personal Property Free and Clear of All Liens, Claims and Encumbrances; (2)
8 Approving Employment of Tauber-Arons, Inc. as Trustee’s Auctioneer; (3) Approving the
9 Payment of Auctioneer’s Commission; and (4) Granting Related Relief (“Motion”).

10 The Trustee has received an offer from Tauber-Arons, Inc. (“Buyer” or “Auctioneer”)¹ to
11 purchase all the Debtor’s personal property, including contracting equipment, warehouse
12 equipment, and vehicles but excluding² certain items which are detailed in the Agreement
13 (collectively, the “Assets”) and to auction such Assets for a net guaranteed sum to the Estate of
14 \$1,067,000. If the net proceeds of the auction sale are greater than the sum of \$1,117,000, such
15 proceeds will be split 90% to the Estate and 10% to the Buyer. The Trustee expects to net
16 approximately \$185,000 from the sale of the Assets after all costs of sale are paid for the benefit
17 of the Estate and its creditors and possibly more if the Assets can be auctioned for more than
18 \$1,117,000 to provide a greater distribution to creditors. Further, this offer was the highest and
19 best received by the Trustee after speaking to over ten interested parties. It is difficult at this
20 point to determine the percentage of distribution to unsecured creditors given that the claims bar
21 date has not yet passed but in any event, the Trustee believes the alternative, i.e. not selling the
22 Assets, is far worse than conducting a sale. Further, the Debtor’s landlord has obtained an
23

24 ¹ Although Tauber-Arons, Inc. is the proposed buyer and auctioneer, Tauber-Arons, Inc.
25 used the following associates to prepare its offer to the Trustee: Capital Recovery Group,
Bit it Up, Reich Brothers, and Aaron Equipment.

26 ² The Debtor alleged that certain of its assets listed on Schedule B were not in fact property
27 of the Debtor. The Trustee and his counsel met and conferred with the Debtor at length
28 on this issue. The Debtor has conceded that all assets can be sold other than
approximately five sets of items that are specifically excluded pursuant to the terms of the
Agreement. As to the excluded assets, the parties reserve all of their rights regarding the
title and ownership of such assets to be resolved at a later date.

1 unlawful detainer judgment against the Debtor and as such, the Trustee needs to auction the
2 Assets and vacate the Debtor's premises as soon as possible.

3 The Trustee further seeks authority to employ the Auctioneer to coordinate the auction
4 sale of the Assets and authorizing payment of the auctioneer's compensation. The auction sale
5 shall be conducted free and clear of any and all liens, encumbrances, claims and/or interests
6 (collectively, the "Liens and Encumbrances") impacting the Assets, with all such Liens and
7 Encumbrances to be unconditionally released, discharged and terminated, and with any Liens
8 and Encumbrances not resolved or satisfied through the sale to attach only to the proceeds of the
9 transaction with the same priority, validity, force and effect as they existed with respect to the
10 sold Assets before the closing of the auction sale pending further Court order or agreement with
11 the parties.

12 For all of these reasons which will be discussed in greater detail below, the Trustee
13 requests the Motion be approved.

14 **II. BACKGROUND INFORMATION**

15 **A. Case Commencement.**

16 On December 16, 2013, the Debtor filed a voluntary petition under Chapter 7 of the
17 Bankruptcy Code.

18 A. Cisneros is the duly appointed, qualified and acting Chapter 7 trustee in the Debtor's
19 bankruptcy case.

20 **B. The Assets.**

21 The Debtor's Amended Schedule B indicates that the Debtor owns numerous machinery,
22 fixtures, equipment and supplies valued at the sum of \$2,500,000. The Debtor's Amended
23 Schedule B also lists seven Nissei 650 blowing molding machines located at 341 Bonnie Circle,
24 Corona, CA valued at \$700,000.

25 The Debtor's Amended Schedule D lists the following: (1) Accurate Air Engineering in
26 the amount of \$18,050 (disputed, contingent, and unliquidated); (2) Employment Development
27 Department in the amount of \$16,405.10; (3) GP Sales Corp. in the amount of \$454,775.86
28 (disputed, contingent, and unliquidated); (4) Internal Revenue Service in the amount of

1 \$170,000; (5) Muelstein in the amount of \$190,276 (disputed, contingent, and unliquidated); and
 2 (6) US Bancorp Equipment Finance, Inc. in the amount of \$150,000 (disputed, contingent, and
 3 unliquidated). A true and correct copy of the Debtor’s Amended Bankruptcy Schedules B and D
 4 is attached to the Cisneros Declaration as **Exhibit “1.”**

5 The Trustee is informed that the amounts owed to such secured parties may be different
 6 than those listed by the Debtor. The proposed treatment of the liens and encumbrances through
 7 the sale is as follows:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
U.S. Bancorp Equipment Finance (“U.S. Bancorp”)	UCC-1 filed with the California Secretary of State on 3/27/09 as Filing No. 06- 7063961038 Abstract of Judgment recorded 1/23/09 as Recording No. 09-7185628652	\$520,000	All amounts owed will be paid through escrow on the sale transaction and as such, this lien will be released, discharged and terminated at the close of escrow and the Assets will be sold free and clear of this lien and the lien will not attach to the sale proceeds. The Trustee understands that the judgment obtained by U.S. Bancorp is against the Debtor and Deco-Pac jointly and as such, the Trustee reserves all rights against Deco-Pac to reimburse the Estate for monies paid toward U.S. Bancorp’s judgment.
Continental Bank	UCC-1 filed with the California Secretary of State on 11/27/06 as Filing No. 06- 7093565566	\$0	The priority, validity and amount of this lien is disputed by the Trustee and is the subject of a bona fide dispute. In particular, the Trustee understands this lien has been satisfied in full. As it is subject to a bona fide dispute, pursuant to Bankruptcy Code Sections 363(b) (1) and (f)(4), the Trustee seeks to sell the Assets free and clear of this lien.

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<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
H. Muelstein & Co. ("Muelstein")	Judgment lien recorded 8/17/09 as Recording No. 09-7205987370	\$190,000	<p>The amount of Muelstein's lien is disputed. Muelstein has filed Proof of Claim No. 2 indicating it has a secured claim \$347,647.92 but Trustee's counsel is informed that the amount actually owed to Muelstein is much lower as a portion of Muelstein's judgment has been paid by the Debtor.</p> <p>As it is subject to a bona fide dispute, pursuant to Bankruptcy Code Sections 363(b) (1) and (f)(4), the Trustee seeks to sell the Assets free and clear of this lien with the lien attaching to the proceeds of the sale with the same priority, validity, force and effect as they existed with respect to the sold Assets before the closing of the auction sale pending further Court order or agreement with the parties.</p>
Internal Revenue Service ("IRS")	Federal income tax lien recorded on 7/6/10 as Recording No. 10-7237389212; 12/8/10 as Recording No. 10-7254054472; 3/30/11 as Recording No. 11-7265324495	\$165,840 based on Claim No. 10 filed by the IRS	The Trustee is in negotiations with the IRS to reduce the amount of its secured lien. The Trustee believes that by the time of the hearing on the Motion, the IRS will consent to the sale or if the parties are still in negotiations, the Trustee will seek to sell the Assets free and clear of this lien with the lien attaching to the proceeds of the sale with the same priority, validity, force and effect as they existed with respect to the sold Assets before the closing of the auction sale pending further Court order or agreement with the parties.
Employment Development Department ("EDD")	Federal tax lien recorded on 8/10/11 as Recording No. 11-7281229598; 4/12/12 as Recording No. 12-7310135518; 9/17/12 as Recording No. 12-7329571845	\$0 based on Claim No. 13 filed by the EDD	There will be no payment made to the EDD as it does not have a secured claim as indicated in its Claim No. 13. The Assets will be sold free and clear of this lien and the lien will <u>not</u> attach to the sale proceeds.

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
<p>3 Accurate Air 4 Engineering 5 (“Accurate”)</p>	<p>3 Writ of 4 attachment 5 entered on 6 11/26/13 in the 7 amount of 8 \$24,458</p>	<p>3 \$0</p>	<p>3 The priority, validity and amount of this lien is 4 disputed by the Trustee and is the subject of a 5 bona fide dispute.</p> <p>6 This lien represents a writ of attachment 7 recorded within 90 days of the Petition Date 8 and can be avoided pursuant to Section 547 and 9 the lien position preserved for the benefit of the 10 Estate pursuant to Section 551. As such, no 11 distribution will be made to this creditor and 12 the sale shall be free and clear of this lien. 13 Accurate has signed a stipulation with the 14 Trustee to waive its security interest. A true 15 and correct copy of the Stipulation is attached 16 to the Cisneros Declaration as Exhibit “2.”</p> <p>17 As it is subject to a bona fide dispute, pursuant 18 to Bankruptcy Code Sections 363(b)(1) and 19 (f)(4), the Trustee seeks to sell the Assets free 20 and clear of this lien.</p>
<p>14 GP Capital & 15 Sales (“GP 16 Capital”)</p>	<p>14 Writ of 15 attachment 16 entered on 17 12/5/13 in the 18 amount of 19 \$454,775</p>	<p>14 \$0</p>	<p>14 The priority, validity and amount of this lien is 15 disputed by the Trustee and is the subject of a 16 bona fide dispute.</p> <p>17 This lien represents a writ of attachment 18 recorded within 90 days of the Petition Date 19 and can be avoided pursuant to Section 547 and 20 the lien position preserved for the benefit of the 21 Estate pursuant to Section 551. As such, no 22 distribution will be made to this creditor and 23 the sale shall be free and clear of this lien. GP 24 has agreed to waive its security interest in a 25 stipulation with the Trustee.</p> <p>26 As it is subject to a bona fide dispute, pursuant 27 to Bankruptcy Code Sections 363(b)(1) and 28 (f)(4), the Trustee seeks to sell the Assets free and clear of this lien.</p>

C. Marketing of the Assets and Interested Parties.

The Trustee has been contacted by at least ten parties interested in purchasing the Assets. The interested parties are mostly either operators who wish to continue the operations of the Debtor’s business or auctioneers interested in purchasing the Assets to then auction them on a piece by piece basis. Approximately ten interested buyers have had access to the warehouse

1 where the Assets are stored in order to inspect the Assets. The Trustee and his counsel have
2 spoken directly to many of these potential buyers and the Trustee has visited the Debtor's
3 business at least three times. The Trustee asked that all interested parties submit to him their
4 highest and best offer for the Assets. The offer discussed herein is the highest and best offer
5 received by the Trustee.

6 Prior to the Petition Date, the Debtor's landlord obtained an unlawful detainer judgment
7 against the Debtor. The landlord has made it clear that the Debtor needs to vacate the premises
8 as soon as possible. By selling the Assets by auction sale as soon as possible, the Debtor will
9 avoid having to incur moving costs to conduct an auction at a later date. The Trustee is in the
10 process of speaking to the landlord to determine the amount of its administrative claim to be paid
11 for post-petition rent and storage.

12 Immediately upon the filing of this Motion, the Auctioneer will begin marketing and
13 advertising of the auction sale of the Assets through direct mailings, e-mails, and trade journals
14 and newspapers. The Debtor expects the target audience to be either end users wanting to
15 continue running Debtor's business or operators in the bottling industry in need of equipment.

16 **D. The Offer for the Purchase of the Assets and Summary of the Auction Terms.**

17 The Trustee received an offer from the Buyer whose address is 13848 Ventura
18 Boulevard, Sherman Oaks, CA 91423 to purchase and auction the Assets as follows: net
19 guarantee to the Estate of \$1,067,000, the next \$50,000 in net proceeds to be paid to the Buyer to
20 reimburse it for out of pocket expenses, and all net proceeds over and above \$1,117,000 to be
21 split 90% to the Estate and 10% to the Buyer. Attached as **Exhibit "3"** to the Cisneros
22 Declaration is a true and correct copy of the Asset Purchase Agreement and all other documents
23 related to the sale (collectively, the "Agreement").

24 A summary of the Agreement's terms and highlights are discussed below, but the
25 summary and discussion are not meant to be a complete review of every provision of the
26 Agreement. The Agreement itself is the legally binding document the Trustee seeks approval of,
27 and in the event of any inconsistency between the terms, provisions or effect of the Agreement
28 and the description of it in these pleadings, the Agreement alone shall govern and not these

1 pleadings or the descriptions herein.

2 In summary, the principal terms of the sale and auction of the Assets shall be as follows
3 (the Trustee is referred to at all times as the "Seller" in the following summary):

4 Buyer:	Tauber-Arons, Inc.
5 Excluded Assets:	JLG Mod. Electric scissor lift, (2) 3M box closers, (5) lazy susans, Toyota 6 forklift with serial no. 60850, (6) incline belt conveyors. Debtor's counsel has informed the Trustee that no dispute exists as to all the other assets of the Debtor which will be sold.
7 Purchase Price:	\$1,067,000 net guarantee to the Estate. If the auction produces a net price of 8 more than \$1,067,000, the next \$50,000 over and above \$1,067,000 will go to the Buyer. If the auction produces a net price of over \$1,117,000, the 9 proceeds will be divided 90% to the Estate and 10% to the Buyer.
10 Deposit:	Buyer will pay the Trustee the sum of \$53,350 immediately upon the full execution of the Agreement. The Deposit will be returned if, through no fault of the Buyer, the Court does not approve this Motion.
11 Commission:	The Auctioneer will retain a 15% buyers' premium based on the sales price of 12 the Assets at the auction. However, in the event the Buyer sells the Assets at the auction on a bulk sale basis to a single buyer, the Buyer will reimburse 5% of the buyers' premium to the Estate.
13 Closing:	Closing will occur no later than 5 days from entry of a Court Order approving 14 this Motion.
15 Auction:	Buyer will have forty-five (45) days from entry of an order approving this Motion to conduct its auction.
16 Bankruptcy Court Approval	The sale is expressly conditioned on approval of the United States Bankruptcy Court for the Central District of California, Riverside Division and entry of final order approving the Agreement.
17 No Assignment	The Agreement is between the Buyer and the Trustee. The Buyer shall have 18 no right to assign the Escrow, the Agreement, or transfer the Assets concurrent with closing without consent of the Seller.
19 Limitations of Sale	The parties acknowledge that the operation of the law has placed the Trustee 20 in a unique role as the Seller of the Assets. Due to the nature of the Trustee's role in administering the Estate, there are limitations as to the extent, type and 21 character of the Agreement under which the Trustee can convey the Assets. The Trustee proposes to sell Assets under certain limitations. The parties 22 acknowledge that they understand the terms under which the Assets are to be conveyed may vary substantially from the normal customs and trade within 23 the Debtor's industry. Except where expressly mandated by operation of law, the Buyer consents to any such modifications and amendments.

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Purchase Without Warranties	The Buyer acknowledges that he is purchasing the Assets from the Seller “AS IS” without warranties of any kind, expressed or implied, being given by the Seller, concerning the condition of the Assets or the quality of the title thereto, or any other matters relating to the Assets. The Buyer represents and warrants that it is purchasing the Assets as a result of his own investigations and are not buying the Assets pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction, or on the behalf of the Seller. The Buyer acknowledges that the Buyer has inspected the Assets, and upon closing of Escrow governed by this Agreement, the Buyer forever waives, for himself, his heirs, successors and assigns, all claims against the Debtor, its attorneys, agents and employees, the Debtor’s Estate, A. Cisneros as Trustee and individually, and his attorneys, agents and employees, arising or which might otherwise arise in the future concerning the Assets.
Trustee’s Liability	The Buyer acknowledges that the Trustee is acting in his official capacity only. No personal liability shall be sought or enforced against the Trustee with regard to the Agreement, the Assets, or the physical condition of the Assets. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee’s liability is only to return any money paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Assets and the Agreement; and all disputes arising before and after closing shall be resolved in said Court. Further, the Trustee has agreed that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.
Hold Harmless	The Buyer understands the terms and conditions of the entire purchase contact and holds the Estate and the brokers, agents, A. Cisneros, Trustee, and his attorneys including Shulman Hodges & Bastian LLP, agents and employees, harmless from any liabilities arising from the Agreement.
Jurisdiction of the Bankruptcy Court	Any and all disputes which involve in any manner the Estate or A. Cisneros, Trustee, arising from the Agreement or relating in any manner to the Assets, shall be resolved only in the United States Bankruptcy Court, Central District of California.
Waiver of Rule 6004(h)	The Trustee requests that the Court waive the fourteen-day stay of the order approving the sale of the Assets under Federal Rules of Bankruptcy Procedure 6004(h).

Within forty-five days of entry of an order approving this Motion, the Buyer will hold an auction of the Assets. As such, the Trustee requests authorization to employ the Buyer as auctioneer to market and coordinate the auction and authorization to pay the Buyer’s compensation and expenses as set forth herein.

Sale Format	Onsite Public Auction
Sale Date	Within forty-five days after entry of an order approving this Motion
Site	Onsite at 510 Alcoa Circle, Corona, CA (“Facility”) and 341 Bonnie Circle, Corona, CA
Marketing	Newspaper, On Line Publications, Direct Mail and Email Blast

<p>1 Seller's Cost</p>	<p>Auctioneer's Expense Reimbursement only if the net proceeds are greater than \$1,067,000. Expenses to be no more than \$50,000. No Seller's Commission paid.</p>
<p>2 3 4 Auctioneer's Compensation</p>	<p>15% Buyer's Premium from purchasers and reimbursement of expenses not to exceed \$50,000. If the net proceeds of the sale are more than \$1,117,000, the Auctioneer will receive 10% of such excess net proceeds.</p>
<p>5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 Sale Terms</p>	<ul style="list-style-type: none"> • The sale will be without limit and without reserve, subject only to minimum opening bid amounts established by the Auctioneer, based on Auctioneer's expert judgment. • Auctioneer will offer the Assets to buyers in "As-Is, Where-Is" Condition, without representations or warranties. • Auctioneer will require bidders to post an appropriate deposit as a prerequisite to bid • Auctioneer will require buyers to sign a terms sheet, which will include terms intended to protect Auctioneer and Seller from buyer payment defaults, property abandonment, damage to persons or property onsite, claims regarding the property condition, etc. • Auctioneer will accept from buyers the following forms of payment: credit card (fees shall be Auctioneer's responsibility), cashiers' checks, guaranteed checks and wire transfer as payment for the property sold. No cash will be accepted for this sale. • Regardless of any scheduled time and place for offer to purchase the Assets, the Trustee may, at his option, reject any and all bids if he deems that such bids are inadequate as to form and amount. The sale date may be continued from time to time until the Assets are sold, without further Order of this Court, or until such time it is determined that abandonment is appropriate. • Auctioneer shall be responsible to collect and remit any applicable sales tax. • Auctioneer shall provide Trustee an Auctioneers' Report within 7 days of the auction, including a list of items sold, price of each item sold, buyer of each item, and gross sale proceeds. The Auctioneer shall also provide a settlement summary report, statement itemizing sale expense, copies of all marketing materials and expense receipts.

21 Attached as **Exhibit "4"** to the Declaration of Anthony Arons ("Arons Declaration") is a
 22 true and correct copy of the resume for the Auctioneer. Attached as **Exhibit "5"** is a copy of the
 23 Auctioneer's blanket bond in favor of the United States of America for coverage in the aggregate
 24 of \$25,000. Upon Court approval of this Motion and before the auction is conducted, the
 25 Auctioneer will obtain an individual bond for this case in the amount of \$3,000,000. The cost to
 26 obtain the bonds will be paid by the Estate from the sale proceeds. The Auctioneer has advised
 27 the Trustee that the total value of all pending bankruptcy estate auctions in which the Auctioneer
 28 is involved in this district does not exceed these bonds, including auctions already conducted in

1 which funds have not yet been disbursed by the Auctioneer to a trustee and pre-auction estimated
2 values of estate assets in the custody and control of the Auctioneer.

3 The Trustee believes that the auction is fair and reasonable and that the Trustee should be
4 authorized to employ the Auctioneer on the terms and conditions set forth herein. The Trustee is
5 satisfied from the Arons Declaration that the Auctioneer is a disinterested person within the
6 meaning of Bankruptcy Code Section 101(14).

7 **E. Request for Authorization to Use the Auction Proceeds to Pay the Auctioneer's**
8 **Compensation and Expenses and to Reimburse the Trustee for its Actual Costs.**

9 Through this Motion, the Trustee requests the Court authorize the use of the proceeds of
10 the auction sale to make Court approved disbursements to the proposed Auctioneer as set forth
11 herein.

12 Pursuant to the Office of the United States Trustee's Supervisory Instructions
13 ("Instruction"), Auctioneer's compensation and expenses shall be payable upon completion of
14 the following:

15 a. Within seven (7) days after the auction sale, Auctioneer shall turnover any and all
16 proceeds from the auction to the Trustee;

17 b. Within fifteen (15) days after the auction sale, Auctioneer shall submit to the
18 Trustee a Report of Auctioneer (the "Auction Report") which is consistent with the requirements
19 of the Instructions; and

20 c. Within seven (7) days of receipt of the Auction Report, the Trustee shall file the
21 Auction Report with the Court together with a brief declaration ("Trustee's Declaration") which
22 is consistent with the requirements of the Instructions.

23 d. Provided an Order has been entered approving payment of the Auctioneer's
24 compensation and expenses, the Trustee shall compensate the Auctioneer for the Court approved
25 fees and expenses within seven (7) calendar days of the Trustee's filing of the Auction Report
26 and the Trustee's Declaration with the Court.

27 Based upon an analysis of the market value of the Assets and costs associated with sale of
28 same, the Trustee is of the opinion and belief that the public auction as referenced above is in the

1 best interest of this Estate, as it will generate the most funds to the Estate for the benefit of the
2 creditor body.

3 The Trustee believes that the proposal for employment of the Auctioneer is fair and
4 reasonable and the Trustee should be authorized to pay the Auctioneer pursuant to the terms and
5 conditions set forth above.

6 **F. Tax Consequences**

7 At this time, the Trustee does not know what the capital gains taxes liability will be, if
8 any, generated by the sale but believes if any are generated they will be minimal. The Trustee is
9 speaking to his accountant about the potential taxes on the sale and will update the Court with
10 such information as soon as possible.

11 **III. ARGUMENT**

12 **A. The Sale Should Be Approved As Being in the Best Interest of the Estate.**

13 The Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b).
14 The standards to establish are that there is a sound business purpose for the sale, that the sale is
15 in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that there is
16 accurate and reasonable notice to creditors, and that the sale is made in good faith. *In re Wilde*
17 *Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d
18 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale to one of
19 very few serious bidders where an asset has been shopped and a delay could jeopardize the
20 transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y.
21 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's
22 proposed sale and auction of the Assets meets the foregoing criteria.

23 1. **Sound Business Purpose.**

24 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the
25 business purpose for a proposed sale justifies disposition of property of the estate under Section
26 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting
27 the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir.
28

1 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the
2 following standard to be applied under Bankruptcy Code Section 363(b):

3 Whether the proffered business justification is sufficient depends
4 on the case. As the Second Circuit held in *Lionel*, the bankruptcy
5 judge should consider all salient factors pertaining to the
6 proceeding and, accordingly, act to further the diverse interests of
7 the debtor, creditors and equity holders, alike. He might, for
8 example, look to such relevant factors as the proportionate value of
9 the assets to the estate as a whole, the amount of lapsed time since
10 the filing, the likelihood that a plan of reorganization will be
11 proposed and confirmed in the near future, the effect of the
12 proposed disposition on future plans of reorganization, the
13 proceeds to be obtained from the disposition vis-a-vis any
14 appraisals of the property, which of the alternatives of use, sale or
15 lease the proposal envisions and, most importantly perhaps,
16 whether the asset is increasingly or decreasing in value. This list is
17 not intended to be exclusive, but merely to provide guidance to the
18 bankruptcy judge.

19 *Walter*, 83 B.R. at 19-20 (quoting *Continental*, 780 F.2d at 1226).

20 Here, the facts surrounding the sale and auction of the Assets support the Trustee's
21 business decision that the proposed sale is in the best interests of the estate and its creditors.
22 Through the sale, the Trustee expects to generate net proceeds of approximately \$185,000 after
23 all secured liens, taxes and costs of sale are paid as shown below:

24 Sale Price	\$1,067,000
25 Bond Cost	(\$6,000)
26 Less amount to be paid to U.S. Bancorp	(\$520,000)
27 Less amount to be paid to Continental Bank	(\$0)
28 Less estimate due to H. Muelstein & Co.	(\$190,000)
Less estimate due to IRS	(\$165,840)
Less amount to be paid to EDD	(\$0)
Estimated Net Sale Proceeds ³	\$185,160 ⁴

³ The next two lien positions in which the Estate has an interest as a result of the avoidance of Accurate Air and GP Capital's secured claims is up to the sum of approximately \$480,000.

⁴ This amount will increase pro rata for auction overbidding at a rate of 90% to the Estate and 10% to the Auctioneer if the Auctioneer is able to sell the Assets for more than \$1,117,000. From such proceeds, the Trustee may also request to pay the Debtor's landlord an administrative claim for post-petition storage. The Trustee expects the landlord will be owed approximately \$50,000 to \$90,000 as an administrative claim.

1 The estimated net proceeds will benefit the Estate by providing funds for distribution to
2 creditors. If the Motion is not approved, then there will be a substantial loss to the Estate. In
3 such event, the Estate will not receive any benefit from the Assets.

4 Through the competitive bidding of a public auction sale, it is anticipated that the Trustee
5 will receive the best and highest value for the Assets and therefore, the ultimate sale price of the
6 Assets will be fair and reasonable. Furthermore, the Assets are located at the Facility and the
7 landlord has obtained an unlawful detainer judgment against the Debtor. Thus, the Trustee needs
8 to liquidate the Assets as quickly as possible in order to vacate the premises and terminate the
9 accruing of post-petition rent.

10 Therefore, the Trustee respectfully submits that, if this Court applies the good business
11 reason standard suggested by the Second Circuit in *Lionel*, the sale should be approved.

12 2. The Sale Serves the Best Interests of the Estate and Creditors.

13 The Trustee believes that it would be in the best interest of the Estate and its creditors to
14 sell the Assets through the competitive bidding of a public auction sale. The benefits to the
15 Estate, as set forth above, are tremendous due to the funds to be generated from the sale. If the
16 Motion is not approved, the Estate will not net approximately \$185,000. The Trustee does not
17 want to lose this beneficial business opportunity. Thus, the Trustee has made a business decision
18 that it is in the best interest of the creditors of the Estate that this Motion be approved.

19 3. Accurate and Reasonable Notice.

20 It is expected that notice of this Motion will satisfy the requirements for accurate and
21 reasonable notice and will be appropriate under the emergency circumstances of this case.

22 The notice requirements for sales are set forth in Federal Rule of Bankruptcy Procedure
23 (“FRBP”) 6004 and 2002. The notice must include the time and place of any public sale, the
24 terms and conditions of any private sale, the time fixed for filing on objections and a general
25 description of the property. Fed. R. Bankr. P. 2002(c)(1).

26 In compliance with FRBP 2002 and Bankruptcy Code Section 102(1), the Trustee shall
27 provide notice of the proposed sale of the Assets and the Bidding Procedures to creditors and
28 parties in interest. The Notice of Motion will include a summary of the terms and conditions of

1 the proposed sale, the time fixed for filing objections, and a general description of the Assets,
2 including the Bidding Procedures. The Trustee submits that the notice requirements will have
3 been satisfied, thereby allowing creditors and parties in interest an opportunity to object to the
4 sale. Hence, no further notice should be necessary.

5 4. The Sale is Made in Good Faith.

6 The proposed sale has been brought in good faith and has been negotiated on an “arms
7 length” basis.

8 The court, in *Wilde Horse Enterprises*, set forth the factors in considering whether a
9 transaction is in good faith. The court stated:

10 ‘Good faith’ encompasses fair value, and further speaks to the
11 integrity of the transaction. Typical ‘bad faith’ or misconduct,
12 would include collusion between the seller and buyer, or any
13 attempt to take unfair advantage of other potential purchasers. . . .
And, with respect to making such determinations, the court and
creditors must be provided with sufficient information to allow
them to take a position on the proposed sale.

14 *Id.* at 842 (citations omitted).

15 In the present case, the negotiation of the proposed sale was an arms-length transaction.
16 Buyer has no relationship with the Trustee or the Debtor although it has worked with one of the
17 Debtor’s secured lienholders, U.S. Bancorp. As set forth in the Notice of the Motion, the
18 creditors will have been provided with sufficient notice of the sale. Accordingly, the sale is in
19 good faith and should be approved. The Trustee shall request such a finding pursuant to
20 Bankruptcy Code Section 363(m) at the hearing on this Motion.

21 **B. The Assets Will Be Sold Free and Clear of All Liens.**

22 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
23 “free and clear of any interest in such property of an entity,” if any one of the following five
24 conditions is met:

- 25 (1) applicable non-bankruptcy law permits a sale of
such property free and clear of such interest;
- 26 (2) such entity consents;
- 27 (3) such interest is a lien and the price at which such
28 property is to be sold is greater than the aggregate value of all liens
on such property;

1 (4) such interest is in bona fide dispute; or

2 (5) such entity could be compelled, in a legal or
3 equitable proceeding, to accept money satisfaction of such interest.
4 11 U.S.C. § 363(f).

5 Section 363(f) is written in the disjunctive and thus only one of the enumerated
6 conditions needs to be satisfied for Court approval to be appropriate.

7 1. Section 363(f)(2)

8 The Trustee believes that all secured creditors support and consent to the sale and as
9 such, the sale can be approved pursuant to Section 363(f)(2). The Trustee will endeavor to file
10 declarations of such parties attesting to their consent prior to the hearing.

11 2. Section 363(f)(3)

12 The sale of the Assets is proper pursuant to Section 363(f)(3). The sales price is for a
13 sum that is greater than the aggregate value of the liens other than those which can be avoided
14 under Section 547(b) which show as attached to the Assets. Courts have approved sales under
15 Bankruptcy Code Section 363(f) even where the sale price did not exceed the value of the liens
16 asserted on the property so long as the sale is for fair market value. *In re Terrace Gardens Park*
17 *Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989); *In re Beker Indus. Corp.*, 63 B.R. 474, 477
18 (Bankr. S.D.N.Y. 1986).

19 Thus, approval for the sale free and clear of liens and encumbrances in the manner
20 provided herein is appropriate.

21 3. Section 363(f)(4) – Bona Fide Dispute

22 As set forth in the chart above, the liens and encumbrances of Muelstein, Accurate Air
23 and GP Capital are disputed by the Trustee as the Trustee believes that each lien is based on a
24 writ of attachment that was filed within ninety days of the Petition Date and as such, can be
25 avoided as a preferential transfer under Section 547(b). As the liens are subject to a bona fide
26 dispute, the Trustee seeks to sell the Assets free and clear of the liens of Accurate Air and GP
27 Capital.
28

1 A bona fide dispute has been defined by *In re Atwood*, 124 B.R. 402 (Bankr. S.D. Ga.
2 1991) as a “genuine issue of material fact that bears upon the debtor’s liability, or meritorious
3 contention as to the application of law to undisputed facts.” *Id.* at 407. In *In re Milford Group*,
4 *Inc.*, 150 B.R. 904 (Bankr. M.D. Pa. 1992), the court stated it need not resolve a bona fide
5 dispute, but must determine whether the issues presented are genuine as to the existence of a
6 bona fide dispute. In doing so, the *Milford* Court found that the debtor had met its burden to
7 establish cause for the Court to allow for the sale of the property, free and clear of liens.

8 In the instant case, the proposed sale of the Assets conforms to the requirements of
9 Section 363(f)(4) in that the Trustee has established the existence of bona fide disputes with the
10 holders of disputed liens and encumbrances.

11 The Trustee seeks Court approval of the sale free and clear of any and all disputed liens
12 and encumbrances, with all disputed liens and encumbrances to be unconditionally released,
13 discharged and terminated, and with any liens and encumbrances not satisfied through the sale to
14 attach only to the proceeds of the transaction with the same priority, validity, force and effect as
15 they existed with respect to the Assets before the closing of the sale pending further Court order
16 or agreement with the parties. The Trustee does not believe it is prudent or necessary to resolve
17 the disputes with holders of any disputed liens and encumbrances by Court order or judgment
18 prior to the sale although he has done so with Accurate Air and GP Capital. The Trustee’s
19 stipulation with Accurate Air to avoid its security interest was filed with the Court on March 6,
20 2014 and the Trustee expects to file a similar stipulation with GP Capital before the hearing on
21 this Motion. As to Muelstein, the amount of its lien is disputed. By selling the Assets as soon as
22 possible, the Trustee will also avoid losing the current Buyer and having to expend time and
23 costs to find another buyer for the Assets. Thus, the Trustee needs immediate Court approval of
24 the sale of the Assets.

25 Further, the Trustee desires to sell the Assets quickly in order stop administrative costs
26 associated with the Assets and delays that could result from having to first resolve any disputes
27 related to secured claims that may negatively impact the benefits of the sale. Thus, approval for
28

1 the sale of the Assets free and clear of disputed liens and encumbrances pursuant to Bankruptcy
2 Code Sections 363(f)(2), (3) and (4) in the manner provided herein is appropriate.

3 **C. The Court has the Authority to Waive the Fourteen-Day Stay of Sale.**

4 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the
5 use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days
6 after entry of the order, unless the Court orders otherwise.” Fed. Rule Bankr. P. 6004. The
7 Trustee desires to close the sale of the Assets as soon as practicable after entry of an order
8 approving the sale. Accordingly, the Trustee requests that the Court, in the discretion provided it
9 under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay requirement.

10 **IV. CONCLUSION**

11 Based upon the foregoing, the Trustee respectfully submits that good cause exists for
12 granting the Motion and requests that the Court enters an order as follows:

13 1. Authorizing the Trustee to sell the Assets to the Buyer pursuant to the terms and
14 conditions as set forth in the Agreement attached as **Exhibit “3”** to the Cisneros Declaration and
15 conditions set forth herein free and clear of all liens, claims and encumbrances and with any liens
16 and encumbrances not satisfied through the sale to attach only to the proceeds of the transaction
17 with the same priority, validity, force and effect as they existed with respect to the Assets before
18 the closing of the sale pending further Court order or agreement with the parties.

19 2. Authorizing the Trustee to sign any and all documents convenient and necessary
20 in pursuit of the sale as set forth above, including but not limited to any and all conveyances
21 contemplated by the Agreement attached as **Exhibit “3”** to the Cisneros Declaration.

22 3. Authorizing payment of all sales taxes owed on the sale of the Assets.

23 4. Authorizing payment from the auction proceeds to the following parties: (1) U.S.
24 Bancorp in the approximate amount of \$520,000; and (2) for the cost of the bond of
25 approximately \$6,000.

26 5. Authorizing the employment of Tauber-Arons, Inc. as the Trustee’s auctioneer.

27 6. Authorizing payment of Auctioneer’s commissions without further order of this
28 Court upon completion of the requirements of the Office of the United States Trustee’s 2011

1 Revised Supervisory Instruction #10.

2 7. Waiving the fourteen (14) day stay of the order approving the sale of the Assets
3 under Federal Rule of Bankruptcy Procedure 6004(h).

4 8. For such other and further relief as the Court deems just and proper under the
5 circumstances of this case.

6

7

Respectfully submitted,
SHULMAN HODGES & BASTIAN LLP

8

9 Dated: March 12, 2014

/s/ Melissa Davis Lowe
Leonard M. Shulman
Melissa Davis Lowe
Attorneys for A. Cisneros, Chapter 7 Trustee

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DECLARATION OF A. CISNEROS

I, A. Cisneros, declare and state as follows:

1. The matters stated herein are true and correct and within my personal knowledge. If called as a witness, I could and would competently testify thereto. I am the Chapter 7 trustee for the bankruptcy estate of Apogee Containers, Inc. I am also an attorney duly licensed in the State of California and licensed to practice before this Court.

2. I make this Declaration in support of my Motion for an Order: (1) Approving the Sale and Auction of Personal Property Free and Clear of All Liens, Claims and Encumbrances; (2) Approving Employment of Tauber-Arons, Inc. as Trustee's Auctioneer; (3) Approving the Payment of Auctioneer's Commission; and (4) Granting Related Relief ("Motion"). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Motion.

3. I have read and I am aware of the contents of the Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Motion and the Memorandum of Points and Authorities are true to the best of my knowledge. All capitalized terms herein have the same meaning set forth in the Motion unless otherwise noted.

4. The Debtor's Amended Schedule B indicates that the Debtor owns numerous machinery, fixtures, equipment and supplies valued at the sum of \$2,500,000. The Debtor's Amended Schedule B also lists seven Nissei 650 blowing molding machines located at 341 Bonnie Circle, Corona, CA valued at \$700,000.

5. The Debtor's Amended Schedule D lists the following: (1) Accurate Air Engineering in the amount of \$18,050 (disputed, contingent, and unliquidated); (2) Employment Development Department in the amount of \$16,405.10; (3) GP Sales Corp. in the amount of \$454,775.86 (disputed, contingent, and unliquidated); (4) Internal Revenue Service in the amount of \$170,000; (5) Muelstein in the amount of \$190,276 (disputed, contingent, and unliquidated); and (6) US Bancorp Equipment Finance, Inc. in the amount of \$150,000 (disputed, contingent, and unliquidated). A true and correct copy of the Debtor's Bankruptcy Schedules B and D is attached hereto as **Exhibit "1."**

///

1 6. Accurate Air has agreed to avoid its security interest as set forth in a Stipulation
2 filed with the Court on March 6, 2014. A true and correct copy of the Stipulation is attached
3 hereto as **Exhibit “2.”**

4 7. I have received an offer from the Buyer to purchase and auction the Assets.
5 Attached hereto as **Exhibit “3”** is a true and correct copy of the Agreement.

6 8. Through the sale and auction of the Assets, I expect to generate net proceeds of
7 approximately \$185,000. The estimated net proceeds will benefit the Estate by providing funds
8 for distribution to creditors.

9 9. The Buyer will action the Assets and guarantee the Estate the sum of \$1,067,000.
10 The proposed public auction shall be without any warranties, representations or contingencies,
11 free and clear of liens, claims and interests of third parties, with such liens, claims and interests to
12 attach to the sale proceeds.

13 10. Regardless of any scheduled time and place for offer to purchase the Assets, I may,
14 at my option, reject any and all bids if I deem that such bids are inadequate as to form and
15 amount. The sale date may be continued from time to time until the Assets are sold, without
16 further Order of this Court, or until such time it is determined that abandonment is appropriate.

17 11. Based upon an analysis of the market value of the Assets and costs associated with
18 sale of same, I am of the opinion and belief that the public auction as referenced above is in the
19 best interest of this bankruptcy estate, as it will generate the most funds to the estate for the
20 benefit of the creditor body.

21 12. I am requesting authorization to employ the Auctioneer. The Auctioneer’s duties
22 will include advertising the public auction as appropriate, conducting the public auction,
23 collecting funds, preparation of appropriate reporting, and forwarding the proceeds to me.

24 13. The Auctioneer will charge a 15% buyers’ premium of the gross proceeds from the
25 sale, to be paid upon completion of the requirements of the Office of the United States Trustee’s
26 2011 Revised Supervisory Instruction #10. Notwithstanding the above, if the Auctioneer sells the
27 Assets at auction to a single buyer, it will reimburse the Estate 5% of its 15% buyers’ premium.
28 In addition, the Auctioneer will be reimbursed its reasonable expenses, as well as the costs of

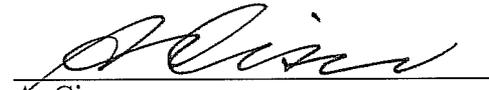
1 advertising and labor not to exceed \$50,000 and only if the net sale proceeds are greater than
2 \$1,067,000. I believe that the proposal of the employment of the Auctioneer is fair and
3 reasonable and I should be authorized to pay the Auctioneer on the terms and conditions set forth
4 herein.

5 14. I am satisfied from the Declaration of Anthony Arons that the Auctioneer is a
6 disinterested person within the meaning of Bankruptcy Code section 101(14), and that the
7 Auctioneer is adequately bonded and insured.

8 15. For the reasons set forth in the Motion and this Declaration, I respectfully request
9 that the Court grant the Motion so that I do not lose this favorable business opportunity to net a
10 substantial amount of money for the Estate.

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct.

13 Executed on March 12, 2014 at Riverside, California.

14
15 
16 A. Cisneros

DECLARATION OF ANTHONY ARONS

I, Anthony Arons, declare and state as follows:

1. I am the President of Tauber-Arons, Inc. (“Firm” or “Auctioneer”), the proposed purchaser and auctioneer for A. Cisneros, Chapter 7 Trustee (“Trustee”) for the bankruptcy estate of Apogee Containers, Inc. (“Debtor”). The Firm is located at 13848 Ventura Blvd., Sherman Oaks, CA 91423. I have personal knowledge of the matters set forth in this Declaration and if called upon to testify, I could and would testify competently thereto.

2. I make this Declaration in support of the Trustee’s Motion for Order: (1) Approving the Sale and Auction of Personal Property Free and Clear of All Liens, Claims and Encumbrances; (2) Approving Employment of Tauber-Arons, Inc. as Trustee’s Auctioneer; (3) Approving the Payment of Auctioneer’s Commission; and (4) Granting Related Relief (“Motion”). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

3. I have extensive experience in the matters to which I am to be engaged and am well qualified to complete the sale of the kind proposed by the Trustee in the Motion. Attached hereto as **Exhibit “4”** is a true and correct copy of my resume.

4. Attached as **Exhibit “5”** is a copy of the Auctioneer’s blanket bond in favor of the United States of America for coverage in the aggregate of \$25,000. Immediately upon Court approval of this Motion, the Auctioneer will obtain an individual bond for this particular case in the amount of \$3,000,000. The Firm has advised the Trustee that the total value of all pending bankruptcy estate auctions in which the Auctioneer is involved in this district does not exceed these bonds, including auctions already conducted in which funds have not yet been disbursed by the Auctioneer to a trustee and pre-auction estimated values of estate assets in the custody and control of the Auctioneer.

5. To the best of the Firm’s knowledge, neither the Firm, nor any of the professionals comprising or employed by it, have any connection with the Debtors, their creditors or any other party in interest, their respective attorneys or other professionals, the United States Trustee, or any person employed by the Office of the United States Trustee.

1 6. To the best of the Firm's knowledge, none of the professionals comprising or
2 employed by the Firm are related to any judge of the United States Bankruptcy Court for the
3 Central District of California.

4 7. To the best of my knowledge the Firm is both disinterested as that term is defined
5 in Bankruptcy Code Section 101(14) and represents no interest which would be adverse to the
6 Debtors, their Estates or their creditors or any party in interest in this proceeding.

7 8. The Firm has no pre-petition claim against the Estates.

8 9. The Firm has received no retainer for the services to be performed herein.

9 10. The Firm and I are familiar with the requirements of the Office of the United
10 States Trustee related to employment of auctioneers which includes requirements relative to the
11 filing of a report by the auctioneer within 15 days after the auction sale, and the procedures for
12 compensation of auctioneers, and we agree to comply therewith.

13 11. The Firm will extensively market the Assets for sale, including but not limited to,
14 direct mailings, e-mails, and advertisements in newspapers and trade journals. The Firm will
15 advertise in local and industry-specific print and online publications, and use search engine
16 optimization to reach the widest audience of potential buyers.

17 12. The Firm will upload pictures and information about the Assets to its website for
18 potential buyers to review prior to the auction.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21 Executed on March 12, 2014, at Los Angeles, California.

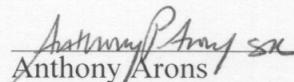
22
23 
24 Anthony Arons

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

Filer's Name:	<u>Dennis Connelly</u>	Atty Name (if applicable):	<u>Dennis Connelly</u>
Street Address:	<u>2901 W. Coast Highway Ste 200 Newport Beach, CA 92663</u>	CA Bar No. (if applicable):	<u>232835</u>
Filer's Telephone No.:	<u>(949) 270-2904</u>	Atty Fax No. (if applicable):	<u>(949) 258-6093</u>
In re:	<u>Apogee Containers Inc.</u>	Case No. 6:13-bk-30034 Chapter 7	

AMENDED SCHEDULE(S) AND/OR STATEMENT(S)

A filing fee of \$30.00 is required to amend any or all of Schedules "D" through "F." An addendum mailing list is also required as an attachment if creditors are being added to the creditors list. Is/are creditor(s) being added? Yes No

Indicate below which schedule(s) and/or statement(s) is(are) being amended.

- A B C D E F G H I J
- Statement of Social Security Number(s) Statement of Financial Affairs
- Statement of Intention Other

NOTE: IT IS THE RESPONSIBILITY OF THE DEBTOR TO MAIL COPIES OF ALL AMENDMENTS TO THE TRUSTEE AND TO NOTICE ALL CREDITORS LISTED IN THE AMENDED SCHEDULE(S) AND TO COMPLETE AND FILE WITH THE COURT THE PROOF OF SERVICE ON THE BACK OF THIS PAGE.

I/We, Howard Chow, the person(s) who subscribed to the foregoing Amended Schedule(s) and/or Statement(s) do hereby declare under penalty of perjury that the foregoing is true and correct.

DATED: Feb. 7, 2014

[Signature]
Howard Chow, President/CEO
Debtor Signature

Co-Debtor Signature

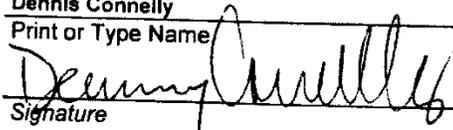
****FOR COURT USE ONLY****

****SEE REVERSE SIDE****

PROOF OF SERVICE

I hereby certify that a copy of the Amendment(s) was(were) mailed to the Trustee and that notice was given via ECF to the additional creditors listed.

DATED: 2/7/14

Dennis Connelly
Print or Type Name

Signature

Chapter 7 Trustee
Arturo Cisneros
3403 Tenth Street Ste 714
Riverside, CA 92501
amctrustee@mclaw.org

US Trustee
3801 University Ave Ste 720
Riverside, CA 92501
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Melissa Davis Lowe Attorney for the Chapter 7 Trustee
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Richard W Labowe
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Ferco Color, Inc.
represented by **Robert H Dewberry**
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Newport Beach, CA 92660
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B-1008 Revised November 2011

H. Muehlstein & Co
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Orlando, FL 32810
represented by **Martin F Goldman**
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15910 Ventura Blvd Suite 1525
Encino, CA 91436
MARTY@MARTYLAW.COM

The Pacific Rim Traders, LLC
represented by **Catherine Schlomann Robertson**
Pahl & Gosselin
225 W Santa Clara St Ste 1500
San Jose, CA 95113-1752
crobertson@pahl-gosselin.com

B-1008 Revised November 2011

B6B (Official Form 6B) (12/07)

In re **Apogee Containers Inc.**

Case No. **6:13-bk-30034**

Debtor

SCHEDULE B - PERSONAL PROPERTY - SECOND AMENDED

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		JP Morgan Chase business account	-	0.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > **0.00**
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Apogee Containers Inc.

Case No. 6:13-bk-30034

Debtor

SCHEDULE B - PERSONAL PROPERTY - SECOND AMENDED
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.		See attached schedule.	-	84,000.00
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		Lawsuits pertaining to claims against former employees and business partner. Apogee Containers Inc v. Asceptic Solutions Inc. (RSC Case No. RIC 1211514) Apogee Containers Inc. v Alma Alvarez (RSC Case No. RIC 1214951)	-	Unknown
			Sub-Total >	84,000.00
			(Total of this page)	

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Apogee Containers Inc.

Case No. 6:13-bk-30034

Debtor

SCHEDULE B - PERSONAL PROPERTY - SECOND AMENDED
(Continuation Sheet)

Type of Property	NON E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.		Edited list. See attached.	-	2,500,000.00
		7 Nissei 650 blow molding machines located at 341 Bonnie Circle, Corona, CA	-	700,000.00
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > **3,200,000.00**
(Total of this page)
Total > **3,284,000.00**

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

4:17 PM
01/13/14

Apogee Containers, Inc.
A/R Aging Summary
As of January 13, 2014

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>> 90</u>	<u>TOTAL</u>
Ecoplast	0.00	0.00	0.00	0.00	0.00	0.00
Flavours, Inc.	0.00	0.00	0.00	0.00	50,530.42	50,530.42
Glzmo Beverage Corporation	0.00	0.00	0.00	0.00	65,115.06	65,115.06
M.O.A.B. Superfruits	0.00	0.00	0.00	0.00	18,674.71	18,674.71
Rao Design Intl. & American Plastics	0.00	0.00	0.00	0.00	16,850.00	16,850.00
Sandwich Isles Trading Co. Inc.	0.00	0.00	0.00	0.00	12,750.00	12,750.00
Tricorbraun	0.00	0.00	0.00	0.00	-80,016.98	-80,016.98
TOTAL	0.00	0.00	0.00	0.00	83,903.21	83,903.21

Inventory of 510 Alcoa Circle by Rexco 11-5-13

Name	Description	Location	Serial Number
1 2 Desks	1 L-shape & 1 U-shape w/nutch	Office 1	
2 1 Filing Cabinet	1 - 4 drawer filing cabinet	Office 1	
3 2 phones	2 - RCA Phones	Office 1	
4 1 Keyboard	1 - Dell Keyboard	Office 1	
5 1 Monitor	1 - Dell Monitor	Office 1	
6 1 Printer	1 - HP Inkjet printer	Office 1	
7 2 Guest Chairs	2 - Guest Chairs	Office 1	
8 2 Exec Chairs	2 - Exec Chairs	Office 1	
9 Assorted Plastic Bottles	Assorted Plastic Bottles	Office 1	
10 Assorted Office Supplies	Assorted Office Supplies	Office 1	
11 File Boxes	6 - File Boxes	Office 1	
12 Water Fountain	1 - Elkey Water Fountain	Office 1	
13 Time Clock	1 - Time Clock	Break Room	
14 Coffee Maker	1 - Coffee Maker	Break Room	
15 Microwaves	2 - Microwaves	Break Room	
16 Booth style tables	6 - Booth style tables w/benches	Break Room	
17 Television	1 - Small Daewoo Television	Break Room	
18 Vending Machines	2 - Vending Machines	Break Room	
19 Refrigerator	1 - Refrigerator	Break Room	
20 Lockers	1 - set of lockers - 6 lockers	Break Room	
21 4 Desks	4 L-shaped Desks - 2 with Hutches	Break Room	
22 3 Exec Chairs	3 - Exec Chairs	Office 3	
23 Credenza	1 - Freestanding Credenza	Office 3	
24 Printer/Copier/Fax	1 - Brother printer/copier/fax - small desktop	Office 3	
25 magnifying lamp	1 - magnifying lamp attached to desk	Office 3	
26 3 phones	3 - RCA Phones	Office 3	
27 4 Monitors	4 - Dell Monitors	Office 3	
28 4 Keyboards	4 - Dell Keyboards	Office 3	
29 4 Computer Towers	4 - Dell Desktop computer towers	Office 3	
30 Label Printer	1 - ZAMPlus Label Printer	Office 3	
31 Thickness Gage	1 - Panametrics Hall Effect Thickness Gage	Office 3	
32 Assorted Plastic Bottles	Assorted Plastic Bottles	Office 3	
33 Assorted Office Supplies	Assorted Office Supplies	Office 3	
34 3 - Mice	3 - HP Corded Mice	Office 3	
35 Filing Cabinet	1 - 4 drawer filing cabinet	Office 3	
36 Rolling Filing Cart	1 Rolling Cart with Files	Office 3	
37 Assorted Papers/Binders	Assorted Papers/Binders	Office 3	
38 Assorted Rolls of Plans	Assorted Rolls of Plans	Office 3	

Inventory of 510 Alcoa by Rexco 11-5-13.xlsx

Inventory of 510 Alcoa Circle by Rexco 11-5-13

Name	Description	Location	Serial Number
39 White Boards	3 - White Boards on Wall	Office 3	
40 1 Cork Board	1 - Cork Board on Wall	Office 3	
41 1 Key Box	1 - Key Box w/ Assorted Keys - on wall behind door	Office 3	
42 Shrink-wrap Machine	1 - Fox 3 Shrink-wrap Machine		
43 Anduze Conveyor	1 - Anduze Conveyor	Warehouse - A1	23-011001233
44 Metal Cabinets	3 - Metal Cabinets w/ Machine Parts	Warehouse - A1	XMRP 5264
45 Rolling Cart	1 - Rolling Cart	Warehouse - A1	
46 Pallet - PET Resin	1 - Pallet PET Resin	Warehouse - A1	
47 Cardboard	Empty Cardboard boxes for pallets	Warehouse - A1	
48 Plastic Trash Cans	8 - Plastic Trash Cans	Warehouse - A1	
49 Metal Trash Cans	8 - Metal Trash Cans	Warehouse - A1	
50 Sidel B-1 Oven	Sidel B-1 Oven Model MB-400	Warehouse - A1	
51 1 Tank - not connected	1 Tank - not connected	Warehouse - A1	24727
52 Racking w/assorted items	1 - Racking w/ Assorted parts, boxes, pallets	Warehouse - A1	
53 Empty Pallet Box	1 - Empty Pallet Box by racking	Warehouse - A1	
54 Foremost Machine	1 - Foremost Machine - small plastic pellets	Warehouse - A1	
55 Cart w/Shop Vac	1 - Cart w/Shop Vac	Warehouse - A1	
56 Plastic Trash Cans	3 - Plastic Trash Cans	Warehouse - A1	
57 Metal Trash Cans	3 - Metal Trash Cans	Warehouse - A1	
58 Cumberland Machine	1 - Cumberland Machine	Warehouse - A1	
59 Step ladder	1 - Step Ladder	Warehouse - A1	421000-7817
60 Foremost Machine	1 - Foremost Machine Model MB-400	Warehouse - A1	
61 Adaptive Engineering Machine	Adaptive Engineering Machine - 3 Lg pieces and 1 small piece	Warehouse - A1	23792
62 Husky Tool Cart	1 - Locked Husky Tool Cart	Warehouse - A1	
63 Shop-Vac Top	1 - Shop-Vac Top	Warehouse - A1	
64 Walton Stout Machine	3 - Walton Stout Inc. Bulk Material Handling Processing Equip. WSO-185-Hi-Heat Machines	Warehouse - A1	5799-A1-2-02 5799-A1-1-01 5799-A1-??-01
65 AS3 Machine	1 - ASB Stretch Blow Molding Machine 650 NH11	Warehouse - A1	
66 Scale	1 - Fairbanks Scale Model 11437	Warehouse - A1	139A5191
67 Round Table	1 - Round Work Table	Warehouse - A1	0-26417
68 Husky Cart	1 - Husky Metal Cart	Warehouse - A1	
69 ASB Nissei Machine	1 - ASB Nissei Machine PF8-4B	Warehouse - A1	
70 ASB Nissei Machine	1 - ASB Nissei Machine AS8-70DPH	Warehouse - A1	279C40273
71 Round Table	1 - Round Work Table -	Warehouse - A1	329A60983
72 Round Tables w/Conveyors	2 - Round Work Tables w/Conveyors	Warehouse - A2	
73 Square Table w/Conveyor	1 - Square Work Table w/Conveyor	Warehouse - A2	
74 Toyota Forklift	1 - Orange Toyota Forklift w/Tank Model 426FGCU25	Warehouse - A2	77046

Inventory of 510 Alcoa by Rexco 11-5-13.xlsx

Inventory of 510 Alcoa Circle by Rexco 11-5-13

Name	Description	Location	Serial Number
75 Pallet Jack	1 - Pallet Jack	Warehouse - A2	
76 Floor Fans	4 - Large Floor Fans	Warehouse - A2	
77 Pallet w/empty boxes	1 - Pallet of empty boxes	Warehouse - A2	
78 Plastic Trash Cans	4 - Plastic Trash Cans	Warehouse - A2	
79 Adaptive Engineering Machine	1 - Adaptive Engineering Machine	Warehouse - A2	
80 Bekum Machine	1 - Bekum Machine - Type H11/5632	Warehouse - A2	
81 Bekum Machine	1 - Bekum Machine - Type S831	Warehouse - A2	
82 Bekum Machine	1 - Bekum Machine - Type S82	Warehouse - A2	W15,314,0
83 Bekum Machine	1 - Bekum Machine - Type BM203D/S501	Warehouse - A2	62975.5.037
84 Foremost Machine	1 - Foremost Machine M/S2000	Warehouse - A2	78168
85 Foremost Machine	1 - Foremost Machine 2700G-DI	Warehouse - A2	W16,144,0
86 Foremost Machine	1 - Foremost Machine 2500G	Warehouse - A3	36481
87 Manhattan Ind. Supply Machine	1 - Manhattan Industrial Supply machine Model 951463	Warehouse - A4	37064
88 Pallet of Cardboard Material	1 - Pallet Cardboard Material	Warehouse - A2	
89 Rolling Carts	2 - Rolling Carts	Warehouse - A2	845090
90 Rolling Ladder	1 - Rolling Ladder	Warehouse - A2	
91 A-Frame Ladders	2 - A-Frame Ladders	Warehouse - A2	
92 Lathe	1 - Lathe	Warehouse - A2	
93 Sandblasting Machine	1 - Sandblasting Machine	Warehouse - A2	
94 Red Machine?	Red Machine - unknown	Warehouse - A2	
95 Tradesman Drill Press	1 - Tradesman Drill Press on Bench	Warehouse - A2	
96 Blue Machine No.4	1 - Blue Machine No.4. on Bench	Warehouse - A2	
97 Grinding Machine	1 - Pipe Cutting Machine on Bench	Warehouse - A2	1027
98 Vice	1 - Vice on Bench	Warehouse - A2	
99 Assorted Parts for Machines	Assorted Parts for Machines	Warehouse - A2	10042
100 Rolling Blue Cage Cabinet	1 - Rolling Blue Cage Cabinet w/parts for Machines	Warehouse - A2	
101 Filing Cabinet	1 - 4 drawer filing cabinet	Warehouse - A2	
102 Filing Cabinets	2 - 2 Drawer filing cabinets; stacked	Warehouse - A2	
103 Cabinets w/Parts	5 Cabinets with doors containing parts for Machines	Warehouse - A2	
104 Locked Cabinet	1 - Gray locked rolling cabinet	Warehouse - A2	
105 Welder	1 - 3 Phase Miller Welder - Miller Metric300	Warehouse - A2	
106 Power Source for Welder	1 - CCAC/DC Welding Power Source - Miller Synchrowave 250	Warehouse - A2	
107 Burr King Model 760	1 - Burr King Model 760 Sander	Warehouse - A2	
108 Lacun Drill Press	1 - Lacu FTV-2 Drill Press	Warehouse - A2	
109 Webb Lathe	1 - Webb Lathe YB2-4-T1	Warehouse - A2	
110 Duke 712 Machine	1 - Duke SE712 Machine	Warehouse - A2	
111 Grinder	1 - Burr King Grinder	Warehouse - A2	MS1500G
112 Buffer	1 - Balder Buffer	Warehouse - A2	574502

Inventory of 510 Alcoa by Rexco 11-5-13.xlsx

Inventory of 510 Alcoa Circle by Rexco 11-5-13

Name	Description	Location	Serial Number
113	Mitsui Machine		
114	Rolling Carts	Whse - Fenced Area	80071621
115	Assorted Parts for Machines	Whse - Fenced Area	
116	Assorted Parts for Machines	Whse - Fenced Area	
117	Empty Pallets - Stacked	Whse - Fenced Area	
118	Pallets of Cardboard	Whse - Fenced Area	
119	2 Loaders	Ext. of Whse - Dock	
120	48 Pallet Boxes	Ext. of Whse - West Side	
121	1 White Truck	Ext. of Whse - North Side	
122	Trane Chiller	Ext. of Whse - West Side	
123	Hankison Compressed Air Dryer	Ext. of Whse - West Side	
124	Gardner Denver Air Compressors	behind fence	
125	Ingersoll Rand Air Compressor	Ext. of Whse - West Side	
126	Large Fan	Ext. of Whse - West Side	
127	Telephone	behind fence	
128	Desktop Computer	Reception Area	
129	Assorted Office Supplies	Reception Area	
130	Printer	Reception Area	
131	Filing Cabinet	Reception Area	
132	Assorted Plastic Bottles	Reception Area	
133	Exec Chair	Reception Area	
134	Display Case	Reception Area	
135	Exec Chair	Reception Area	
136	6 Chairs	Office 2	
137	Desk	Office 2	
138	Round Table	Office 2	
139	Wall Unit	Office 2	
140	Golf Club Display	Office 2	
141	Painting	Office 2	
142	Creedenza	Office 2	
143	Telephone	Office 2	
144	Desk Lamp	Office 2	
145	Computer	Office 2	

Inventory of 510 Alcoa by Rexco 11-5-13.xlsx

Inventory of 510 Alcoa Circle by Rexco 11-5-13

Name	Description	Location	Serial Number
146 Assorted Plastic Bottles	Assorted Plastic Bottles		
147 Pictures	2 - Golf Pictures	Office 2	
148 Assorted Office Supplies	Assorted Office Supplies	Office 2	
149 Conf Room Table	1 - Conference Room Table	Office 2	
150 Chairs	6 - Chairs	Conference Room	
151 File Cabinets	2 - File Cabinets	Conference Room	
152 File Boxes	5 - File Boxes	Conference Room	
153 Belliss & Marcom Machine	1 - Belliss & Marcom Machine Type VH9H3N	Warehouse - A-6	9375
154 Belliss & Marcom Machine	1 - Belliss & Marcom Machine Type VH9H#N	Warehouse - A-6	9475
155 Hankison Air Dryer	1 - Hankison Air Dryer HPRD-1.5-700	Warehouse - A-6	
156 Floor Fans	2 - Floor Fans	Warehouse - A-6	H1558004600108002
157 Rolling Cart	1 - Rolling Cart	Warehouse - A-6	
158 Series II Equipment	1 - Series II Equipment - unassembled	Warehouse - A-6	
159 Glacier Machine	1 - Glacier Machine - unassembled	Warehouse - A-6	
160 Fenwall Machine	1 - Fenwall Machine	Warehouse - A-6	
161 Step Ladder	1 - Step Ladder	Warehouse - A-6	
162 Empac Plastic Pallets	4 - Plastic Empac Pallets	Warehouse - A-6	
163 Rolling Cart	1 - Plastic Rolling Cart	Warehouse - A-6	
164 Pallet Jack	1 - Pallet Jack	Warehouse - A-6	
165 6 Foot Table	2 - 6 Foot Work Tables	Warehouse - A-6	
166 Misc Drums & Buckets	Misc Drums & Buckets	Warehouse - A-6	
167 Rolling Cart	1 - Husky Rolling Cart	Warehouse - A-6	
168 Metal Table	1 - Metal Work Table	Warehouse - A-6	
169 Asmech Machine	1 - Asmech Machine Unit 108-11	Warehouse - A-6	
170 Chair	1 - Chair	Warehouse - A-6	
171 Pallet - APX	150 - APX Wood Pallets	Warehouse - A-6	12039-01
172 Pallet - Cardboard Boxes	4 - Pallets Cardboard Boxes	Warehouse - A-6	
173 Pallet - Misc. Plastic	1 - Pallet Misc. Plastic	Warehouse - A-6	
174 Pallet - Shredded Plastic	1 - Pallet Shredded Plastic	Warehouse - A-6	
175 Misc Cardboard	Misc Cardboard	Warehouse - A-6	
176 Misc Pipes	Misc Pipes	Warehouse - A-6	
177 Pallets - Berlin Plastic Pallets	Pallets of Berlin Plastic Pallets	Warehouse - A-6	
178 Pallets of Plastic Containers	31 - Pallets of Plastic Containers	Warehouse - A-6	
179 Pallets of Plastic Containers	13 - Pallets of Plastic Containers	Warehouse - A-6	
180 Pallets of Cardboard Boxes	6 - Pallets of Cardboard Boxes	Warehouse - A-3	
181 Forklift	1 - Toyota Forklift Model 42-6FGU15	Warehouse - A-3	
182 Metal Ramp	1 - Metal Ramp	Warehouse - A-3	50850
183 2 Machines	2 - Machines - unassembled	Warehouse - A-3	

OK
OK
 Inventory of 510 Alcoa by Rexco 11-5-13.xlsx
 Conveyors at Bekins - Unlisted
 3-m Tape Machine Small (2) - red/grey appear to be 183 above.

Inventory of 510 Alcoa Circle by Rexco 11-5-13

Name	Description	Location	Serial Number
184 EFG Metal Bin	1 - EFG Metal Bin	Warehouse - A-3	
185 Step Ladders	3 - Step Ladders	Warehouse - A-3	
186 Pallet Jack	1 - Pallet Jack	Warehouse - A-3	
187 Misc Cardboard	4 - Stack Misc Cardboard	Warehouse - A-3	
188 JEG Scissor-Lift	1 - JEG Scissor-Lift	Warehouse - A-3	
189 Rolling Cart	5 - Rolling Carts	Warehouse - A-3	
190 Pallets of Plastic Bottles	61 - Pallets Plastic Bottles	Warehouse - A-3	
191 Shop-Vac	1 - Shop-Vac	Warehouse - A-7	
192 Misc Drums & Barrels	Misc Drums & Barrels	Warehouse - A-7	
193 Metal Cages	3 Metal Cages	Warehouse - A-7	
194 Rolling Cart	1 - Plastic Rolling Cart	Warehouse - A-7	
195 Desk & Chair	1 - Desk & 1 - Chair	Warehouse - A-7	
196 Bookshelf	1 - Bookshelf	Warehouse - A-7	
197 Metal Table	1 - Metal Table	Warehouse - A-7	
198 ALPS Machine	1 - ALPS Total Quality Systems SC110 Machine	Warehouse - A-7	
199 Line 9 Grinder	1 - Line 9 Grinde-	Warehouse - A-5	
200 Round Table	1 - Round Table FSC		
201 Blue Machine	1 - Blue Machine	Warehouse - A-5	
202 Racking w/assorted items	2 - Shelving Racks w/Misc Machine Parts	Warehouse - A-5	
203 Bekum Machine	1 - Bekum Machine Type BM303D	Warehouse - A-5	
204 Bekum Machine	1 - Bekum Machine Type BM-304D	Warehouse - A-5	WE9.125.0
205 Bekum Machine	1 - Bekum Machine Type H-121D	Warehouse - A-5	2003050024
206 Foremost Machine	1 - Foremost Machine - Green	Warehouse - A-5	H121D 203-5
207 Tool Cart	1 - Red Tool Cart	Warehouse - A-5	
208 Pallet Misc Plastic Pellets	1 - Pallet Misc. Plastic Pellets	Warehouse - A-5	
209 Bekum Machine	1 - Bekum Machine (Marked #6)	Warehouse - A-5	
210 Step Ladder	1 - Small Step Ladder	Warehouse - A-5	

3 UNITS

Inventory of 510 Alcoa by Rexco 11-5-13.xlsx

B6D (Official Form 6D) (12/07)

In re **Apogee Containers Inc.**

Case No. **6:13-bk-30034**

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS - SECOND AMENDED

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	Husband, Wife, Joint, or Community		CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
	C O D E B T O R	H W J C					
Account No. Accurate Air Engineering PO Box 4800 Cerritos, CA 90703	-		X	X	X	18,050.00	Unknown
						Value \$	Unknown
Account No. Employment Development Department Bankruptcy Group MIC 92E PO Box 826880 Sacramento, CA 94280-0001	-					16,405.10	Unknown
						Value \$	Unknown
Account No. GP Sales Corp 1011 High Ridge Rd Stamford, CT 06905	-		X	X	X	454,775.86	Unknown
						Value \$	Unknown
Account No. H. Muelstein & Co. Law Offices of Martin F. Goldman 15910 Ventura Blvd Ste 1525 Encino, CA 91436-2830	-		X	X	X	190,276.00	Unknown
						Value \$	Unknown
Subtotal						679,506.96	0.00
(Total of this page)							

1 continuation sheets attached

B6D (Official Form 6D) (12/07) - Cont.

In re Apogee Containers Inc.

Case No. 6:13-bk-30034

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS - SECOND AMENDED
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E H W J C	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY	
		DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN						
Account No.								
Internal Revenue Service PO Box 7346 Philadelphia, PA 19101-7346	-							
		Federal Taxes						
		Value \$ Unknown				165,840.04	Unknown	
Account No.								
US Bankcorp Equipment Finance Inc Attn: Cindy Smith 13010 SW 68th Parkway Ste 100 Portland, OR 97223	-		X	X	X			
		Equipment Lessor						
		Value \$ Unknown				150,000.00	Unknown	
Account No.								
		Value \$						
Account No.								
		Value \$						
Account No.								
		Value \$						
Sheet 1 of 1 continuation sheets attached to Schedule of Creditors Holding Secured Claims						Subtotal (Total of this page)	315,840.04	0.00
						Total (Report on Summary of Schedules)	995,347.00	0.00

EXHIBIT 2

1 Leonard M. Shulman – Bar No.
Melissa Davis Lowe – Bar No. 245521
2 **SHULMAN HODGES & BASTIAN LLP**
8105 Irvine Center Drive, Suite 600
3 Irvine, California 92618
Telephone: (949) 340-3400
4 Facsimile: (949) 340-3000
Email: lshulman@shbllp.com; mlowe@shbllp.com
5 Attorneys for A. Cisneros, Chapter 7 Trustee
6
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

11 In re
12 **APOGEE CONTAINERS, INC.,**
13 Debtors.

Case No. 6:13-bk-30034-SC

Chapter 7

**STIPULATION TO AVOID SECURITY
INTEREST ALLEGED BY ACCURATE
AIR ENGINEERING, INC. (CLAIM NO. 8)**

**[Order Approving Stipulation filed
concurrently herewith]**

[No hearing set]

19
20 A. Cisneros, the Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
21 Apogee Containers, Inc., the debtor herein (“Debtor”), and Accurate Air Engineering, Inc.
22 (“Accurate Air”), by and through their respective counsel of record, hereby agree and stipulate as
23 follows:

24 **RECITALS**

25 1. On December 16, 2013, the Debtor filed a voluntary petition under Chapter 7 of
26 the Bankruptcy Code. A. Cisneros is the duly appointed, qualified and acting Chapter 7 trustee
27 in the Debtor’s bankruptcy case.

28 ///

1 1. Release of the Writ. The Right to Attach Order and Order for Issuance of Writ of
2 Attachment After Hearing entered on November 26, 2013 and the Writ of Attachment entered on
3 December 13, 2013 both by the Riverside County Superior Court in Case No. RIC 1307750 are
4 hereby avoided under Section 547 and the transfer preserved for the benefit of the Estate
5 pursuant to Sections 544, 550, and 551 except as provided herein. The Writ shall no longer
6 constitute a lien encumbering assets of the Debtor's Estate and the proceeds generated therefrom.
7 If for any reason this case is dismissed this Stipulation will be of no force or effect.
8 Alternatively, if the Trustee abandons any assets which would have been secured by the Writ, the
9 Writ shall reattach to such abandoned assets.

10 2. Treatment of Claim No. 8/Waiver of Secured Claim Status Against the Estate.
11 Accurate Air waives any and all secured claims against the Debtor's Estate and agrees that Claim
12 No. 8 shall be reclassified as a general unsecured claim. Accurate Air agrees it shall not be
13 entitled to share in any proceeds as a secured creditor from the sale of assets of the Debtor's
14 Estate. Nothing in this Agreement shall be deemed as a waiver of the Trustee's rights to object
15 to Claim No. 8 as a general unsecured claim against the Estate.

16 3. Trustee Capacity. Accurate Air shall be expressly aware and fully informed that
17 the Trustee is entering into this Agreement exclusively in his capacity as the Chapter 7 Trustee of
18 the Debtor's Estate. No personal liability for costs, fees or other charges on the Trustee's part is
19 intended, any liability is strictly the liability of the Debtor's Estate.

20 4. Consultation with Counsel. All Parties hereto acknowledge and represent that
21 they have consulted with legal counsel before entering into this settlement and executing this
22 Agreement. The Parties, and each of them, understand the meaning of this Agreement and
23 expressly consent that this Agreement shall be given full force and effect according to each and
24 all of its express terms and provisions. All Parties acknowledge that they are executing and
25 delivering this Agreement after having received from legal counsel of their own choosing legal
26 advice as to their respective rights hereunder and the legal effect hereof.

27 5. Attorneys' Fees and Costs. All parties hereto shall bear their own attorneys' fees,
28 expenses, and costs incurred in the preparation of this Agreement. In the event of any action or

1 proceeding brought by either party against the other under this Agreement, the prevailing party
2 shall be entitled to recover for the fees of its attorneys in such action or proceeding, including
3 costs of appeal, if any, in such amount as the court may adjudge reasonable as attorneys' fees.

4 6. Execution of Additional Documents. The Parties agree that they will execute any
5 and all additional documents and take all additional steps which may be necessary or convenient
6 to consummate this settlement and accomplish the purposes thereof.

7 7. Integration of Entire Agreement. This Agreement contains the entire agreement
8 of the Parties, and no representations, warranties, inducements or promises not included herein
9 by express provision or contained in a document or instrument identified herein and executed
10 contemporaneously herewith shall be binding on any party hereto.

11 8. Authority to Sign. Each individual executing this Agreement on behalf of a
12 corporation, partnership or other entity represents that he or she is duly authorized to execute and
13 deliver this Agreement on behalf of the corporation, partnership or entity and agrees to deliver
14 evidence of his or her authority and power if requested by the other party.

15 9. Appropriate Notice. The Trustee shall cause appropriate notice of this Agreement
16 to be given to parties entitled to such notice under the United States Bankruptcy Code and
17 Federal Rules of Bankruptcy Procedure. Accurate Air shall not oppose the Trustee's motion
18 and/or notice of the motion for Court approval of this Agreement.

19 10. Counterparts. This Agreement may be executed in any number of original, fax or
20 copied counterparts, and all counterparts shall be considered together as one agreement. A faxed
21 or copied counterpart shall have the same force and effect as an original signed counterpart.
22 Each of the Parties hereby expressly forever waives any and all rights to raise the use of a fax
23 machine to deliver a signature, or the fact that any signature or agreement or instrument was
24 transmitted or communicated through the use of a fax machine, as a defense to the formation of a
25 contract.

26 11. Binding. This Agreement shall be binding on the Parties hereto when each such
27 Party has executed at least one counterpart.

28 12. Ownership of Claims. Each of the Parties to this Agreement expressly warrants

1 and represents that it is the sole and lawful owner of all right, title and interest in and to every
2 claim and other matter which it purports to release herein, and it has not assigned or transferred,
3 or purported to assign or transfer to any person or entity any claims or other matters herein
4 released.

5 13. Successors and Assigns. The provisions of this Agreement shall be binding upon
6 and inure to the benefit of the respective parties and their heirs, executors, administrators, agents,
7 representatives, successors and assigns.

8 14. Governing Law. This Agreement is to be governed by and construed in
9 accordance with federal bankruptcy law, to the extent applicable, and where state law is
10 implicated, the laws of the State of California shall govern.

11 15. Jurisdiction of the Bankruptcy Court. Should any dispute arise regarding this
12 Agreement, the United States Bankruptcy Court for the Central District of California, Riverside
13 Division shall have exclusive jurisdiction to determine the same.

14 16. Headings. The headings of all sections of this Agreement are inserted solely for
15 the convenience of reference and are not a part of and are not intended to govern, limit or aid in
16 the construction or interpretation of any term or provision hereof.

17 Dated: ^{Mer} February 5, 2014



A. Cisneros, solely in his capacity as the
Chapter 7 Trustee for the bankruptcy estate of
Apogee Containers, Inc.

21 Dated: February __, 2014

ACCURATE AIR ENGINEERING, INC.

By:
Its:

25 **APPROVED AS TO FORM.**

1 and represents that it is the sole and lawful owner of all right, title and interest in and to every
2 claim and other matter which it purports to release herein, and it has not assigned or transferred,
3 or purported to assign or transfer to any person or entity any claims or other matters herein
4 released.

5 13. Successors and Assigns. The provisions of this Agreement shall be binding upon
6 and inure to the benefit of the respective parties and their heirs, executors, administrators, agents,
7 representatives, successors and assigns.

8 14. Governing Law. This Agreement is to be governed by and construed in
9 accordance with federal bankruptcy law, to the extent applicable, and where state law is
10 implicated, the laws of the State of California shall govern.

11 15. Jurisdiction of the Bankruptcy Court. Should any dispute arise regarding this
12 Agreement, the United States Bankruptcy Court for the Central District of California, Riverside
13 Division shall have exclusive jurisdiction to determine the same.

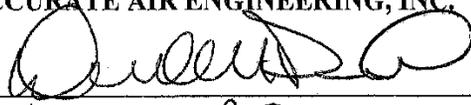
14 16. Headings. The headings of all sections of this Agreement are inserted solely for
15 the convenience of reference and are not a part of and are not intended to govern, limit or aid in
16 the construction or interpretation of any term or provision hereof.

17 Dated: February __, 2014

18 _____
19 A. Cisneros, solely in his capacity as the
20 Chapter 7 Trustee for the bankruptcy estate of
Apogee Containers, Inc.

21 Dated: February __, 2014

22 _____
23 ACCURATE AIR ENGINEERING, INC.

24 By: 
Its: David M. Peña
CFO

25 **APPROVED AS TO FORM.**

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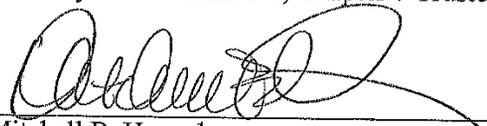
Dated: ^{MARCH 6} February __, 2014

SHULMAN HODGES & BASTIAN LLP

/s/ MELISSA DAVIS LOWE

Leonard M. Shulman
Melissa Davis Lowe
Attorneys for A. Cisneros, Chapter 7 Trustee

Dated: February ² 2014



Mitchell B. Hannah
Attorneys for Accurate Air Engineering, Inc.

SHULMAN HODGES &
BASTIAN LLP
8105 Irvine Center Drive
Suite 600
Irvine, CA 92618

Z:\A-B\
4763-000\EXP. 50

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 8105 Irvine Center Drive, Suite 600, Irvine CA 92618.

A true and correct copy of the foregoing document entitled (*specify*): **STIPULATION TO AVOID SECURITY INTEREST ALLEGED BY ACCURATE AIR ENGINEERING, INC. (CLAIM NO. 8)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 3/6/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On 3/6/2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 3/6/2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY: Honorable Scott Clarkson, 411 W. Fourth Street, Bin beside 5th floor elevators/Ctrrm 5C, Santa Ana, CA 92701

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

3/6/2014

Date

LAURIE VERSTEGEN

Printed Name

/s/ Laurie Versteegen

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE (cont'd)

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Cathrine M Castaldi ccastaldi@brownrudnick.com
- Arturo Cisneros (TR) amctrustee@mclaw.org, acisneros@ecf.epiqsystems.com
- Dennis Connelly socalcsq44@yahoo.com
- Robert H Dewberry robert.dewberry@dewlaw.net
- Martin F Goldman MARTY@MARTYLAW.COM
- Richard W Labowe llhlaw1631@aol.com
- Melissa Davis Lowe mdavis@shbllp.com
- Catherine Schломann Robertson crobertson@pahl-gosselin.com
- Leonard M Shulman lshulman@shbllp.com
- United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

Claimant

ACCURATE AIR ENGINEERING, INC.
16207 CARMENITA ROAD
CERRITOS, CA 90703

Attys for Accurate Air Engineering, Inc.

Mitchell B Hannah
Law Office of Mitchell B Hannah
9900 Research Dr
Irvine, CA 92618-4309

File a Motion:

[6:13-bk-30034-SC Apogee Containers Inc.](#)

Type: bk

Chapter: 7 v

Office: 6 (Riverside)

Assets: y

Judge: SC

U.S. Bankruptcy Court

Central District Of California

Notice of Electronic Filing

The following transaction was received from Melissa Davis Lowe entered on 3/6/2014 at 3:45 PM PST and filed on 3/6/2014

Case Name: Apogee Containers Inc.

Case Number: [6:13-bk-30034-SC](#)

Document Number: [25](#)

Docket Text:

Stipulation By Arturo Cisneros (TR) and *Accurate Air Engineering, Inc.* Filed by Trustee Arturo Cisneros (TR) (Lowe, Melissa)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:Z:\A-B\Apogee Containers, Inc\Claims\Stip Avoid Secured_Accurate Air_v2_Clean.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1106918562 [Date=3/6/2014] [FileNumber=68850423-0] [663aa212f2c2a6507e218a4f31f0bd55297880dff418aaa0579d3db192400c9700098559eebc277b610ee3a25a0a282c5718b59d75845f494929b8d2ffbf71e3]]

6:13-bk-30034-SC Notice will be electronically mailed to:

Cathrine M Castaldi on behalf of Interested Party Courtesy NEF
ccastaldi@brownrudnick.com

Arturo Cisneros (TR)
amtrustee@mclaw.org, acisneros@ecf.epiqsystems.com

Dennis Connelly on behalf of Debtor Apogee Containers Inc.
socallesq44@yahoo.com

Robert H Dewberry on behalf of Creditor Ferco Color, Inc.
robert.dewberry@dewlaw.net

Martin F Goldman on behalf of Creditor H. Muehlstein & Co
MARTY@MARTYLAW.COM

Richard W Labowe on behalf of Interested Party Courtesy NEF
llhlaw1631@aol.com

Melissa Davis Lowe on behalf of Trustee Arturo Cisneros (TR)
mdavis@shbllp.com

Catherine Schlomann Robertson on behalf of Creditor The Pacific Rim Traders, LLC
crobertson@pahl-gosselin.com

Leonard M Shulman on behalf of Trustee Arturo Cisneros (TR)
lshulman@shbllp.com

United States Trustee (RS)
ustpreregion16.rs.ecf@usdoj.gov

6:13-bk-30034-SC Notice will not be electronically mailed to:

Mitchell B Hannah on behalf of Creditor Accurate Air Engineering Inc
Law Office of Mitchell B Hannah
9900 Research Dr
Irvine, CA 92618-4309

Shulman Hodges & Bastian LLP
8105 Irvine Center Dr, Ste 600
Irvine, CA 92618

EXHIBIT 3

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into this 17th day of March, 2014 (the "Effective Date"), by and among TAUBER-ARONS, INC., a California corporation ("Buyer"), and ARTURO CISNEROS, solely in his capacity as Chapter 7 Trustee ("Seller" or "Trustee"), for the bankruptcy estate of APOGEE CONTAINERS, INC., a California corporation ("Apogee," "Debtor" or "Apogee Estate").

RECITALS:

A. On December 16, 2013 ("Petition Date"), Apogee filed a voluntary petition for relief under Chapter 7 (the "Chapter 7 Case") of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California, Riverside Division (the "Bankruptcy Court"), as Case No. 6:13-bk-30034-SC.

B. Arturo Cisneros is the duly appointed, qualified and acting Chapter 7 Trustee for the Apogee Estate.

C. Apogee was engaged in the business of manufacturing bottles and containers for a wide variety of industries (the "Business"), with its principal place of business as of the Petition Date located at 510 Alcoa Circle, Corona, California 92880 ("Facility").

D. Buyer's role under this Agreement is twofold. Seller desires to sell, assign, transfer and deliver to Buyer, and Buyer desires to purchase from Seller all of the Apogee Estate's rights, title and interest in the assets which are more fully described in Article I of this Agreement, on the terms and subject to the conditions hereinafter contained. Seller further desires to hire Buyer to sell, assign, transfer and deliver the assets described in Article I of this Agreement, on the terms and subject to the conditions hereinafter contained, at the Auction (as hereinafter defined), with Buyer using its best efforts to maximize the sale, assignment, transfer and delivery of the assets described in Article I of this Agreement to the Bidders (as hereinafter defined).

In consideration of the mutual covenants, promises, agreements, representations and warranties contained in this Agreement, the parties hereto do hereby covenant, promise, agree, represent and warrant as follows:

ARTICLE I - PURCHASE AND SALE

1.1 Purchase and Sale of Assets. Subject to the Bidding Procedures (as defined below) and other terms and conditions of this Agreement, except for the Excluded Assets (defined below), on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in and to all of the assets specifically described in Exhibit A as of the Closing Date (collectively, the "Purchased Assets"). Seller then authorizes Buyer to sell, assign, transfer and deliver the Purchased Assets to any Bidders at the Auction for the best and highest offer for each of the Purchased Assets. Other than the Purchased Assets expressly set forth in this Agreement, no other assets, however described, are the subject of this Agreement. The Purchased Assets include all of Seller's rights and interests pursuant to warranties, representations and guarantees

made by suppliers, manufacturers and contractors in connection with products or services affecting the Purchased Assets.

1.2 Excluded Assets. Other than the Purchased Assets expressly set forth in this Agreement, all other assets of Apogee, however described (the "Excluded Assets"), are expressly excluded from the purchase and sale contemplated hereby and are not included in the Purchased Assets.

1.3 Purchase Price. The purchase price for the Purchased Assets (the "Purchase Price") shall be comprised of the following:

(a) Deposit. Concurrently with the mutual execution and delivery of this Agreement, Buyer shall deposit with Trustee the sum of Fifty Three Thousand Three Hundred Fifty Dollars and No/100 Dollars (\$53,350.00) (the "Deposit") in Good Funds (as hereinafter defined). The Deposit will be held by the Trustee in accordance with the terms and conditions of this Agreement and will be disbursed as provided in this Agreement. The Deposit shall be non-refundable to Buyer except upon the occurrence of the termination of this Agreement for any reason other than Buyer's default or breach of this Agreement, in which case the Trustee shall return the Deposit to Buyer. For purposes of this Agreement, the term "Good Funds" shall mean cash or other immediately available, good funds. The Deposit shall be applied to the Purchase Price at the Closing. If the Bankruptcy Court does not enter a Sale Approval Order for any reason other than the fault of the Buyer, the Trustee shall return the Deposit to the Buyer.

(b) Balance of Purchase Price.

(i) Net Guarantee. Notwithstanding anything in this Agreement to the contrary, Buyer shall pay Seller, at a minimum, the net sum (after payment of all fees, expenses, Buyer's Premiums (as hereinafter defined), and any other costs of sale) of One Million Sixty Seven Thousand and No/100 Dollars (\$1,067,000.00) ("Net Guarantee") at the Closing.

(ii) Net Sales Proceeds Less than the Amount of the Net Guarantee. In the event that the auction conducted by Buyer pursuant to the terms of this Agreement ("Auction") nets a Purchase Price less than the full amount of the Net Guarantee (i.e., a sum less than \$1,067,000.00), then Buyer shall retain all of such proceeds and shall be entitled to no other sums or amounts (including the Deposit).

(iii) Net Sales Proceeds in Excess of the Net Guarantee. In the event that the Auction nets a Purchase Price in excess of the Net Guarantee (i.e., a sum in excess of \$1,067,000.00), the following provisions shall apply:

(A) If the Auction nets a Purchase Price between \$1,067,000.01 and \$1,117,000.00, then (i) Buyer shall pay Seller the full amount of the Net Guarantee, and (ii) any and all sums between \$1,067,000.01 and \$1,117,000.00 shall be paid to Buyer for reimbursement of expenses, pursuant to Section 1.3(c)(ii) of this Agreement;

(B) If the Auction nets a Purchase Price in excess of \$1,150,000.01, then (i) Buyer shall pay Seller the full amount of the Net Guarantee, (ii) any and all sums between \$1,067,000.01 and \$1,117,000.00 shall be paid to Buyer for reimbursement of

expenses, pursuant to Section 1.3(c)(ii) of this Agreement, and (iii) any sums in excess of \$1,117,000.00 shall be divided ninety percent (90%) to the Apogee Estate and ten percent (10%) to Buyer, pursuant to the terms of this Agreement.

(c) Buyer's Premium; Reimbursement.

(i) Buyer may charge a commission not to exceed fifteen percent (15%) ("Buyer's Premium") of the gross proceeds from the sale of the Purchased Assets at the Auction, to be paid to Buyer upon the completion of the requirements of Revised Supervisory Instruction #10 of the Office of the United States Trustee ("Supervisory Instructions"). Buyer shall be solely responsible for collecting the Buyer's Premium from the Bidders at the sale of the Purchased Assets at the Auction.

(ii) In the event Buyer sells the Assets at Auction on a bulk sale basis to a single buyer, the Buyer will reimburse to Seller 5% of the Buyer's Premium charged on the sale.

(ii) Within fifteen (15) calendar days of the Auction, Seller shall reimburse Buyer for its reasonable and customary expenses in connection with the Auction, but not to exceed the sum of \$50,000.00, pursuant to Section 1.3(b)(iii)(A) and Section 1.3(b)(iii)(B) (as applicable) of this Agreement. Notwithstanding anything in this Agreement to the contrary, Buyer shall pay the Net Guarantee to Seller.

(d) On the Closing Date, Buyer shall pay and deliver to Seller, by Good Funds, the Net Guarantee. Any and all other sums shall be disbursed pursuant to the terms of this Agreement.

1.5 Sales Tax Obligations. In the event that Buyer purchases the Purchased Assets under the terms of this Agreement, all federal, state, local or foreign sales, use, transfer or similar taxes payable in connection with the sale of the Purchased Assets to Buyer, if any, shall be paid by Buyer directly to the appropriate taxing authorities within 60 days of the Closing Date. Seller shall have no responsibility to pay any taxes under this Section 1.5. Buyer agrees to indemnify, defend and hold Seller harmless in the event of any claims relating to the late, non, or insufficient payment of all tax liabilities resulting from the sale.

1.6 Limitations of Sale. Buyer and Seller acknowledge that the operation of the law has placed the Trustee in a unique role in connection with the Purchased Assets. Due to the nature of the Trustee's role in administering the Apogee Estate, there are limitations as to the extent, type and character of the Agreement under which the Trustee can cause the Purchased Assets to be sold, assigned, transferred and delivered, regardless of whether the Purchased Assets are purchased by Buyer or by any Bidder. The Trustee proposes that the Purchased Assets be sold, assigned, transferred and delivered under the limitations and circumstances hereunder. Buyer and Seller acknowledge that they each understand that the terms and conditions under which the Purchased Assets are to be conveyed may vary substantially from the normal customs and trade within the industry in which the Purchased Assets may be sold outside of the context of

bankruptcy law. Except where mandated by operation of law, Buyer hereby consents to any such modifications and amendments of the terms and conditions of any such customs and trade within said industry under which the Purchased Assets are to be conveyed.

1.7 Storage Fees. Buyer acknowledges and understands that the landlord of the Facility ("Landlord") has obtained an unlawful detainer judgment against Apogee. Any and all rent and other charges due under the lease between Landlord and Debtor from the Petition Date to forty-five days after entry of the Sale Approval Order shall be subject to an administrative expense claim of the Apogee Estate. Any and all rent and other charges due under the lease between Landlord and Debtor following forty-five days after entry of the Sale Approval Order shall be the sole responsibility of Buyer, and Buyer shall not seek any sums or amounts from Seller in connection with the obligation to pay said rent and other charges. Seller shall not be responsible for payment of any rent, charges or other fees in connection with the storage of the Purchased Assets at the Facility. Seller shall have no liability or responsibility to remove the Purchased Assets from the Facility, and Buyer will indemnify, defend and hold harmless Seller in connection with the same. At Buyers' sole cost, Buyer agrees to return the Facility to the condition required of the Debtor pursuant to the terms of its prior lease with Landlord.

1.8 Access to Facility. This Agreement is conditioned upon the Buyer getting reasonable access to the Facility from the date of the execution of this Agreement until forty-five days after entry of the Sale Approval Order.

ARTICLE II - CLOSING

2.1 Time, Date and Place. The payment by Buyer to Seller, and the receipt of Seller from Buyer, the full amount of the Net Guarantee (less the Deposit received by Seller) under this Agreement shall constitute the closing ("Closing"), which shall take place at the law offices of Shulman, Hodges & Bastian LLP, 8105 Irvine Center Drive, Suite 600, Irvine, CA 92618. The Closing shall be held within five calendar (5) days after the Bankruptcy Court enters an order approving the sale of the Purchased Assets unless otherwise approved by Seller (referred to throughout this Agreement as the "Closing Date"). The Closing Date may be extended by the Trustee in the Trustee's sole discretion.

2.2 Closing Costs. All expenses incurred by Seller or Buyer with respect to the consummation of the transaction contemplated by this Contract, are to be borne and paid exclusively by the party incurring same, subject to the terms and conditions of Section 1.3(c)(ii) above.

2.3 Sale Free and Clear of Liens. Seller will seek to have the Purchased Assets sold free and clear of any liens, claims and encumbrances pursuant to Bankruptcy Code Section 363, subject to Bankruptcy Court approval. Seller shall use his best efforts to cause the Bankruptcy Court to enter an order approving such terms of the sale. Seller will request this relief in the motion to the Bankruptcy Court to approve this Agreement and the underlying transaction and believes that such relief is justified and appropriate. Seller does not warrant or guaranty that any of these provisions in this Agreement will be approved by the Bankruptcy Court. If the Bankruptcy Court does not approve the sale free and clear of liens, the Trustee shall return the Deposit to the Buyer.

ARTICLE III - DELIVERIES AT THE CLOSING

3.1 Deliveries by Seller. At the Closing on the Closing Date, subject to satisfaction of the conditions precedent set forth in Section 6.1 of this Agreement, Seller shall deliver to Buyer the documents listed on Schedule 3.1 (collectively, the "Closing Documents").

3.2 Deliveries by Buyer. At the Closing on the Closing Date, Buyer shall deliver, or cause to be delivered, an amount in equal to the Net Guarantee (less the Deposit) in Good Funds.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Seller represents and warrants to Buyer as of the date hereof and as of the Closing on the Closing Date, subject to approval of the Bankruptcy Court, Seller has the legal capacity, right, power, and authority to enter into this Agreement. Subject to approval of the Bankruptcy Court, Seller has the full right, power and authority to execute, acknowledge and deliver this Agreement.

ARTICLE V - REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

5.1 Buyer represents and warrants to Seller as of the date hereof and as of the Closing on the Closing Date each of the following:

(a) Organization, Good Standing, and Corporate Power. Buyer is duly organized, validly existing, and in good standing under the laws of the State of its formation. Buyer has the corporate power to enter into, execute and deliver this Agreement and to consummate the transactions contemplated hereby.

(b) Authorization of Agreement. The execution and delivery of this Agreement and the performance by Buyer of its obligations and agreements under this Agreement have been duly and validly authorized. Buyer has taken all other actions required on its part by law in order to consummate the transactions contemplated hereby.

(c) Execution, Delivery and Performance. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer and, subject to the approval of the Bankruptcy Court, is enforceable against Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application which may affect the enforcement of creditors rights generally and by general equitable principles.

(d) Effect of Agreement. The execution and delivery by Buyer of this Agreement, the purchase by Buyer of the Purchased Assets, the sale by Buyer of the Purchased Assets, the performance by Buyer of its obligations pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not, with or without the giving of notice or lapse of time, or both: (a) violate or conflict with any term of the articles of incorporation or other organizational documents of Buyer; (b) violate any provision of law, statute, rule, regulation or executive order to which Buyer or any of its assets or properties is subject which could have a material adverse effect on Buyer; or (c) violate any judgment, order,

writ or decree of any court or administrative body applicable to Buyer or any of its assets or properties.

(e) Buyer's Closing Funds. On or before the Closing Date, Buyer shall have the necessary funds immediately available to consummate the transaction contemplated by this Agreement and there is no financing contingency with respect to Buyer's obligations in connection with this transaction.

(f) No Conflicts or Violations. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-laws of Buyer, (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound, or (iv) prevent consummation of the transactions contemplated in this Agreement, and the compliance by Buyer with the terms, conditions and provisions hereof.

(g) Litigation. There is no litigation, nor any order, decree or judgment, in progress or pending, or, to the knowledge of Buyer, threatened, against or relating to Buyer and, to Buyer's knowledge, no facts or circumstances exist which would reasonably be expected to give rise to litigation which would prevent, restrain or affect Buyer's ability to perform the transaction contemplated by this Agreement.

(h) Disclaimer of Warranties; "AS-IS AND WHERE-IS" Conveyance. BUYER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT BUYER IS PURCHASING THE PURCHASED ASSETS IN AN "AS-IS AND WHERE-IS" CONDITION WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OF OR ON BEHALF OF SELLER. Buyer acknowledges that Buyer has not relied, and is not relying, upon any information, document, sales brochure, due diligence, information package or other literature, map or sketch, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of or omitted by Seller, his agents, representatives, consultants and/or attorneys with respect to the title, quality, nature, adequacy or physical condition of the Purchased Assets. Buyer acknowledges that it is Buyer's responsibility to make such legal, factual and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to the Purchased Assets; Buyer has had ample and sufficient time to conduct such inquiries and investigations, and Buyer has in fact made such inquiries and investigations. Such inquiries and investigations may include, but shall not be limited to, the physical components of all portions of the Purchased Assets and the condition of the Purchased Assets. BUYER ACKNOWLEDGES TO, AND AGREES WITH SELLER THAT WITH RESPECT TO THE PURCHASED ASSETS, SELLER HAS NOT AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR

WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PURCHASED ASSETS OR WITH RESPECT TO COMPLIANCE OF THE PURCHASED ASSETS WITH ANY ENVIRONMENTAL PROTECTION LAW, RULE OR REGULATION, ORDER OR REQUIREMENT INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE. Without in any way limiting the generality of the foregoing, Buyer specifically acknowledges and agrees that Buyer hereby waives, releases and forever discharges any claim, warranty, guarantee, refund, cause of action, right of recovery, right of set-off and right of recoupment of every kind and nature that it has, might have in the future, had or may have against Seller and/or Seller's agents with respect to the Purchased Assets, including the condition of the Purchased Assets (either patent or latent). Buyer does hereby release, and forever discharge Seller (in his individual capacity and as Trustee of the Apogee Estate), his employees, representatives, agents, sub-agents, successors, assigns and attorneys from any and all claims for damages and other causes of action at law or equity for injury, destruction, loss or damage of any kind or character, to the person or property of Buyer and Buyer's employees, agents and representatives arising out of or in any way relating to the Purchased Assets. Notwithstanding the above, the Parties acknowledge that the Assets may contain hazardous materials as a result of the standard operation of such Assets. To the extent that any barrels or other storage containers might have hazardous waste, Buyer will not be responsible for any removal or loss or damage caused by such materials. This Article V shall survive Closing.

(i) Buyer's Proof of Liability Insurance and Blanket Bond. Buyer represents and warrants to Seller that Buyer now holds and has previously submitted to Seller proof of liability insurance in the sum of \$5,000,000, and an auctioneer's blanket bond in favor of the United States of America for coverage in the aggregate sum of \$25,000 ("Blanket Bond"). Buyer has advised the Trustee that the total value of all pending bankruptcy estate auctions in which Buyer is involved in this judicial district does not exceed the Blanket Bond, including auctions already conducted in which funds have not yet been disbursed by Buyer to any bankruptcy trustee and pre-auction estimated values of estate assets in the custody and control of Buyer. The cost of the Blanket Bond shall be paid by the Seller.

(j) Buyer as a "Disinterested Person". Buyer acknowledges that Buyer is a "disinterested person" within the meaning of 11 U.S.C. § 101(14).

5.2 Acknowledgment of the Trustee's Capacity. Buyer is expressly aware and fully informed that the Trustee is selling the Purchased Assets exclusively in his capacity as the Chapter 7 Trustee of the Apogee Estate, and not in an individual capacity. No personal liability for costs, fees or other charges on the Trustee's part is intended, as any liability is strictly the liability of the Apogee Estate. No personal liability shall be sought or enforced against the Trustee with regard to the Agreement, the Purchased Assets (including title, quality, nature, adequacy or physical condition of the Purchased Assets), or the transaction contemplated hereunder. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to immediately upon demand return any money paid to the Trustee by Buyer, without deduction. All other liability of the Trustee, or his agents or attorneys, is hereby released.

5.3 Attorney Review. Buyer represents, warrants, acknowledges and agrees that: (i) the law firm of Shulman Hodges & Bastian LLP represents only Seller; (ii) Buyer fully understands its right to discuss all aspects of this Agreement with its attorney(s), and is strongly encouraged to do so and has had the opportunity to do so; and (iii) Buyer has carefully reviewed and fully understands all of the provisions of this Agreement, and that it is voluntarily entering into this Agreement. Buyer further acknowledges and agrees that Buyer is entering into this Agreement without reliance upon any statement or representation of any attorney of Seller.

ARTICLE VI - CLOSING CONDITIONS

6.1 Seller's Conditions to Close. Seller's obligation to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Seller (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by Buyer in this Agreement):

(a) All representations and warranties made by Buyer in this Agreement shall be complete and accurate at and as of the Closing on the Closing Date;

(b) All covenants, promises and agreements made by Buyer in this Agreement and all other actions required to be performed or complied with by Buyer under this Agreement prior to or at the Closing shall have been fully performed or complied with by Buyer;

(c) Buyer shall have delivered to Seller the Net Guarantee in Good Funds as set forth in Section 1.3(b)(i) of this Agreement; and

(d) Buyer shall have delivered to Seller appropriate evidence of all necessary corporate action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's directors approving the transactions contemplated herein and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated herein.

6.2 Buyer's Conditions to Close. Buyer's obligation to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Buyer (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by Seller in this Agreement):

(a) All representations and warranties made by Seller in this Agreement shall be complete and accurate at and as of the Closing on the Closing Date;

(b) All covenants, promises and agreements made by Seller in this Agreement and all other actions required to be performed or complied with by Seller under this Agreement

prior to or at the Closing shall have been fully performed or complied with by Seller as applicable; and

(c) Seller shall have delivered to Buyer each Closing Document listed on Schedule 3.1.

6.3 Mutual Conditions to Close. The obligations of both Buyer and Seller to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent:

(a) All representations of Buyer and Seller contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as though made at and as of that time.

(b) The Bankruptcy Court shall have entered the Sale Approval Order as contemplated by and defined in Section 7.2 below and the Sale Approval Order shall not have been stayed nor shall any appeal therefrom have been filed as of the expiration of the time limit for filing such appeal or be subject to a motion for stay as of the Closing Date.

ARTICLE VII - BANKRUPTCY COVENANTS

7.1 Auction. The Auction shall be conducted by Buyer at the Facility within forty-five (45) days after the Bankruptcy Court enters the Sale Approval Order, with the exact date and time of the sale to be set by Buyer. Buyer shall market the sale of the Purchased Assets at the Auction by way of newspaper, online publications, direct mail, email blast and any other form of advertisement commonly used by Buyer in auctions of the type contemplated hereunder.

7.2 Bidding Procedures. The sale of the Purchased Assets at the Auction shall be subject to the following bidding procedures (the "Bidding Procedures"):

(a) The Trustee will schedule a hearing on the Trustee's motion to the Bankruptcy Court for an order approving the sale of the Purchased Assets and the Bidding Procedures ("Sale Motion") seeking entry of an order approving the sale of the Purchased Assets free and clean of all liens and encumbrances ("Sale Approval Order").

(b) The following manner for the notice of the hearing on the Sale Motion shall be deemed reasonable under the circumstances of this case. The Trustee shall serve the notice of the hearing on the Sale Motion to the following parties via United States Mail, First Class, not later than twenty-one days prior to the hearing on the Sale Motion:

- i. The Office of the United States Trustee.
- ii. All creditors and parties-in-interest.
- iii. All parties requesting special notice.
- iv. Any potential bidders.

(c) Buyer shall use Buyer's best efforts to sell the Purchased Assets in excess of the Net Guarantee.

(d) The sale of the Purchased Assets shall be without limit and without reserve, subject only to minimum opening bid amounts established by Buyer, based on Buyer's expert judgment, but shall under no circumstances be less than the amount of the Net Guarantee.

(e) Buyer will offer the sale of the Purchased Assets to each bidder at the Auction ("Bidder(s)") in "as-is, where-is" condition, with all faults, and without any representations or warranties, as further set forth in Section 7.2(g) below.

(f) Buyer will require each Bidder to post an appropriate deposit as a prerequisite for each Bidder to bid, with such deposit being determined by Buyer exercising Buyer's expert judgment.

(g) Buyer will require each Bidder to sign a terms sheet, which will include terms intended to protect Buyer and Seller from such Bidder's payment defaults, property abandonment, damage to persons or property onsite, claims regarding the property condition, as well as any other terms that Buyer and Seller deem appropriate. Said term sheet shall also advise any and all Bidders that:

(1) EACH BIDDER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT EACH BIDDER IS PURCHASING THE PURCHASED ASSETS IN AN "AS-IS AND WHERE-IS" CONDITION WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OF OR ON BEHALF OF SELLER. Each Bidder acknowledges that each Bidder has not relied, and is not relying, upon any information, document, sales brochure, due diligence, information package or other literature, map or sketch, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of or omitted by Seller, his agents, representatives, consultants and/or attorneys with respect to the title, quality, nature, adequacy or physical condition of the Purchased Assets. Each Bidder acknowledges that it is each Bidder's responsibility to make such legal, factual and other inquiries and investigations as each Bidder deems necessary, desirable or appropriate with respect to the Purchased Assets; each Bidder has had ample and sufficient time to conduct such inquiries and investigations, and each Bidder has in fact made such inquiries and investigations. Such inquiries and investigations may include, but shall not be limited to, the physical components of all portions of the Purchased Assets and the condition of the Purchased Assets. EACH BIDDER ACKNOWLEDGES TO, AND AGREES WITH SELLER THAT WITH RESPECT TO THE PURCHASED ASSETS, SELLER HAS NOT AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PURCHASED ASSETS OR WITH RESPECT TO COMPLIANCE OF THE PURCHASED ASSETS WITH ANY ENVIRONMENTAL PROTECTION LAW, RULE OR REGULATION, ORDER OR REQUIREMENT

INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE;

(2) Without in any way limiting the generality of the foregoing, each Bidder specifically acknowledges and agrees that each Bidder hereby waives, releases and forever discharges any claim, warranty, guarantee, refund, cause of action, right of recovery, right of set-off and right of recoupment of every kind and nature that it has, might have in the future, had or may have against Seller and/or Seller's agents with respect to the Purchased Assets, including the condition of the Purchased Assets (either patent or latent). Each Bidder does hereby release, and forever discharge Seller (in his individual capacity and as Trustee of the Apogee Estate), his employees, representatives, agents, sub-agents, successors, assigns and attorneys from any and all claims for damages and other causes of action at law or equity for injury, destruction, loss or damage of any kind or character, to the person or property of each Bidder and each Bidder's employees, agents and representatives arising out of or in any way relating to the Purchased Assets;

(3) Any claim for damages by any Bidder shall be limited solely to the return of such Bidder's deposit set forth in Section 7.2(f), with each Bidder waiving any right to equitable relief (including injunctive relief), as well as waiving any right to seek any damages beyond the amount of the Bidder's deposit (including, but not limited to, punitive and consequential damages); and

(4) The provisions of this Section shall survive the Closing.

(h) Buyer will accept from each Bidder the following forms of payment: credit card (any and all credit cards fees shall be solely Buyer's responsibility), cashiers' checks, guaranteed checks and wire transfer as payment for the Purchased Assets sold. No cash will be accepted for the Auction.

(i) Regardless of any scheduled time and place for offer to purchase the Purchased Assets, the Trustee may, at his option and in his sole discretion, reject any and all bids if the Trustee deems that such bids are inadequate as to form and amount. The Auction date may be continued from time to time until the Purchased Assets are sold, without further Order of the Bankruptcy Court, or until such time it is determined that abandonment is appropriate.

(j) In the event that any Bidder purchases the Purchased Assets under the terms of this Agreement, Buyer shall be responsible to collect and remit any and all federal, state, local or foreign sales, use, transfer or similar taxes payable in connection with the Purchased Assets, with such tax to be paid by Buyer to Seller within 60 days of the Closing Date, to be remitted to the appropriate taxing authorities by Seller. Seller shall have no responsibility to pay any taxes under this Section 7.2(j).

(k) Within seven (7) calendar days of the Auction, Buyer shall turnover any and all proceeds from the Auction to the Trustee in excess of \$1,117,000.00. Within fifteen (15) calendar days, Buyer shall submit to the Trustee a report of Buyer ("Auctioneer's Report"),

which shall include a list of all Purchased Assets sold, the price of each of the Purchased Assets sold, the identity and address of each Bidder who purchased any of the Purchased Assets, and gross sale proceeds from the Auction. Buyer shall also provide a settlement summary report, statement itemizing sale expense, copies of all marketing materials and expense receipts. The Auctioneer's Report shall also comply with the Supervisory Instructions, which Buyer has reviewed and Buyer is thoroughly familiar with the same.

(l) Buyer understands that Seller needs to file the Auctioneer's Report with the Bankruptcy Court, as well as a declaration which is consistent with the Supervisory Instructions, within twenty-one (21) days of Seller's receipt of the Auctioneer's Report. Thereafter, Seller shall distribute to Buyer any and all sums due to Buyer pursuant to Section 1.3(b)(iii).

7.4 Subject to Court Approval. Seller shall use his best efforts to cause the Bankruptcy Court in the Chapter 7 Case to enter the Sale Approval Order. This Agreement is expressly contingent upon Seller obtaining Bankruptcy Court approval of the sale of the Purchased Assets in the Chapter 7 Case with a finding that Buyer is in good faith pursuant to Bankruptcy Code Section 363(m). Seller makes no warranties, either express or implied, as to his ability to obtain approval of the Bankruptcy Court and entry of a Sale Approval Order, and in the event that Seller is unable to obtain said approval and Sale Approval Order, Buyer and its officers, directors, shareholders, agents, successors and assigns shall hold Seller, both in his individual capacity and in his capacity as Chapter 7 trustee, and his officers, directors, shareholders, attorneys and agents harmless from any and all damages which Buyer may allege it has suffered as a result thereof. In the event that the Bankruptcy Court does not approve the Sale Approval Order, then (a) this Agreement shall terminate, and each party shall be released from its obligations under this Agreement except for those obligations of Buyer which expressly state they shall survive such termination, (b) Buyer shall be entitled to a refund of the Deposit, and (c) Buyer shall not be entitled to any other reimbursements or compensation from Seller.

7.5 Substantial Contribution. Seller shall use his best efforts to cause the Bankruptcy Court to enter the Sale Approval Order. Unless the Bankruptcy Court fails to issue the Sale Approval Order, neither Buyer nor any of its agents shall seek compensation from Seller under Bankruptcy Code Section 503(b) or otherwise for making a substantial contribution in the Bankruptcy Case.

ARTICLE VIII - TERMINATION

8.1 The parties may terminate this Agreement as provided below:

(a) Buyer and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing; and

(b) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing in the event Seller is in breach of any representation, warranty, or covenant contained in this Agreement in any material respect or are otherwise unable to fulfill their conditions to the Closing, and Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing in the event Buyer is in breach of any representation,

warranty or covenant contained in this Agreement in any material respect or is otherwise unable to fulfill its conditions to the Closing, it being understood and agreed that TIME SHALL BE OF THE ESSENCE with respect to the performance of Buyer's and Seller's obligations hereunder; provided that, any such breach by a party shall trigger an obligation by the non-breaching party to provide prompt notice to the breaching party of the alleged breach (to the extent that the non-breaching party is aware thereof and to the extent that any such alleged breach is curable), including a detailed description of the facts and circumstances giving rise to such alleged breach, and the breaching party shall have a period of fifteen (15) days following the sending of such notice to cure the alleged breach (but in any event to have been completed no later than the one (1) business day preceding the Closing Date).

8.2 If any party terminates this Agreement pursuant to Section 8.1, this Agreement shall be of no further force or effect and no party shall have any liability to any other party hereunder; provided however, that (i) Section 11.8 (Costs and Expenses) hereof shall survive any such termination and continue in full force and effect, as well as any and all provisions of this Agreement which provide that they shall survive in the event of such termination; (ii) nothing herein shall relieve any party hereto from any liability resulting from any breach of this Agreement prior to such termination, (iii) a termination of this Agreement solely for failure of Buyer to meet the closing conditions set forth in this Agreement for any reason shall result in the Deposit being retained by Seller as liquidated damages, and (iv) a termination of this Agreement solely for failure of Seller to meet the closing conditions set forth in this Agreement for any reason shall result in the Deposit being returned by Seller to Buyer (with no other sums to be paid to Buyer).

ARTICLE IX - SPECIAL COVENANTS AND CONDITIONS

9.1 Bulk Sales Law. Buyer waives any and all rights to require compliance with the provisions of the Uniform Commercial Code as adopted by the State of California, including but not limited to Article 6 of the California Commercial Code, related to bulk transfers in connection with the transactions contemplated hereunder, if any.

9.2 Personal Property Taxes. Buyer shall pay for any taxes relating to the Purchased Assets, including all taxes associated with the sale and assignment of the Purchased Assets pursuant to this Agreement.

ARTICLE X - INDEMNIFICATION

10.1 BUYER HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND, SAVE, AND HOLD HARMLESS SELLER, AND EVERY ENTITY AFFILIATED WITH SELLER, AND ALL OF THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS, PARTICIPANTS, AND INDEPENDENT CONTRACTORS, AND THE SUCCESSOR OF EACH AND EVERY ONE OF THEM (COLLECTIVELY, THE "SELLER PARTIES"), FROM AND AGAINST ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, FEES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO, OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE

TRANSACTION CONTEMPLATED HEREUNDER, THE AUCTION, EACH OF THE BIDDERS, THE PURCHASED ASSETS (INCLUDING THE TITLE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE PURCHASED ASSETS), THE REMOVAL OF THE PURCHASED ASSETS FROM THE FACILITY, ANY REPAIRS AND COSTS IN CONNECTION WITH ANY DAMAGE TO THE FACILITY, THE PAYMENT OF TAXES RELATED TO THE ASSETS, AND ANY OTHER MATTERS WITH RESPECT TO THE PURCHASED ASSETS ARISING EITHER BEFORE OR AFTER THE CLOSING DATE.

10.2 Buyer's indemnification obligations under this Agreement shall survive the Closing of the transaction contemplated hereunder.

10.3 This Article X shall survive regardless of whether the transaction contemplated under this Agreement closes.

Buyer has initialed this Article X to further indicate its awareness and acceptance of each and every provision hereof.

Buyer's Initials

ARTICLE XI - MISCELLANEOUS

11.1 Assignment. Buyer may not assign, transfer, set over or otherwise convey any of Buyer's rights, or delegate any of its duties or obligations (by operation of law or otherwise), under this Agreement without the prior written consent of Seller, which Seller may withhold, grant or condition in Seller's sole discretion. Any purported assignment, transfer, set over or other conveyance, or delegation by Buyer, without Seller's consent as set forth in the immediately preceding sentence, shall be void *ab initio*. Any assignment by Buyer will not negate or invalidate Buyer's obligations and duties under this Agreement.

11.2 Notices. All notices, demands and other communications (collectively, "Notice(s)") given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if sent by registered or certified mail, return receipt requested, postage and fees prepaid, by overnight service with a nationally recognized "next day" delivery company, by facsimile transmission, or otherwise actually delivered to the addresses set forth below for Buyer and Seller. Any Notice shall be deemed duly given when received by the addressee thereof, provided that any Notice sent by registered or certified mail shall be deemed to have been duly given two (2) business days after the date of deposit in the United States mails, unless sooner received. Any of the parties to this Agreement may from time to time change its address for receiving Notices by giving written notice thereof in the manner set forth above.

If to Buyer, to:

TAUBER-ARONS, INC.
13848 Ventura Blvd.

Sherman Oaks, CA 91423
Facsimile: (818) 933-0782
Attention: Anthony P. Arons, President

If to Seller, to:

Arturo Cisneros
Chapter 7 Trustee for Apogee Containers, Inc.
3403 Tenth Street, Suite 714
Riverside, CA 92501

with a copy (which shall not constitute notice), to:

Melissa Davis Lowe, Esq.
Shulman Hodges & Bastian LLP
8105 Irvine Center Drive, Suite 600
Irvine, CA 92618
Facsimile: (949) 340-3000

11.3 Waiver. No provision of this Agreement may be waived unless in writing signed by all of the parties to this Agreement, and the waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision. This Agreement may be amended only by a written agreement executed by all of the parties to this Agreement.

11.4 Disputes. ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DISPUTE RELATING TO THE INTERPRETATION, MEANING OR EFFECT OF ANY PROVISION HEREOF, THE TRUSTEE OR THE APOGEE ESTATE, WILL BE RESOLVED IN THE BANKRUPTCY COURT AND THE PARTIES HERETO EACH SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT FOR THE PURPOSES OF ADJUDICATING ANY SUCH DISPUTE, TO THE EXTENT THE JURISDICTION OF THE BANKRUPTCY COURT IS AVAILABLE. BUYER AND SELLER MAY, IF A DISPUTE ARISES, ATTEMPT TO RESOLVE THEIR DISPUTE THROUGH THE MEDIATION PROGRAM PENDING BEFORE THE BANKRUPTCY COURT, BUT IF THEY ARE UNABLE TO RESOLVE SUCH DISPUTE BEFORE THE MEDIATION PROGRAM, THEY SHALL SUBMIT THE DISPUTE TO THE BANKRUPTCY COURT. THE TERM SHEET DESCRIBED IN SECTION 7.2(g) ABOVE SHALL ADVISE EACH BIDDER THAT ANY DISPUTES ARE TO BE RESOLVED PURSUANT TO THIS SECTION 11.4.

11.5 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.

11.6 Headings. The section and subsection headings contained in this Agreement are included for convenience only and form no part of the agreement between the parties.

11.7 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any

provision of this Agreement shall be or become prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11.8 Costs and Expenses. Buyer shall pay its costs and expenses, including without limitation, the fees and expenses of its counsel, financial advisors and broker or finder. Seller shall pay the costs and expenses incurred by Seller, including without limitation, the fees and expenses of the legal, accounting and financial advisors of Seller, as well as any brokers' fees for any brokers engaged by Seller or any of his affiliates in connection with the transactions contemplated hereby.

11.9 Integration. This Agreement, including the other agreements and schedules to be entered into in connection with the transactions contemplated by this Agreement, constitutes and embodies the entire understanding and agreement of the parties hereto relating to the subject matter hereof and there are no other agreements or understandings, written or oral, in effect between the parties relating to such subject matter except as expressly referred to herein.

11.10 Attorney's Fees. In the event of any action or suit based upon or arising out of any alleged breach of any party of any representation, warranty, covenant or agreement contained in this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and other costs of such action or suit from the other party.

11.11 No Third Parties Benefitted. Nothing in this Agreement shall confer any rights upon any person or entity other than Buyer and Seller (except any permitted successors or assigns).

11.12 Knowledge of Seller. Whenever in this Agreement reference is made to the "knowledge" of Seller, such shall be interpreted to mean the actual knowledge of Seller, who shall not have any obligation to make any inquiry whatsoever.

[The remainder of this page is intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this Asset Purchase Agreement has been executed as of the Effective Date.

BUYER:

TAUBER-ARONS, INC., a California corporation

By: _____

Name: Anthony P. Arons

Title: President

SELLER:

Arturo Cisneros, solely in his capacity as Chapter
7 Trustee of the bankruptcy estate of APOGEE
CONTAINERS, INC., a California corporation

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EXHIBIT "A"

Purchased Assets

[To be attached.]

EXHIBIT 'A'

APOGEE CONTAINERS

~~To include, but not limited to:~~

(7) Nissei 650 Ton Stretch Blow Molders.

(3) (2004) Columbian 80000 Lb., 3000 Cu. Ft. Resin Silos.

Gardner & Denver Mod. ECMQLC, 60 H.P. Rotary Screw Air Compressor.
S/N M24928

Gardner & Denver 40 H.P. Rotary Screw Air Compressor.
S/N N/A

(1992) IR Mod. U15H-SP, 15 H.P. Rotary Screw Air Compressor.
S/N 1CC5T1U92F

Gardner & Denver 15 H.P. Rotary Screw Air Compressor.

Hankison Mod. HPRP750, Air Dryer.
S/N WH750B460020504

Air Receiving Tank.

Trane Mod. RTHB130FLF, Series R Sentramatic 150 Ton Chiller System w/ Evapco Cooling Tower,
S/N U98608735

(2) (2002) Belliss & Morcom Mod. UH9H3N, 150 H.P. High Pressure Air Compressors.
S/N N/A
S/N 9375

Hankison Mod. HPRD-1.5-700, Air Dryer.
S/N H16958

(1991) Nissei Mod. 650NHII, 650 Ton Stretch Blow Molders, w/ Walton Stout Vacuum Loader.
S/N 139A5191

~~JLG Mod. 2646ED, Electric Scissor Lift.~~

Fox Mod. C3, Auto. Pallet Wrapper.

(3) Cumberland 25 H.P. Scrap Grinders.
S/N 4210007817
(2) S/N's N/A

Adaptive Vacuum/Hopper Loader System w/ Hopper.

(2006) Nissei Mod. PF8-4B, Biaxial Stretch Orientation Blow Molder, 8-Cavity, 4-Blow w/ Walton/Stout
S/N 279C40273

(2010) Nissei Mod. ASB-70DPH, Biaxial Stretch Orientation Blow Molder, 8-Cavity, 4-Blow w/
S/N 329A60983

Digital Platform Scale.

(1994) Sidel Mod. SBO 4/6 FOUR, Four Station Rotary Stretch Blow Molder, w/ Bottle Feeder.
S/N 244

(1984) Bekum Mod. H111, Single-Extrusion, Dbl. Die Blow Molder w/ PR30T Controls.
S/N 26825507

(1986) Bekum Mod. SG32-H111, Single-Extrusion, Dbl. Die Blow Molder w/ PR30T Controls.
S/N 104992568

(1983) Bekum Mod. S831, Single-Extrusion, Dbl. Die Blow Molders w/ AVG EZ Series, Controls.
S/N 62975037

(1979) Bekum Mod. 582, Single Extrusion Dbl. Die Blow Molder, w/ AVG EZ Series, Controls.
S/N 78163

(1986) Bekum Mod. BM-203D, Single-Extrusion, Dbl. Die Blow Molder w/ PR30T Controls, 2-Nozzle
S/N 100265047

(1989) Bekum Mod. BM-303D, Single-Extrusion, Dbl. Die Blow Molder w/ PR30T Controls, 2-Nozzle
S/N 100265081

(1996) Bekum Mod. BM304D, Single-Extrusion, Dbl. Die Blow Molder w/ BNC Controls, 3-Nozzle Head.
S/N 2003050024

(1990) Bekum Mod. H121D, Single-Extrusion Dbl. Die Blow Molder.
S/N H-121-D-203-5

~~(2) 3M Box Closers.~~

(4) Delta Pressure Testers.
S/N 0170074
S/N 0170075
(2) S/N's N/A

~~(5) Lazy Susans.~~

~~Toyota Mod. 6FGU15, 3000 Lb. L.P.G. Forklift.
S/N 60850~~

~~(6) Incline Belt Conveyors~~

ALPS Mod. SC110, Leak Tester.

HPCM Trimmer.

Vacuum/Hopper Loader System w/ (2) Silos.

Foremost Scrap Grinder w/ Elevator & Hopper.

S/N N/A

(2) Foremost Hopper/Loader Systems.

(11) Extra Blow Mold Heads. (See attached list of tooling)

(42) Blow Mold Dies. (See attached list of tooling)

(4) Color Matrix Mod. CM2000, Color Metering Systems.

Digital Platform Scale.

MSC 24" Vert. Band Saw.

Cuttermaster Tool Grinder.

(2) Dbl. End Grinders.

Mitsui 6" x 18" Manual Surface Grinder.

BurrKing 1" Vert. Belt Sander.

Mac Blast Cabinet.

Miller Wire Welder.

Miller Heli Arc Welder.

H-Frame Press.

4" Horiz. Band Saw.

Lagun Mod. FT-V-2, Var. Sped. Vert. Mill w/ D.R.O.'s.

S/N 22042

Webb 17" x 60" Gap Bed Engine Lathe, 3-Jaw Chuck.

S/N N/A

Zebra PC Labeller.

(7) Cabinets of Bekum, Nissei and Sidel Spare Parts

Misc. Shop & Office Equipment.

List of Tooling

HDPE MOLDS - Bekum

1 Litre/32oz 38mm 6 Cavity
1 Litre/32oz 38mm 4 Cavity
1 Litre/32oz Dosing Cap/Buttress Neck 4 Cavity
500ml 38mm 4 Cavity
16oz 38mm 6 Cavity
15.2oz 38mm 6 Cavity
32oz 28mm Handle ware 4 Cavity
8oz 28mm Round 4 Cavity
32oz F Style 28mm 4 Cavity
BirdBall/Disk -- 2 Cavity -- See webpage under Company Product -- Bird Disks
1 Gallon with Handle 2 Cavity
1 Litre Boston Round 4 Cavity
1 Litre Round 4 Cavity
1 Litre Ajax 4 Cavity
2oz Boston Round 4 Cavity
4oz Boston Round 2 Cavity
6oz Boston Round 2 Cavity
8oz Oval 4 Cavity
8oz Boston Round 2 Cavity
8oz Round with Square Shoulders 2 Cavity
8oz Cylinder Round 2 Cavity
8oz Cylinder Round with Square Shoulders 2 Cavity
8oz Oval 2 Cavity
9oz Oval 2 Cavity
12oz Cylinder Round Square Shoulders 4 Cavity
14oz Baby Oil 4 Cavity
15oz Cylinder Round 2 Cavity
15oz Round Square Shoulder 4 Cavity
16oz Oval 4 Cavity
16OZ Cylinder Round Square Shoulders 2 Cavity
18oz Bullet Cylinder Round
24oz Cylinder Round 2 Cavity
24oz Cylinder Round 4 Cavity
32OZ Cylinder Round Radius Shoulders 4 Cavity
32OZ Cylinder Round Slanted Shoulders 4 Cavity -- Label Protect
32OZ Cylinder Round Slanted Shoulders 4 Cavity
32OZ Cylinder with Handleware 6 Cavity
64OZ Dishwashing Detergent with Handleware 2 Cavity
64OZ Cooking Oil with Handleware 2 Cavity
100ml Square Oval 2 Cavity
250ml Oval Lotion Bottle 4 Cavity
300ml Cylinder Round with Square Shoulders 6 Cavity

300ml Cylinder Wound with Square Shoulders 2 Cavity
 300ml Fructis Round 6 Cavity
 350ml Bullet 4 Cavity
 500cc Cylinder Round (Spin Trim Neck)

PETE MOLDS - Nissei

42oz 89mm Widemouth 55gr 4 Cavity

PETE MOLDS - Sidel

1.75L 33mm 4 Cavity Kirkland Signature Margarita Mix
 1.75L 33mm 4 Cavity Liquor
 33mm Tooling
 28PCO Tooling

Customer Owned MOLDS

31oz 22mm Custom Fuel additive -- Long Neck 33gr.
 32oz Lucas Oil HDPE 6 Cavity
 Kirkland Spice 6 Cavity PETE
 37oz 89mm Widemouth 55gr 4 Cavity Cold Mold
 1 Gallon Handeware 2 Cavity No Glug Design
 4L 50mm Custom Oil 2 Cavity
 5L 50mm Custom Oil 2 Cavity
 6L 50mm Custom Oil 2 Cavity
 32oz 28MM Handeware 4 Cavity
 15.2oz 38mm 6 Cavity
 2 oz 22mm 4 cavity
 3 oz 33m 4 cavity
 37oz 89mm Widemouth 55gr 4 Cavity

Extrusion Heads -- BEKUM

	LOCATION	DESCRIPTION	NOTE
1	MACH 1	2 X100MM	COMPLETE
2	MACH 2	2 X 100MM	COMPLETE
3	MACH 3	2 X 100MM	COMPLETE

4	MACH 4	3 X 120 MM	COMPLETE
5	MACH 5	None	N/A
6	MACH 6	3 X 70MM	COMPLETE
7	MACH 7	3 X 85MM	COMPLETE
8	MACH 8	SINGLE	COMPLETE
9	WAREHOUSE	3 X 100 MM	COMPLETE
10	WAREHOUSE	2 X 100MM	COMPLETE
11	WAREHOUSE	3 X 115MM	COMPLETE
12	WAREHOUSE	2 X 140MM	COMPLETE
13	WAREHOUSE	2 X 120MM	COMPLETE
14	WAREHOUSE	3 X 100MM	COMPLETE
15	WAREHOUSE	2 X 125MM	COMPLETE
16	WAREHOUSE	3 X 83MM	COMPLETE
17	WAREHOUSE	SINGLE	COMPLETE
18	WAREHOUSE	4 X 83MM	COMPLETE
19	WAREHOUSE	SINGLE	NEEDS REBUILD
20	WAREHOUSE	2 X 140MM	COMPLETE

SCHEDULE 3.1

Closing Documents

1. A receipt for the Net Guarantee and Deposit executed by Seller in a form reasonably satisfactory to Buyer.
2. Executed original of a Bill of Sale, in a form reasonably satisfactory to Buyer.
3. A copy of the Sale Approval Order.

EXHIBIT 4



TAUBER-ARONS, INC.

Industrial Auctioneers & Liquidators since 1892

13848 Ventura Blvd., Sherman Oaks, CA, 91423 • P-323-851-2008 • F-818-933-0782
www.tauberaronsinc.com • main@tauberaronsinc.com

ABOUT TAUBER-ARONS, INC.

Tauber-Arons, Inc. combines four generations of experience with up-to-the minute industry awareness and state-of-the-art auction technology to offer unparalleled service and expertise. Established in Chicago in 1892, we moved our headquarters to Los Angeles in the 1920s, and we have been here ever since. Tauber-Arons, Inc. conducts both live and internet bid auctions, offering clients a true global marketing reach.

We conduct about 50 auction sales and 300 appraisals worldwide each year, for companies in a wide range of industries including metalworking, food processing, plastics and more. We established ourselves as a boutique-style firm and remain committed to our founding ideals. We provide individualized service to every client, and our clients always make confident decisions based on accurate, professional guidance from Tauber-Arons.

Anthony Arons, President & Owner

Anthony Arons joined Tauber-Arons, Inc. in 1988 and has owned Tauber-Arons, Inc. since 1993. Tony oversees all aspects of the auction operations. He is a licensed auctioneer in most states and has personally conducted over 300 auction sales throughout North America.

Tony had more than 30 years in Industrial Auction and Liquidations experience. In his tenure, he has conducted approximately 500 transactions realizing more than \$500 million dollars for American Industry. His experience includes turnkey projects in metalworking, fabrication, machine tools, foundry, woodworking, chemical, semiconductor, telecommunications and food processing. These include projects for fortune 500 and 1000 companies including Nestle, Corning, Carlisle, Acco Brands, Intel, Navistar, Boeing, Brunswick Corp, The HON Company, Life Fitness, Sauer Danfoss, and Neenah Paper.

Tony holds a BA from University Of California at Colorado and is a graduate of The Missouri Auction School.

EXHIBIT 4

EXHIBIT 5

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF

BOND NO. 2542196

AUCTIONEER'S BOND

KNOW ALL MEN BY THESE PRESENTS, That we Tauber Arons, Inc. of Los Angeles, California as Principal and Great American Insurance Company, a corporation, organized and existing under the laws of the State of Ohio, with an office and usual place of business at 950 Tower Lane, Ste. 340, Foster City CA 94404, as Surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of twenty five thousand (\$25,000) Dollars, lawful money of the United States of America, for the payment of which sum we do hereby bind and oblige ourselves and our respective heirs, executors, administrators, successors and assigned jointly and severally, firmly by these presents.

WHEREAS, the said Tauber Arons, Inc., desires to conduct sales as auctioneer in accordance with the rules, orders and decrees of the United States Bankruptcy Court for the Central District of California.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that is the said Tauber Arons Inc. auctioneer, shall faithfully and promptly account for all monies and property which may come into his possession as auctioneer in accordance with the Bankruptcy Code, the said rules of Court and said order and decrees, then this obligation to be void, otherwise to be and remain in full force and effect.

That if the Surety shall so elect this bond may be cancelled by giving Sixty (60) say written notice to the United States Bankruptcy Court of the United States of America District of California.

The Surety however, shall remain liable for any default occurring during the period up to the expiration of said (60) days notice.

IN WITNESS WHEREOF, the Tauber Arons Inc., has hereunto set his hand and seal and the Great American Insurance Company has caused this instrument to be executed by its proper officers duly authorized, and its corporate seal to be hereunto affixed this 12th day of March, 2014.

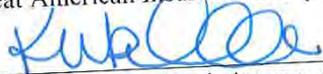
Tauber Arons, Inc.

BY: _____

Witness to Signature

BOND

United States Bankruptcy Judge

Great American Insurance Company


Kristie Paolozzi, Attorney-In-Fact

Dated: _____

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than THREE

No. 0 14661

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
ADRIENNE ORTEGA	ALL OF	ALL
CHRISTINE A. BAIRD	FOSTER CITY,	UNLIMITED
KRISTIE PAOLOZZI	CALIFORNIA	

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 8TH day of NOVEMBER, 2013
Attest GREAT AMERICAN INSURANCE COMPANY



[Signature]
Assistant Secretary

[Signature]
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 8TH day of NOVEMBER, 2013, before me personally appeared DAVID C. KITCHIN, to me

known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



KAREN L. GROSHEIM
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 02-20-16

[Signature]

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 12th day of March, 2014



[Signature]
Assistant Secretary

S1029AC (4/11)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Mateo } SS.

On 3/12/14, before me, Christine Ann Baird
(Date) (Notary)

personally appeared Kristie Paolozzi, who proved to me
(Name of Signer)
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal. [Signature]
(Signature of Notary)

My commission expires on July 24, 2017.



(Seal)

OPTIONAL

The following information is not required by law, however it may be helpful in preventing fraudulent use
of this acknowledgement.

Bond No. 2542196 Eff:3/12/14

DOCUMENT TITLE OR DESCRIPTION _____

DOCUMENT DATE: _____ NUMBER OF PAGES: _____

COMMENTS:

RIGHT THUMBPRINT OF SIGNER

RIGHT THUMBPRINT OF SIGNER

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
8105 Irvine Center Drive, Suite 600, Irvine, CA 92618

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 3/12/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* 3/12/2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* 3/12/2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY: Honorable Scott C. Clarkson, Bin Beside 5th Floor
Elevators, 411 W. Fourth St., Santa Ana CA 92701

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

3/12/2014
Date

Laurie Verstegen
Printed Name

/s/ Laurie Verstegen
Signature

PROOF OF SERVICE (CONT'D)

VIA NEF:

Cathrine M Castaldi on behalf of Interested Party Courtesy NEF
ccastaldi@rusmiliband.com

Arturo Cisneros (TR)
amctrustee@mclaw.org, acisneros@ecf.epiqsystems.com

Dennis Connelly on behalf of Debtor Apogee Containers Inc.
socalsq44@yahoo.com

Robert H Dewberry on behalf of Creditor Ferco Color, Inc.
robert.dewberry@dewlaw.net

Martin F Goldman on behalf of Creditor H. Muehlstein & Co
MARTY@MARTYLAW.COM

Richard W Labowe on behalf of Interested Party Courtesy NEF
llhlaw1631@aol.com

Melissa Davis Lowe on behalf of Trustee Arturo Cisneros (TR)
mdavis@shbllp.com

Catherine Schlomann Robertson on behalf of Creditor The Pacific Rim Traders, LLC
crobertson@pahl-gosselin.com

Leonard M Shulman on behalf of Trustee Arturo Cisneros (TR)
lshulman@shbllp.com

United States Trustee (RS)
ustpreion16.rs.ecf@usdoj.gov