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The Honorable Marc L. Barreca  
Chapter 11  
Hearing Date: December 1, 2016  
Hearing Time: 9:30 a.m.  
Response Date: November 25, 2016

9 UNITED STATES BANKRUPTCY COURT  
10 WESTERN DISTRICT OF WASHINGTON  
11 AT SEATTLE

12 In re

No. 15-13813-MLB

13 J L LEASING & TRANSPORTATION,  
14 INC.

15 Debtor.

**MOTION FOR ORDER APPROVING  
PUBLIC AUCTION SALE OF ALL OF  
THE DEBTOR'S TRUCK AND  
TRAILER ASSETS FREE AND  
CLEAR OF ALL LIENS, CLAIMS,  
INTERESTS AND ENCUMBRANCES**

18 J L Leasing & Transportation, Inc. ("Debtor") moves the court for an order approving an  
19 auction sale as described herein, and authorizing the sale of Debtor's truck and trailer assets  
20 ("Assets"),<sup>1</sup> free and clear of liens by Successful Bidders.  
21

22 The Debtor requests that this Court find that (i) notice of the Motion was appropriate and  
23 was properly served in accordance with applicable Bankruptcy Code provisions, the Bankruptcy  
24

25  
26 <sup>1</sup> Attached as Exhibit "1" is the list of Assets that Debtor proposes to sell and the name of each creditor listed on the schedules that are believed to claim a security interest against particular Assets.

**MOTION FOR ORDER APPROVING THE AUCTION  
SALE OF ALL OF THE DEBTOR'S TRUCK AND  
TRAILER ASSETS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES - 1**  
{25538/U953666.DOCX}

L A S H E R	2600 TWO UNION SQUARE
H O L Z A P P E L	601 UNION STREET
S P E R R Y &	SEATTLE, WA 98101-4000
E B B E R S O N	(206) 624-1230
	FAX (206) 340-2563

1 Rules, and orders of this Court; (ii) the proposed sale of the Assets is in the best interests of the  
2 Debtor and its estate and creditors; (iii) the sale of Assets is being proposed and, if approved, will  
3 be consummated as provided in Bankruptcy Code § 363(m); (iv) the Assets may appropriately be  
4 sold and conveyed free and clear of any liens, interests and encumbrances pursuant to Bankruptcy  
5 Code § 363(f); and (v) the Buyers are not insiders or affiliates of the Debtor.

7 This Motion is based on these moving papers and the Declaration of Frank Letourneau (the  
8 “Letourneau Decl.”), the record in this case, the arguments and representations of counsel, and any  
9 oral or other documentary evidence presented at or prior to the hearing on this Motion.

#### 11 I. BACKGROUND

12 A. The Debtor filed a voluntary petition under Chapter 11 of the United States  
13 Bankruptcy Code on June 23, 2015 (the “Petition Date”). The Debtor is operating its business and  
14 managing its affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy  
15 Code.

17 B. J L Leasing is a trucking company, incorporated in Washington on December 13,  
18 2001 and it is headquartered in Enumclaw, Washington. Prior to that time the business was a sole  
19 proprietorship operated by Frank Letourneau’s father and mother since approximately 1993. J L  
20 Leasing’s primary trucking activities are in the state of Washington including container shipping for  
21 companies importing and exporting goods through the ports of Washington, Oregon and British  
22 Columbia, and transporting produce and other commodities in Washington, Oregon and British  
23 Columbia.

25 C. In 2013-2014 the Debtor expanded into long haul or over-the-road trucking in the  
26

1 continental United States and Canada. Also in 2014, the Debtor expanded into excavation/ dirt  
2 hauling. This comprised an investment of approximately \$1 million in equipment purchases and  
3 rentals. Additionally, the Debtor hired management employees and truck drivers at a cost of an  
4 estimated \$800,000 of additional salaries and other expenses. Unfortunately, neither of these lines  
5 of business were profitable. The Debtor has laid off the employees doing long haul or  
6 excavation/dirt hauling work and has sold off most of the equipment devoted to those unprofitable  
7 lines of business.  
8  
9

10 D. The Debtor also owns truck and trailer assets used in ongoing operations, many of  
11 which are subject to the claims of secured creditors (“Collateral”). The Debtor has determined that  
12 it is in the best interests of the bankruptcy estate to liquidate its assets and sell the Collateral and pay  
13 the secured obligations. Any sale proceeds in excess of payoffs of the Collateral will be held by the  
14 Chapter 11 Trustee for distribution pursuant to further order of the Court.  
15

16 E. Attached as Exhibit “2” is a true and correct copy of the proposed terms of the auction  
17 sale with Ritchie Bros. Auctioneers (America) Inc. (“Ritchie Bros.”). Ritchie Bros. proposed two  
18 options: (1) a straight commission sale for ten percent (10%) of the sale proceeds; or (2) a guarantee  
19 by Ritchie Bros. that it will pay the Debtor a minimum of \$1,100,000 for the assets notwithstanding  
20 the aggregate sale prices for the Assets and less equipment refurbishment costs of \$17,000. A  
21 guarantee would cost a thirteen percent (13%) commission rather than ten percent (10%). Under  
22 the guarantee option any sales proceeds over \$1.1 million would be divided 75% to Debtor and 25%  
23 to Ritchie Bros. If the guarantee is the option approved by the Court, then the guarantee amount  
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1 would benefit all secured creditors on a pro rata basis to the extent of the guarantee amount over  
2 and above the actual sale price of any particular truck or trailer, provided, however, that payment to  
3 any particular secured creditor shall not exceed its allowed secured claim. Debtor and the Chapter  
4 11 Trustee may enter into an agreement with James G. Murphy Co. ("Murphy") on substantially  
5 similar or better terms at any time prior to Court approval and in that event will submit a  
6 supplemental filing with Murphy's proposed terms.  
7

8 F. The Debtor believes that the public auction sale is in the best interests of the estate  
9 and creditors and will provide the estate with no less than the liquidation value of the Assets.  
10

11 G. Ritchie Bros. has a regularly scheduled auction on December 16, 2016. Ritchie Bros.  
12 or Murphy will provide notice and advertising of the Auction to all parties which they believe, in  
13 their reasonable judgment, have the interest and wherewithal to purchase the Assets.  
14

## 15 II. ARGUMENT

16 A. The Court Should Approve the Public Auction Sale Contemplated Under the  
17 Agreement.  
18

19 The Debtor has established the requisite business justifications for the Court to approve the  
20 public auction sale of the Assets. The Debtor has determined that it cannot continue as a going  
21 concern. The Debtor must therefore dispose of the Assets to realize the most value for creditors.  
22 The auction planned by the Debtor will provide an adequate opportunity for any party to submit a  
23 competing bid. The Debtor has done all it can to sell the Assets to the highest and best bidder and  
24 will now rely on the advertising of an international auctioneer. Consequently, the Court should  
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1 approve the auction sale as in the best interests of the Debtor and its estate and creditors.

2 The Court should approve the proposed sale of the Debtor's Assets free and clear of liens,  
3 claims, interests and encumbrances. Section 363(b) of the Bankruptcy Code provides that the  
4 Trustee is authorized to sell assets outside the ordinary course of its business. While the text of the  
5 Bankruptcy Code does not provide the standard for determining when it is appropriate for a court to  
6 authorize the sale of property of the estate, courts often approve a proposed sale if such sale is based  
7 upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 9F3d  
8 389, 395 (3d Cir. 1996); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

11 B. The Proposed Auction Sale Meets the Requirements for a Sale Under 363(b).

12 Here, a sound business reason exists for the proposed auction. Namely, the objective of the  
13 proposed sale is to maximize the proceeds of such sale for the benefit of the bankruptcy estate and  
14 to preserve value of the remainder of the assets of the bankruptcy estate. *See, e.g., Four B Corp. v.*  
15 *Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8<sup>th</sup> Cir. 1997) (stating  
16 that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at  
17 hand"); *In re Integrated Res, Inc.*, 147 B.R. 650 (S.D.N.Y. 1992) ("It is a well-established principle  
18 of bankruptcy law that the objective of bankruptcy rules and the [Debtor's] duty with respect to such  
19 sales is to obtain the highest price or greatest overall benefit possible for the estate.") (alteration in  
20 original) (quoting *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

21 The sale of assets outside of the ordinary course of business may even be conducted by a  
22 private sale as opposed to an auction under appropriate circumstances. *See In re Bakalis*, 220 B.R.  
23  
24  
25  
26

1 525, 531 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale  
2 of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion .  
3 . . to conduct public or private sales of estate property.”) (internal quotations and citation omitted).  
4 Here, it is in the best interests of creditors and the estate to sell the assets by public auction.  
5

6 For purposes of 11 USC § 363(m), a “good faith purchaser” is one who buys “in good faith”  
7 and “for value.” *Ewell v. Diebert (in re Ewell)*, 958 F.2d 276, 281 (9<sup>th</sup> Cir. 1992). “The requirement  
8 that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale  
9 proceedings.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3<sup>rd</sup> Cir. 1992)  
10 (quotations omitted). The “lack of good faith is shown by ‘fraud, collusion between the purchaser  
11 and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’”  
12 *In re Ewell*, 958 F. 2d at 281 (quoting *Community Thrift & Loan v. Suchy (In re Suchy)*, 786 F.2d  
13 900, 902 (9<sup>th</sup> Cir. 1985)); see also *In re Abbotts Dairies*, 788 F.2d at 147. Here, the auction sales  
14 will be the result of competitive arm’s length public bidding. The sales will not be the result of any  
15 fraud or collusion between the Debtor and any Buyer. The sales will be conducted by a professional  
16 third party auctioneer and the Buyers will be good-faith buyers within the meaning of 11 USC §  
17 363(m).  
18  
19  
20  
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22 The Buyers at the public auction should be deemed to have participated in good faith. There  
23 is a sound business justification for the sale(s) and the Debtor has also provided adequate and  
24 sufficient notice of the proposed auction sale. The Court should grant the Motion to approve the  
25 proposed auction sale.  
26

1 C. Good Cause Exists to Waive the Stay Under Fed. R. Bankr. P. 6004(h).

2 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale or lease of property  
3 other than cash collateral is stayed for 14 days, unless the court orders otherwise. Given the liquidity  
4 concerns facing the Debtor's business and the necessity that this sale close quickly, cause exists to  
5 waive the stay and permit the Debtor to quickly consummate the proposed sales at public auction.  
6

7 D. The Proposed Sales of the Assets at Auction Satisfies the Requirements of 11 USC  
8 §363(f).

9 Pursuant to 11 USC § 363(f), a Trustee may sell property of the estate under 11 USC §363(b)  
10 free and clear of any interest in such property of any entity other than the estate only if (1) applicable  
11 non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity  
12 consents; (3) such interest is a lien and the price at which the property is to be sold is greater than  
13 the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such  
14 entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such  
15 interest. 11 USC § 363(f).  
16  
17

18 The Debtor has provided notice to every creditor on the mailing matrix, so that if any entity  
19 claims a lien on the assets being sold, they will have an opportunity to object. If no such creditor  
20 objects, the sale free and clear of will be permitted under 11 USC § 363(f)(2). Moreover, even if  
21 secured creditors object to the sale, the sale free and clear is permissible under 11 USC §363(f)(5)  
22 because there are legal and equitable proceedings in which a lienholder could be compelled to accept  
23 a money satisfaction of such lien, including the disposition of collateral under the default remedies  
24 provided in Washington's Uniform Commercial Code (RCW 62A.9A) or in a receivership  
25  
26

1 proceeding pursuant to RCW 7.60.260. Furthermore, any lienholder also will be adequately  
2 protected by having its liens, if any, attach to the proceeds of the sale in the same order of priority,  
3 with the same validity, force, and effect that such creditor had prior to such sale, subject to any  
4 claims and defenses that the Debtor's bankruptcy estate may possess with respect thereto. For these  
5 reasons, the proposed public auction sale free and clear of liens should be approved.  
6

### 7 III. CONCLUSION

8  
9 For the foregoing reasons, the Debtor requests that the Court enter an order in the form  
10 proposed by the Debtor authorizing its proposed public auction sale, free and clear of liens, claims,  
11 interests, and encumbrances, and for such other relief as the Court deems appropriate under the  
12 circumstances.  
13

14 **DATED** this 8<sup>th</sup> day of November, 2016.

15 LASHER HOLZAPFEL  
16 SPERRY & EBBERSON, P.L.L.C.

17 /s/ Danial D. Pharris  
18 Danial D. Pharris, WSBA #13617  
19 Attorneys for Debtor  
20  
21  
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***EXHIBIT 1***

## JL LEASING &amp; TRANSPORTATION INC

- 2 85 - **BMD HARRIS**  
 2007 FREIGHTLINER CL120 COLUMBIA SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1FUNA6AV47DX52313  
 C/W: Caterpillar C15 ACERT, 625 hp, eng brake, 13 spd, self-steering air lift 3rd axle, A/R susp, 12000 lb frt, 40000 lb rears, 245 in. WB, 60 in. high rise sleeper, alum wheels  
 Miles: 119,978  
 Tires/ U/C: 75%  
 Condition: Good
- 3 25 - **BMD HARRIS**  
 2003 KENWORTH W900 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKWDB9X83R387878  
 C/W: Caterpillar C16, 600 hp, eng brake, Eaton Fuller 18 spd, upgraded int pkg, self-steering air lift 3rd axle, 8 bag A/R susp, 13200 lb frt, 46000 lb rears, 282 in. WB, 42 in. flat top sleeper, alum wheels  
 Miles: 1,037,028  
 Tires/ U/C: 80%  
 Condition: Good
- 4 60 - **PACCAR**  
 2013 KENWORTH T800 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKDP40X4DR353588  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller 18 spd, dbl diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp, 13200 lb frt, 40000 lb rears, 282 in. WB, 60 in. flat top sleeper, alum wheels  
 Miles: 360,109  
 Tires/ U/C: 80%  
 Condition: Good
- 5 15 - **NORTH MILL EQUIPMENT FINANCE**  
 2008 KENWORTH T800 TRUCK TRACTOR (TRI/A)  
 s/n 1XKDP4EX78R234609  
 C/W: Cummins ISX550, 550 hp, eng brake, Eaton Fuller 18 spd, upgraded int pkg, self-steering air lift 3rd axle, Hendrickson A/R susp, 14320 lb frt, 46000 lb rears, 228 in. WB, alum wheels, wet kit  
 Miles: 336,002  
 Tires/ U/C: 70%  
 Condition: Good  
 Owner To: To Replace Back Glass

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- 6 40 - APP  
 2003 KENWORTH W900 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKWPB0X23R705868  
 C/W: Caterpillar C15, 475 hp, eng brake, DEF, Eaton Fuller 13 spd, dbl diff lock, upgraded int pkg, self-steering air lift 3rd axle, 8 bag A/R susp, 12000 lb frt, 40000 lb rears, 272 in. WB, 60 in. flat top sleeper, alum wheels  
 Miles: 184,103  
 Tires/ U/C: 85%  
 Condition: Good
- 7 350 - BMO HARRIS  
 2013 PETERBILT 386 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XPHP49X0DD195830  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller 18 spd, dbl diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp, 13200 lb frt, 40000 lb rears, 48 in. mid roof sleeper, alum wheels  
 Miles: 299,097  
 Tires/ U/C: 70%  
 Condition: Good
- 8 00 - WELLS FARGO  
 2014 KENWORTH W900 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKWP40X2EJ394973  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller RTL018918B, dbl diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp, 13200 lb frt, 40000 lb rears, 290 in. WB, 60 in. flat top sleeper, alum wheels  
 Miles: 267,857  
 Tires/ U/C: 75%  
 Condition: Good
- 9 400 - ENGS  
 2014 KENWORTH T660 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKAP40X0ER390562  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller RTL018918B, dbl diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp, 13200 lb frt, 40000 lb rears, 268 in. WB, 48 in. flat top sleeper, alum wheels  
 Miles: 244,205  
 Tires/ U/C: 75%  
 Condition: Good

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10 50 - **APA**

2003 KENWORTH W900B TRUCK TRACTOR (TRI/A)  
 s/n 1XKWDB9X35R084820  
 C/W: Caterpillar C15 ACERT, 475 hp, eng brake, Eaton Fuller 18 spd,  
 upgraded int pkg, self-steering air lift 3rd axle, 8 bag A/R susp, 12350  
 lb frt, 40000 lb rears, 250 in. WB, 48 in. flat top sleeper, alum frt,  
 wet kit  
 Miles: 100,182  
 Tires/ U/C: 80%  
 Condition: Good  
 Owner To: Put on Front Bumper and Tires

11 05 - **BMD HARRIS**

2013 PETERBILT 386 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XPHP49X4DD195829  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller 18 spd, dbl diff  
 lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp, 13200  
 lb frt, 40000 lb rears, 270 in. WB, 48 in. flat top sleeper, alum wheels  
 Miles: 368,080  
 Tires/ U/C: 85%  
 Condition: Good

12 80 - **WESTEAN PETERBILT**

2010 PETERBILT 389 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1NPXP49XXAD113118  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller RTL018918B, dbl  
 diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp,  
 14320 lb frt, 40000 lb rears, 295 in. WB, 72 in. flat top sleeper, alum  
 wheels  
 Miles: 453,462  
 Tires/ U/C: 70%  
 Condition: Good

. 13 55 - **PACCAR**

2013 KENWORTH T800 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKDP40X6DR353589  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller RTL018918B, dbl  
 diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp,  
 13200 lb frt, 40000 lb rears, 284 in. WB, 48 in. flat top sleeper, alum  
 wheels  
 Miles: 295,000  
 Tires/ U/C: 60%  
 Condition: Good  
 Owner To: Needs new batteries

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- 14 70 - ~~PACCAR~~  
 2013 KENWORTH W900 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKWP40X6DJ330711  
 C/W: Cummins ISX15, 550 hp, eng brake, DEF, Eaton Fuller RTL018918B, dbl  
 diff lock, upgraded int pkg, self-steering air lift 3rd axle, A/R susp,  
 13200 lb frt, 40000 lb rears, 284 in. WB, 48 in. flat top sleeper, alum  
 wheels  
 Miles: 321,222  
 Tires/ U/C: F@50% R@80%  
 Condition: Very Good  
 Owner To: Put on Bumper
- 15 90 - ~~WESTERN~~ PETERBILT  
 2003 KENWORTH W900 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKWPB0X53R388555  
 C/W: Caterpillar C15, 550 hp, eng brake, Eaton Fuller 18 spd, upgraded  
 int pkg, self-steering air lift 3rd axle, A/R susp, 12000 lb frt, 40000  
 lb rears, 48 in. flat top sleeper, alum wheels  
 Miles: 14,264  
 Tires/ U/C: 50%  
 Condition: Fair  
 Owner To: Put on grill, 5th wheel plate, Put tires on rear axles and lift  
 axle, Put on bumper
- 16 200 - ~~WESTERN~~ PETERBILT  
 2009 PETERBILT 389 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XPXD49X49D778106  
 C/W: Cummins ISX 550, 550 hp, eng brake, Eaton Fuller RTL018918B,  
 upgraded int pkg, self-steering air lift 3rd axle, A/R susp, 12000 lb  
 frt, 40000 lb rears, 278 in. WB, 60 in. flat top sleeper, alum wheels  
 Miles: 741,040  
 Tires/ U/C: 75%  
 Condition: Good
- 17 35 - ~~WESTERN~~ PETERBILT  
 2009 PETERBILT 389 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XPXD49X49D777957  
 C/W: Cummins ISX 600, 600 hp, eng brake, Eaton Fuller 18 spd, upgraded  
 int pkg, self-steering air lift 3rd axle, A/R susp, 12000 lb frt, 40000  
 lb rears, 274 in. WB, 48 in. flat top sleeper, aux power unit, alum  
 wheels  
 Miles: 893,694  
 Tires/ U/C: F@80% R@75%  
 Condition: Good

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## JL LEASING &amp; TRANSPORTATION INC

- 18 65 - *BMO HARRIS*  
 2007 PETERBILT 379 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XP5DB9XX7N667594  
 C/W: Caterpillar C15, 600 hp, eng brake, Eaton Fuller 18 spd,  
 self-steering air lift 3rd axle, A/R susp, 12000 lb frt, 38000 lb rears,  
 267 in. WB, 32 in. flat top sleeper, alum wheels  
 Hours: 618,069  
 Tires/ U/C: 85%  
 Condition: Good
- 19 20 - *CAPITAL ONE*  
 2012 PETERBILT 389 SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XPXP49X4CD155910  
 C/W: Cummins ISX 15, 550 hp, eng brake, DEF, CARB compliant, Eaton Fuller  
 18 spd, upgraded int pkg, self-steering air lift 3rd axle, A/R susp,  
 12000 lb frt, 40000 lb rears, 292 in. WB, 60 in. flat top sleeper, alum  
 wheels, Certified Clean Idle  
 Miles: 390,205  
 Tires/ U/C: 85%  
 Condition: Good
- 20 30 - *APP*  
 2006 KENWORTH W900B SLEEPER TRUCK TRACTOR (TRI/A)  
 s/n 1XKWDB9X06R151116  
 C/W: Caterpillar C15 ACERT, 550 hp, eng brake, Eaton Fuller 18 spd,  
 upgraded int pkg, self-steering air lift 3rd axle, 8 bag A/R susp, 13200  
 lb frt, 40000 lb rears, 300 in. WB, 72 in. raised roof sleeper, alum  
 wheels  
 Miles: 786,826  
 Tires/ U/C: F@75% R@85%  
 Condition: Good
- 21 10 - *BMO HARRIS*  
 2007 FREIGHTLINER CL120 COLUMBIA SLEEPER TRUCK TRACTOR PARTS/STATIONARY  
 TRUCKS - OTHER  
 s/n 1FUNA6AV07DX52308  
 C/W: Caterpillar C15, eng brake, Eaton Fuller 13 spd, A/R susp, 248 in.  
 WB, 48 in. high rise sleeper, alum wheels  
 Tires/ U/C: 40%  
 Condition: Poor

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## JL LEASING &amp; TRANSPORTATION INC

- 22 150 - **BMO HARRIS**  
 2012 KENWORTH T660 SLEEPER TRUCK TRACTOR (T/A)  
 s/n 1XKAD49X3CR303889  
 C/W: Cummins ISX 15, 525 hp, eng brake, DEF, CARB compliant, Eaton Fuller RTL018913A, upgraded int pkg, 8 bag A/R susp, 13200 lb frt, DSP40 rears, 234 in. WB, 72 in. raised roof sleeper, alum wheels  
 Miles: 331,837  
 Tires/ U/C: F@50% R@75%  
 Condition: Good
- 23 300 - **BMO HARRIS**  
 2012 KENWORTH T660 SLEEPER TRUCK TRACTOR (T/A)  
 s/n 1XKAD49X6CJ299805  
 C/W: Cummins ISX 500, 500 hp, eng brake, DEF, CARB compliant, Eaton Fuller RTL018918B, upgraded int pkg, A/R susp, 13200 lb frt, DSP40 rears, 246 in. WB, 72 in. raised roof sleeper, alum wheels  
 Miles: 443,951  
 Tires/ U/C: 75%  
 Condition: Good
- 24 250 - **BMO HARRIS**  
 2011 KENWORTH T660 SLEEPER TRUCK TRACTOR (T/A)  
 s/n 1XKAD49XXBJ290068  
 C/W: Cummins ISX15, 485 hp, eng brake, DEF, Eaton Fuller RTL018918B, upgraded int pkg, A/R susp, 12000 lb frt, DSP40 rears, 285 in. WB, 60 in. raised roof sleeper, alum wheels  
 Miles: 195,535  
 Tires/ U/C: 80%  
 Condition: Good
- 25 R-67 - **DAIMLER/BENZ**  
 2008 UTILITY VS3RA 53 FT TRI/A REEFER TRAILER  
 s/n 1UYVS35318U322317  
 C/W: sliding axles, A/R susp, Thermo King SB210 reefer  
 Hours: 30,665  
 Tires/ U/C: 75%  
 Condition: Good
- 26 R-68 - **DAIMLER/BENZ**  
 2008 UTILITY VS3RA 53 FT TRI/A REEFER TRAILER  
 s/n 1UYVS35368U322328  
 C/W: sliding axles, A/R susp, Thermo King SB210 reefer  
 Hours: 30,161  
 Tires/ U/C: 75%  
 Condition: Good

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## JL LEASING &amp; TRANSPORTATION INC

- 27 R-66 - *DAIMLER/BENZ*  
2008 UTILITY VS3RA 53 FT TRI/A REEFER TRAILER  
s/n 1UYVS35368U322314  
C/W: sliding axles, A/R susp, Thermo King SB210 reefer  
Hours: 31,573  
Tires/ U/C: 75%  
Condition: Good
- 28 131A - *APP*  
2007 HELM CD220 40 FT QUAD/A CONTAINER CHASSIS  
s/n 1H9CS53487T347127  
C/W: spring susp, Steerable Drop Axle, Sliding Axles  
Tires/ U/C: 70%  
Condition: Good
- 29 140A - *BMO HARRIS*  
2014 PRATT GF414BSHP4ETLS 41 FT QUAD/A CONTAINER CHASSIS  
s/n 1P9CP4143EB343002  
C/W: spring susp  
Tires/ U/C: 40%  
Condition: Good
- 30 137A - *BMO HARRIS*  
2014 PRATT GF414BSHP4ETLS 41 FT QUAD/A CONTAINER CHASSIS  
s/n 1P9CP4144EB343025  
C/W: spring susp,  
Tires/ U/C: 75%  
Condition: Good
- 31 129A - *APP*  
2007 HELM CD220 40 FT QUAD/A CONTAINER CHASSIS  
s/n 1H9CS53447T347125  
C/W: spring susp, Steerable Drop Axle,  
Tires/ U/C: 70%  
Condition: Good
- 32 136A - *BMO HARRIS*  
2014 PRATT GF414BSHP4ETLS 41 FT QUAD/A CONTAINER CHASSIS  
s/n 1P9CP4146EB343026  
C/W: spring susp,  
Tires/ U/C: 60%  
Condition: Good

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- 33 139A - *BMO HARRIS*  
 2013 PRATT GF414BSHP4ETLS 41 FT QUAD/A CONTAINER CHASSIS  
 s/n 1P9CP4145EB343003  
 C/W: spring susp  
 Tires/ U/C: 60%  
 Condition: Good
- 34 141A - *BMO HARRIS*  
 2014 PRATT GF414BSHP4ETLS 41 FT QUAD/A CONTAINER CHASSIS  
 s/n 1P9CP4141EB343001  
 C/W: spring susp  
 Tires/ U/C: 60%  
 Condition: Good
- 35 113A - *NO VENDOR*  
 1991 PRATT GN4214813 48 FT TRI/A CONTAINER CHASSIS  
 s/n 1P9CP4831MS109181  
 C/W: spring susp, Sliding Axles  
 Tires/ U/C: 60%  
 Condition: Good
- 36 133A - *DAIMLER/BENZ*  
 2010 PRATT GS48564PE5ABDY 40 FT QUAD/A CONTAINER CHASSIS  
 s/n 1P9CP564XAB343278  
 C/W: spring susp, Steerable Drop Axle, Sliding Axles,  
 Tires/ U/C: 60%  
 Condition: Good
- 37 115A - *NO VENDOR*  
 1993 PRATT GN2414813 48 FT TRI/A CONTAINER CHASSIS  
 s/n 1P9CP4839PS109223  
 C/W: spring susp, Sliding Axles  
 Tires/ U/C: 70%  
 Condition: Good
- 38 126A - *APP*  
 2006 HELM 40 FT QUAD/A CONTAINER CHASSIS  
 s/n 1H9CS53436T347096  
 C/W: spring susp, Steerable Drop Axle, Sliding Axles  
 Tires/ U/C: 40%  
 Condition: Good
- 39 112A - *NO VENDOR*  
 1991 PRATT GN4214813 48 FT TRI/A CONTAINER CHASSIS  
 s/n 1P9CP4837MS109179  
 C/W: spring susp, Sliding Axles  
 Tires/ U/C: 60%  
 Condition: Good

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## JL LEASING &amp; TRANSPORTATION INC

- 40 138A - *BMO HARRIS*  
 2014 PRATT GF414BSHP4ETLS 41 FT QUAD/A CONTAINER CHASSIS  
 s/n 1P9CP4140EB343006  
 C/W: spring susp  
 Tires/ U/C: 60%  
 Condition: Good
- 41 134A - *DAIMLER/BENZ*  
 2010 PRATT GS48564-BE5ABDY 48 FT QUAD/A CONTAINER CHASSIS  
 s/n 1P9CP5648AB343277  
 C/W: spring susp, Steerable Drop, Sliding Axle  
 Tires/ U/C: 11@75% 1@25%  
 Condition: Good
- 42 114A - *NO VENDOR*  
 2010 PRATT GN4214813 48 FT TRI/A CONTAINER CHASSIS  
 s/n 1P9CP4833MS109180  
 C/W: spring susp, Sliding Axle,  
 Tires/ U/C: 50%  
 Condition: Good
- 43 135A - *DAIMLER/BENZ*  
 2010 PRATT GS48564-BE5AEDY 48 FT QUAD/A CONTAINER CHASSIS  
 s/n 1P9CP5641AB343279  
 C/W: spring susp, Steerable Drop, Sliding Axle  
 Tires/ U/C: 65%  
 Condition: Good
- 44 2014 FORD FUSION AWD AUTOMOBILE - *FORD MOTOR CREDIT*  
 s/n 3FA6POD91ER358011  
 C/W: 4 cyl, A/T  
 Miles: 16,408  
 Tires/ U/C: 75  
 Condition: Good
- 45 99A - *NO VENDOR*  
 1989 STRICK 20 TON T/A JEEP  
 s/n 1S12SC235K8666896  
 C/W: spring susp  
 Tires/ U/C: 80  
 Condition: Good
- 46 100A - *NO VENDOR*  
 1973 STRICK 20 TON T/A JEEP  
 s/n P600867  
 C/W: spring susp  
 Tires/ U/C: 80%  
 Condition: Good

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JL LEASING & TRANSPORTATION INC

47 99B - *NO VENDOR*  
1962 CUSTOMBUILT STEER CAR T/A MISCELLANEOUS TRAILER - OTHER  
s/n WN601013904  
C/W: spring susp  
Tires/ U/C: 75  
Condition: Good

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***EXHIBIT 2***



## **JL Leasing & Transportation Inc**

**November 7, 2016**

**Auction Proposal**

**Chehalis, Wa  
December 16, 2016**

**Ritchie Bros. Auctioneers**



Option #1

<b>Straight Commission</b>
----------------------------

Estimated Gross Amount	\$1,211,000
<i>Less commission of 10.0%</i>	<u>\$121,100</u>
Sub Total	\$1,089,900
<i>Less refurbishing</i>	<u>\$17,000</u>
Potential Net	<u><u>\$1,072,900</u></u>



Option #2

<b>Gross Guarantee</b>
------------------------

Gross Guarantee Amount	\$1,100,000
<i>Less commission of 13.0%</i>	<u>\$143,000</u>
Sub Total	\$957,000
<i>Less refurbishing</i>	<u>\$17,000</u>
Net Guarantee Amount	\$940,000

**Potential Overage** Estimated on a gross of \$1,211,000 with the following split:

75%	Overage Split Owner	<u>\$83,250</u>
25%	Overage Split RBA	

**Potential Net Amount** \$1,023,250



**CONTRACT TO AUCTION  
(CHAPTER 11 – STRAIGHT COMMISSION)**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**BETWEEN:**

**RITCHIE BROS. AUCTIONEERS (AMERICA) INC.**, having its head office at 4000 Pine Lake Road in the City of Lincoln, in the State of Nebraska, 68516.  
Web Site: [www.rbauction.com](http://www.rbauction.com)

(the "Auctioneer")

OF THE FIRST PART

**AND:**

\_\_\_\_\_, in Chapter 11 of the United States Bankruptcy Code, DEBTOR CASE # \_\_\_\_\_, having a place of business at \_\_\_\_\_

in the City of \_\_\_\_\_, in the State of \_\_\_\_\_.

Telephone No. \_\_\_\_\_ - \_\_\_\_\_,  
Fax No. \_\_\_\_\_ - \_\_\_\_\_,  
E-Mail Address \_\_\_\_\_

(the "Owner")

OF THE SECOND PART

**TERMS AND CONDITIONS OF THIS CONTRACT**

**Agreement**

The above parties recognize that the Owner is operating under Chapter 11 of the US Bankruptcy Code and that this Contract is subject to the approval of the United States Bankruptcy Court in \_\_\_\_\_ (the "Bankruptcy Court"), having jurisdiction over such proceedings. Notwithstanding any other provision herein, this Contract shall be null and void, without penalty to either party, if Bankruptcy Court approval of this Contract is not received on or before \_\_\_\_\_, 20 \_\_\_\_.



For valuable consideration, the above parties enter into this Contract (the "Contract") which sets out their respective rights, obligations and undertakings regarding the sale by unreserved public auction of all those items described on Schedule "A" attached hereto (the "Equipment").

## **SECTION 1: AUCTIONEER'S OBLIGATIONS AND RESPONSIBILITIES**

- 1.01 Sale Date** – The Auctioneer shall, as agent of the Owner, offer the Equipment, together with any additional items delivered by the Owner to the auction site for sale, in whole or in part, pursuant to Bankruptcy Court order (Docket Entry # \_\_\_\_\_), at unreserved public auction on or about the \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_, at the City of \_\_\_\_\_, in the State of \_\_\_\_\_.
- 1.02 Payment** – The Auctioneer shall make payment to the Owner within twenty-one (21) days after the auction, the amount due and owing to the Owner from monies collected from the sale of the Equipment after making all deductions permitted under this Contract.
- 1.03 Commission** – The Auctioneer shall be entitled, at the time of the auction, to a commission based on the gross sale price of the Equipment or any part thereof, as follows:
- (a) \_\_\_\_\_ percent ( \_\_\_\_\_ %) for any lot in excess of \$2,500.00; and
  - (b) for any lot realizing \$2,500.00 or less, twenty-five percent (25%), with a minimum fee of \$100.00 per lot.
- 1.04 Other** – The Auctioneer shall:
- (a) allow the Owner access to records concerning the sale of the Equipment at the auction, excluding the names or contact information of the buyers thereof;
  - (b) supervise the preparation and organization of the auction;
  - (c) provide auctioneers and accountants required for an auction of this type;
  - (d) ensure on-site food catering services are available to those in attendance at the auction;
  - (e) provide listing catalogs of the lots offered for sale to potential buyers at the auction; and
  - (f) collect and remit State and local sales tax arising upon the sale of the Equipment at the auction.
- 1.05 Sale Site** – The Auctioneer shall provide, at no cost to Owner, a suitable site for conduct of the auction.

## **SECTION 2: OWNER'S REPRESENTATIONS AND WARRANTIES:**

### **2.01 Title and Condition**

US Ch11 Straight R01\_14

Initials \_\_\_\_\_

**The Owner represents and warrants that:**

- (a) the Owner is operating under the provisions of Chapter 11 of the Bankruptcy Code, and is authorized by Bankruptcy Court order (Docket Entry #\_\_\_\_) to sell the Equipment pursuant to 11 USC § 363(f) free and clear of any and all registered and unregistered liens, security interests, tax or duty obligations or other encumbrances or contrary claims whatsoever;
- (b) the Owner has complied with all laws, requirements and notices necessary to allow the sale of the Equipment;
- (c) the Equipment is in good operating condition, free of material defects, except as disclosed to the Auctioneer;
- (d) the description of the Equipment is accurately set forth on Schedule "A" attached and in the case of motor vehicle Equipment, such Equipment has never been rebuilt, salvaged or glidered except as disclosed to the Auctioneer;
- (e) all odometer and hour meters on the Equipment reflect actual mileage or usage unless otherwise disclosed to the Auctioneer on Schedule "A";
- (f) the offering for sale, advertising or selling of the Equipment will not contravene or infringe upon any patent, copyright, trademark, agreement or similar right of any third party; and
- (g) the Owner and its signatories are duly authorized by Bankruptcy Court order (Docket Entry #\_\_\_\_) to enter into this Contract.

**SECTION 3: OWNER'S OBLIGATIONS AND RESPONSIBILITIES:****3.01 Refurbishing** – The Owner shall:

- (a) weld, sandblast, paint, clean, and refurbish (the "Refurbishing"), prior to the auction, the Equipment to a standard acceptable to the Auctioneer. Should the Auctioneer organize and pay for the Refurbishing of any part of the Equipment, the Auctioneer shall be reimbursed for these costs plus ten percent (10%) provided that the total cost shall not exceed

\_\_\_\_\_ dollars (\$\_\_\_\_\_) without authorization from the Owner; and

- (b) reimburse the Auctioneer for the cost of fuel and batteries as the Auctioneer deems necessary for demonstration and sale of the Equipment.

**3.02 Delivery** – The Owner shall deliver the Equipment, at the Owner's cost, to the auction site on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

- (a) in good operating condition, free of material defects except as disclosed to the Auctioneer, with adequate fuel and batteries and starting at the key;
- (b) free of hazardous materials other than normal operating fuels, oils, and lubricants;

- (c) in a condition equivalent to or better than its condition when viewed by the Auctioneer's representative on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_; and
- (d) in compliance with all applicable Environmental Protection Agency ("EPA") rules and regulations;

together with all documents evidencing the Owner's title, and/or necessary to transfer title, to the Equipment, properly endorsed.

The Owner hereby assigns Power of Attorney to the Auctioneer for the limited purpose of executing on the Owner's behalf, all documents required to transfer title to, and permit registration or ownership of, any part of the Equipment by the purchaser thereof.

**3.03 Searching and Title Documents – The Owner:**

- (a) shall conduct searches or use other means available, as deemed necessary by the Owner for the disclosure of liens and encumbrances, and include all such creditors in Bankruptcy Court notices seeking authority under 11 USC § 363 to sell the Equipment; in no case shall the Owner have a duty to conduct such searches, nor be responsible for the result thereof; and
- (b) shall pay a document administration fee of \$65 per unit for each item of Equipment requiring title or registration documents.

**3.04 Risk of Loss, Insurance - The Owner shall**

- (a) be responsible for loss or damage to the Equipment, other than loss or damage arising as a result of the negligence of the Auctioneer, its agents or employees, until the earliest of:
  - i. the removal of the Equipment from the auction site by the purchaser; or
  - ii. receipt by the Owner of all proceeds from the sale of the Equipment;
- (b) insure the Equipment, with the Auctioneer as additional insured, to its fair market value against all perils so that in the event of damage to, or destruction of, the Equipment or any part thereof, all insurance proceeds shall be credited to the gross proceeds of the auction and payment made to the Auctioneer forthwith for all deductions permitted by this Contract; and
- (c) upon request, provide Auctioneer with a copy of the insurance certificate, or other documentation evidencing the Auctioneer as an additional insured, to the satisfaction of the Auctioneer.

**3.05 Indemnity – The Owner shall defend, indemnify and save the Auctioneer, its parents, subsidiaries and affiliates, and each of their officers, directors, shareholders, employees, and agents harmless against all claims, demands, suits, actions, causes of action, damages, costs or charges whatsoever arising from:**

- (a) any breach of the representations, warranties or covenants set out herein;
- (b) failure by the Owner to comply with any laws relating to the Owner's right to sell the Equipment;

- (c) hazardous materials associated with the Equipment or contamination resulting from any leakage, spills, or malfunction of the Equipment;
- (d) deficiencies in the provision of documents required for the purpose of titling or registering any part of the Equipment by any purchaser thereof;
- (e) any deficiency in compliance with applicable EPA rules or regulations,
- (f) any negligence, unlawful act, or willful misconduct of the Owner in connection with this Contract; and
- (g) any infringement of a patent, copyright, trademark, agreement or similar right of any third party caused by the offering for sale, advertising or sale of any part of the Equipment.

**3.06 No Buybacks, Unreserved Auction Sale** – The Owner shall not bid, directly or indirectly, nor allow any other person to bid on the Owner's behalf, or for the Owner's benefit, by agency or otherwise, on the Equipment or any part thereof at the auction;

Owner acknowledges the auction is unreserved and the Auctioneer shall have no obligation or duty to withdraw the Equipment or any part thereof from the auction sale or to cancel the auction. The Equipment shall be sold to the highest bidder on the date of the auction.

**3.07 No Guarantee** – The Owner acknowledges that there is no guarantee whatsoever as to the gross proceeds to be realized from the sale of the Equipment at auction.

**3.08 Specific Performance** – The Owner shall not withdraw the Equipment or any part thereof from the auction sale. If the Owner is in breach of this provision, then in addition to any other remedies set out in this Contract, the parties hereto agree:

- (a) the damages to the Auctioneer's business reputation and customer relations are not readily ascertainable;
- (b) available remedies at law are not adequate in the event of breach; and
- (c) the Auctioneer may not be made whole solely by monetary recompense;

therefore, the Auctioneer may elect, at its sole option, to apply for an order for specific performance of this Contract and the Owner hereby waives all rights to object to such application.

**3.09 Other** – The Owner shall:

- (a) provide, at no cost to the Auctioneer, \_\_\_\_\_ (\_\_\_\_\_) competent persons to assist in the preparation of the auction;
- (b) comply with all legislation, regulations, or requirements of any authority of competent jurisdiction relating to the sale of the Equipment;
- (c) be responsible for the payment of any tax or duty whatsoever that may legally be construed as being the responsibility of the Owner; and

- (d) provide the Auctioneer with copies of the Bankruptcy Court orders: (i) approving the sale of the Equipment pursuant to 11 USC § 363(f), and (ii) approving this Contract.

**3.10 Sale Site** – The Owner shall ensure that:

- (a) the Auctioneer is provided with a suitable site, located at \_\_\_\_\_, for the conduct of the auction (the “Sale Site”), at no cost to the Auctioneer for a period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_;
- (b) the Auctioneer and its employees and subcontractors are provided with access to the Sale Site as the Auctioneer deems necessary for preparation and conduct of the auction;
- (c) prospective bidders are provided with access to enter and use the Sale Site to inspect the Equipment in advance of the auction;
- (d) purchasers are provided with access to enter and use the Sale Site to pick up Equipment after the auction; and
- (e) property damage and public liability insurance is maintained in full force and effect throughout the period described in this section to cover third party personal injury, death or property damage claims. The Owner will ensure that the Auctioneer is named as additional insured and, upon request, Auctioneer will be provided with a copy of the insurance certificate, or other documentation evidencing the Auctioneer as an additional insured, to the satisfaction of the Auctioneer.

The Owner and the Auctioneer agree to conduct a site assessment of the Sale Site within ten (10) days of the execution of this Contract.

The Owner shall defend, indemnify and save the Auctioneer, its parents, subsidiaries and affiliates, and each of their officers, directors, shareholders, employees, and agents, harmless against any and all claims, demands, suits, actions, causes of action, damages, costs or charges whatsoever arising from any injury, loss, or damage to any third party, including personal injury, arising out of the third party’s use of the Sale Site in accordance with this paragraph 3.10.

**SECTION 4: MUTUAL AGREEMENTS**

**4.01 Timeliness** – Time is of the essence of this Contract.

**4.02 Waiver** – A waiver by either party of any breach of any of the provisions herein shall be limited to such particular instance and shall not operate as a waiver of, or be deemed to waive, any other or future breaches of the same or any other provisions hereof.

**4.03 Legal Costs** – Should either party be required to participate in any action or proceeding in respect of this Contract, the prevailing party shall be entitled to recover all costs, including attorney’s fees, incurred as a result thereof.

**4.04 Prohibition of Pre-Sale** – Neither the Auctioneer nor the Owner shall sell or offer for sale any part of the Equipment prior to the auction without the written permission of the other.

**4.05 Default by Owner:**

If:

- (a) the Owner withdraws or fails to timely deliver the Equipment or any part thereof or any documents required hereunder, or if the auction sale does not occur as a result of the actions or inaction of the Owner; or
- (b) the Owner, directly or indirectly, bids or permits another to bid on Owner's behalf or for the Owner's benefit, by agency or otherwise, on the Equipment or any part thereof at the auction; or
- (c) the Owner's representations and warranties set out in Section 2 hereof are not true, complete and correct in all respects;

then:

- (d) commissions shall be payable to the Auctioneer upon demand, based upon the fair market value of any withdrawn or undelivered parts of the Equipment as if they had been sold;
- (e) any advances made by the Auctioneer to the Owner together with accrued interest shall become due and repayable immediately; and
- (f) the Owner will upon demand, reimburse the Auctioneer for all out-of-pocket expenses incurred in preparation for the auction.

In the event the Owner is in violation of subparagraph 4.05 (b), in addition to any other rights or remedies the Auctioneer may have under this Contract, the Auctioneer shall, at its sole discretion, have the right to sell or re-sell the Equipment by public or private sale and the Owner shall pay to the Auctioneer as liquidated damages in addition to all other amounts due hereunder, an amount equal to twenty percent (20%) of the proceeds realized from such sale or resale.

**4.06 Auctioneer's Right to Withdraw From Contract / Rescind Sale** – Notwithstanding any other provisions of this Contract, the Auctioneer shall have the right, at its discretion, to withdraw from this Contract and its obligations hereunder shall be unenforceable by the Trustee if the Trustee is in breach of any of its representations or warranties hereunder.

If, pursuant to this section, the Equipment or any part thereof is not sold at the auction, such equipment shall be deemed to have been withdrawn by the Trustee and the provisions of subparagraph 4.05(d), (e) and (f) shall apply.

**4.07 Use of Equipment** – The Owner authorizes the Auctioneer to operate the Equipment for purpose of demonstrating it at the auction.

**4.08 Lots** – The Auctioneer shall divide the Equipment into such lots as it may in its absolute discretion deem desirable for sale at the auction. The Auctioneer shall not be liable for

any loss or damages claimed in respect of the manner in which the Equipment is divided into lots nor in respect of any failure to divide the Equipment into lots.

- 4.09 Administrative Fee** – The Owner acknowledges that the Auctioneer may charge purchasers an administrative fee based on the selling price of each lot.
- 4.10 Collection of Proceeds** – The Auctioneer shall collect the full proceeds from the sale of the Equipment and the Auctioneer shall:
- (a) withhold for its benefit all amounts payable to the Auctioneer hereunder, including commission, and any advances, together with interest thereon; and
  - (b) the Owner directs that all other funds realized from the sale of the Equipment be paid out in accordance with the terms of the Bankruptcy Court order approving the sale.
- 4.11 Auctioneer's Right of Set-Off** – The Auctioneer may, in its discretion, apply any proceeds from the sale of the Equipment towards any outstanding amounts otherwise due and owing to the Auctioneer in connection with any purchases, deficiencies or services rendered by the Auctioneer.
- 4.12 Uncollected Proceeds** – The Auctioneer may, as it deems necessary, re-auction any part of the Equipment not sold or paid for at the auction and the Owner acknowledges that no monies shall be payable by the Auctioneer for any part of the Equipment until it has been paid for in full by the purchaser thereof.
- 4.13 Other Consignments** – Equipment belonging to other owners may be sold at the auction.
- 4.14 Owner's Name** – The Owner authorizes the Auctioneer to use Owner's name, trademark and logo in advertising the auction.
- 4.15 Entire Agreement** – This Contract:
- (a) constitutes the entire agreement between the parties and supersedes and takes the place of all prior contracts, understandings, representations or warranties;
  - (b) may not be amended except in writing. There are no understandings, agreements, promises, terms, conditions, or warranties expressed or implied, whether orally or by law, statute or trade usage, other than as specifically stated herein; and
  - (c) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 4.16 Internet Bidding and Timed Auction Lot System** – The Auctioneer may in its sole discretion offer certain lots for sale, in conjunction with its public unreserved auction, to registered bidders using its proprietary online bidding service or using its silent "timed auction lot" system. The Auctioneer shall use its best effort to ensure that such technologies and systems are available at all auctions for which they have been advertised, however at any given sale
- (a) only those lots which the Auctioneer deems appropriate shall be offered using such technologies and systems, and

- (b) certain circumstances concerning the Internet and the technology in use are beyond the Auctioneer's control, and such systems may not be available at any given time or auction.

The Owner agrees that the Auctioneer shall be held harmless from any and all claims, demands, suits, actions costs or causes of action, damages, costs, or charges arising from the Auctioneer's decision whether or not to use such technologies or systems or its failure to offer such systems at any time.

- 4.17 **Force Majeure** – Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Contract for failure or delay in fulfilling or performing any term of this Contract when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fires, strikes, floods, adverse weather that has the potential to injure persons or damage property, acts of war, terrorism, riot, or public disorder, acts of God, lawful acts of public authorities or electronic failures and internet service provider.
- 4.18 **Jurisdiction and Waiver of Jury Trial** – This Contract is subject to and governed by the laws of the State of Washington. Any legal action brought by the Owner arising from or relating to this Contract shall be litigated exclusively in the state or federal courts of King County, Washington, and the parties irrevocably attorn to the exclusive jurisdiction of such courts for the resolution of such disputes. Any legal action brought by Auctioneer arising from or relating to this Contract shall be litigated exclusively in the state or federal courts of King County, Washington, or any jurisdiction in which the Owner maintains a place of business, assets or an agent for the service of process, and the parties irrevocably attorn to the exclusive jurisdiction of such courts for the resolution of such disputes. The parties irrevocably waive the right to demand a trial by jury in any dispute arising from or relating to this Contract.
- 4.19 **Notice** – Any notice given hereunder shall be delivered by prepaid registered mail to the parties hereto at the address set out on page 1, with any notice to the Auctioneer sent to the attention of Legal Affairs.
- 4.20 **Headings** – All headings in this Contract are for reference purposes only and this Contract shall be interpreted without reference to such headings.
- 4.21 **Severability** - If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Contract will remain in full force and effect.
- 4.22 **Execution by Facsimile, Electronic Transmission and Counterpart** – This Contract may be executed by fax, PDF, or other electronic transmission and in counterpart, each of which when taken together shall be deemed to constitute an original and form part of the same document, and, upon acceptance by the Auctioneer, be effective and binding on both parties.
- 4.23 **Privacy** – Information provided in this Contract will be retained by the Auctioneer in accordance with its formal Privacy Statement, provided on the Auctioneer's website at [www.rbauction.com](http://www.rbauction.com).



4.24 **Further Assurances** - The parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Contract.

IN WITNESS WHEREOF this Contract has been executed by the parties hereto as of the date first above written.

<p style="text-align: right;">_____ (in Chapter 11)</p> <p>(COMPANY – Name of Owner)</p> <p>Per: _____</p> <p>(Signature)</p> <p>_____</p> <p>(Print Name of person signing)</p>	<div style="border: 1px solid black; padding: 5px; min-height: 50px;"> <p>Cust. #:</p> </div>
--	---

**RITCHIE BROS. AUCTIONEERS (AMERICA) INC.**

Per: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

Attached to and forming part of  
**CONTRACT TO AUCTION**

LIENHOLDER INFORMATION

OWNER NAME: \_\_\_\_\_  
 SALE SITE: \_\_\_\_\_ SALE DATE: \_\_\_\_\_

Sch A #	Lienholder	Contact Person	Phone # & Fax #	Amount

**To Whom It May Concern:** The undersigned party hereby authorizes Ritchie Bros. Auctioneers (America) Inc. (the "Auctioneer") to conduct searches and contact creditors as required for the disclosure of liens, charges and encumbrances and to determine amounts claimed against the equipment (the "Equipment") described on the attached Schedule "A". The undersigned further consents to the release to the Auctioneer of any and all information pertaining to any such lien, charge or other encumbrance or security interest claimed in any assets of the undersigned.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
 Name of Owner

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name of Signatory (if different from Owner)

\_\_\_\_\_  
 Position

OWNER CODE: \_\_\_\_\_



**CONTRACT TO AUCTION**  
**(CHAPTER 11 – GUARANTEE)**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**BETWEEN:**

**RITCHIE BROS. AUCTIONEERS (AMERICA) INC.**, having its head office at 4000  
Pine Lake Road in the City of Lincoln, in the State of Nebraska, 68516.  
Web Site: [www.rbauction.com](http://www.rbauction.com)

(the “Auctioneer”)

OF THE FIRST PART

**AND:**

\_\_\_\_\_, in Chapter 11 of the United  
States Bankruptcy Code, DEBTOR CASE # \_\_\_\_\_, having a place of  
business at \_\_\_\_\_

in the City of \_\_\_\_\_, in the State of \_\_\_\_\_.

Telephone No. \_\_\_\_\_ - \_\_\_\_\_,  
Fax No. \_\_\_\_\_ - \_\_\_\_\_,  
E-Mail Address \_\_\_\_\_

(the “Owner”)

OF THE SECOND PART

**TERMS AND CONDITIONS OF THIS CONTRACT**

**Agreement**

The above parties recognize that the Owner is operating under Chapter 11 of the US Bankruptcy Code and that this Contract is subject to the approval of the United States Bankruptcy Court in \_\_\_\_\_ (the “Bankruptcy Court”), having jurisdiction over such proceedings. Notwithstanding any other provision herein, this Contract shall be null and void, without penalty to either party, if Bankruptcy Court approval of this Contract is not received on or before \_\_\_\_\_, 20\_\_\_\_.

For valuable consideration, the above parties enter into this Contract (the "Contract") which sets out their respective rights, obligations and undertakings regarding the sale by unreserved public auction of all those items described on Schedule "A" attached hereto (the "Equipment").

**SECTION 1: AUCTIONEER'S OBLIGATIONS AND RESPONSIBILITIES**

**1.01 Sale Date** – The Auctioneer shall, as agent of the Owner, offer the Equipment, together with any additional items delivered by the Owner to the auction site for sale, in whole or in part, pursuant to Bankruptcy Court order (Docket Entry # \_\_\_\_\_), at unreserved public auction on or about the \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_, at the City of \_\_\_\_\_, in the State of \_\_\_\_\_.

**1.02 Payment** – The Auctioneer shall make payment to the Owner within twenty-one (21) days after the auction, the amount due and owing to the Owner from monies collected from the sale of the Equipment after making all deductions permitted under this Contract.

**1.03 Guarantee** – The Auctioneer shall guarantee minimum gross proceeds of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) from the sale of the Equipment.

**1.04 Commission** – The Auctioneer shall be entitled to the following commission payable at the time of the auction:

- (a) \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the guaranteed minimum gross proceeds set out in section 1.03 above; and
- (b) any proceeds realized from the sale of the Equipment in excess of the guaranteed minimum gross proceeds shall be divided \_\_\_\_\_ percent ( \_\_\_\_\_ %) to the Owner and \_\_\_\_\_ percent ( \_\_\_\_\_ %) to the Auctioneer.

**1.05 Other** – The Auctioneer shall:

- (a) allow the Owner access to records concerning the sale of the Equipment at the auction, excluding the names or contact information of the buyers thereof;
- (b) supervise the preparation and organization of the auction;
- (c) provide auctioneers and accountants required for an auction of this type;
- (d) ensure on-site food catering services are available to those in attendance at the auction;
- (e) provide listing catalogs of the lots offered for sale to potential buyers at the auction; and
- (f) collect and remit State and local sales tax arising upon the sale of the Equipment at the auction.

1.06 Sale Site – The Auctioneer shall provide, at no cost to Owner, a suitable site for conduct of the auction.

**SECTION 2: OWNER’S REPRESENTATIONS AND WARRANTIES:**

**2.01 Title and Condition**

**The Owner represents and warrants that:**

- (a) the Owner is operating under the provisions of Chapter 11 of the Bankruptcy Code, and is authorized by Bankruptcy Court order (Docket Entry #\_\_\_\_) to sell the Equipment pursuant to 11 USC § 363(f) free and clear of any and all registered and unregistered liens, security interests, tax or duty obligations or other encumbrances or contrary claims whatsoever;
- (b) the Owner has complied with all laws, requirements and notices necessary to allow the sale of the Equipment;
- (c) the Equipment is in good operating condition, free of material defects, except as disclosed to the Auctioneer;
- (d) the description of the Equipment is accurately set forth on Schedule “A” attached and in the case of motor vehicle Equipment, such Equipment has never been rebuilt, salvaged or glidered except as disclosed to the Auctioneer;
- (e) all odometer and hour meters on the Equipment reflect actual mileage or usage unless otherwise disclosed to the Auctioneer on Schedule “A”;
- (f) the offering for sale, advertising or selling of the Equipment will not contravene or infringe upon any patent, copyright, trademark, agreement or similar right of any third party; and
- (g) the Owner and its signatories are duly authorized by Bankruptcy Court order (Docket Entry #\_\_\_\_) to enter into this Contract.

**SECTION 3: OWNER’S OBLIGATIONS AND RESPONSIBILITIES:**

**3.01 Refurbishing – The Owner shall:**

- (a) weld, sandblast, paint, clean, and refurbish (the “Refurbishing”), prior to the auction, the Equipment to a standard acceptable to the Auctioneer. Should the Auctioneer organize and pay for the Refurbishing of any part of the Equipment, the Auctioneer shall be reimbursed for these costs plus ten percent (10%) provided that the total cost shall not exceed

\_\_\_\_\_ dollars (\$) \_\_\_\_\_) without authorization from the Owner; and

- (b) reimburse the Auctioneer for the cost of fuel and batteries as the Auctioneer deems necessary for demonstration and sale of the Equipment.

**3.02 Delivery** – The Owner shall deliver the Equipment, at the Owner’s cost, to the auction site on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_:

- (a) in good operating condition, free of material defects except as disclosed to the Auctioneer, with adequate fuel and batteries and starting at the key;
- (b) free of hazardous materials other than normal operating fuels, oils, and lubricants;
- (c) in a condition equivalent to or better than its condition when viewed by the Auctioneer’s representative on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_; and
- (d) in compliance with all applicable Environmental Protection Agency (“EPA”) rules and regulations;

together with all documents evidencing the Owner’s title, and/or necessary to transfer title, to the Equipment, properly endorsed.

The Owner hereby assigns Power of Attorney to the Auctioneer for the limited purpose of executing on the Owner’s behalf, all documents required to transfer title to, and permit registration or ownership of, any part of the Equipment by the purchaser thereof.

**3.03 Searching and Title Documents** – The Owner:

- (a) shall conduct searches or use other means available, as deemed necessary by the Owner for the disclosure of liens and encumbrances, and include all such creditors in Bankruptcy Court notices seeking authority under 11 USC § 363 to sell the Equipment; in no case shall the Owner have a duty to conduct such searches, nor be responsible for the result thereof; and
- (b) shall pay a document administration fee of \$65 per unit for each item of Equipment requiring title or registration documents.

**3.04 Risk of Loss, Insurance** - The Owner shall

- (a) be responsible for loss or damage to the Equipment, other than loss or damage arising as a result of the negligence of the Auctioneer, its agents or employees, until the earliest of:
  - i. the removal of the Equipment from the auction site by the purchaser; or
  - ii. receipt by the Owner of all proceeds from the sale of the Equipment;
- (b) insure the Equipment, with the Auctioneer as additional insured, to its fair market value against all perils so that in the event of damage to, or destruction of, the Equipment or any part thereof, all insurance proceeds shall be credited to the gross proceeds of the auction and payment made to the Auctioneer forthwith for all deductions permitted by this Contract; and
- (c) upon request, provide Auctioneer with a copy of the insurance certificate, or other documentation evidencing the Auctioneer as an additional insured, to the satisfaction of the Auctioneer.

- 3.05 Indemnity** – The Owner shall defend, indemnify and save the Auctioneer, its parents, subsidiaries and affiliates, and each of their officers, directors, shareholders, employees, and agents harmless against all claims, demands, suits, actions, causes of action, damages, costs or charges whatsoever arising from:
- (a) any breach of the representations, warranties or covenants set out herein;
  - (b) failure by the Owner to comply with any laws relating to the Owner's right to sell the Equipment;
  - (c) hazardous materials associated with the Equipment or contamination resulting from any leakage, spills, or malfunction of the Equipment;
  - (d) deficiencies in the provision of documents required for the purpose of titling or registering any part of the Equipment by any purchaser thereof;
  - (e) any deficiency in compliance with applicable EPA rules or regulations,
  - (f) any negligence, unlawful act, or willful misconduct of the Owner in connection with this Contract; and
  - (g) any infringement of a patent, copyright, trademark, agreement or similar right of any third party caused by the offering for sale, advertising or sale of any part of the Equipment.
- 3.06 No Buybacks, Unreserved Auction Sale** – The Owner shall not bid, directly or indirectly, nor allow any other person to bid on the Owner's behalf, or for the Owner's benefit, by agency or otherwise, on the Equipment or any part thereof at the auction; Owner acknowledges the auction is unreserved and the Auctioneer shall have no obligation or duty to withdraw the Equipment or any part thereof from the auction sale or to cancel the auction. The Equipment shall be sold to the highest bidder on the date of the auction.
- 3.07 Specific Performance** – The Owner shall not withdraw the Equipment or any part thereof from the auction sale. If the Owner is in breach of this provision, then in addition to any other remedies set out in this Contract, the parties hereto agree:
- (a) the damages to the Auctioneer's business reputation and customer relations are not readily ascertainable;
  - (b) available remedies at law are not adequate in the event of breach; and
  - (c) the Auctioneer may not be made whole solely by monetary recompense;
- therefore, the Auctioneer may elect, at its sole option, to apply for an order for specific performance of this Contract and the Owner hereby waives all rights to object to such application.
- 3.08 Other** – The Owner shall:
- (a) provide, at no cost to the Auctioneer, \_\_\_\_\_ (\_\_\_\_\_) competent persons to assist in the preparation of the auction;
  - (b) comply with all legislation, regulations, or requirements of any authority of competent jurisdiction relating to the sale of the Equipment;



- (c) be responsible for the payment of any tax or duty whatsoever that may legally be construed as being the responsibility of the Owner; and
- (d) provide the Auctioneer with copies of the Bankruptcy Court orders: (i) approving the sale of the Equipment pursuant to 11 USC § 363(f), and (ii) approving this Contract.

**3.09 Sale Site** – The Owner shall ensure that:

- (a) the Auctioneer is provided with a suitable site, located at \_\_\_\_\_, for the conduct of the auction (the “Sale Site”), at no cost to the Auctioneer for a period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_;
- (b) the Auctioneer and its employees and subcontractors are provided with access to the Sale Site as the Auctioneer deems necessary for preparation and conduct of the auction;
- (c) prospective bidders are provided with access to enter and use the Sale Site to inspect the Equipment in advance of the auction;
- (d) purchasers are provided with access to enter and use the Sale Site to pick up Equipment after the auction; and
- (e) property damage and public liability insurance is maintained in full force and effect throughout the period described in this section to cover third party personal injury, death or property damage claims. The Owner will ensure that the Auctioneer is named as additional insured and, upon request, Auctioneer will be provided with a copy of the insurance certificate, or other documentation evidencing the Auctioneer as an additional insured, to the satisfaction of the Auctioneer.

The Owner and the Auctioneer agree to conduct a site assessment of the Sale Site within ten (10) days of the execution of this Contract.

The Owner shall defend, indemnify and save the Auctioneer, its parents, subsidiaries and affiliates, and each of their officers, directors, shareholders, employees, and agents, harmless against any and all claims, demands, suits, actions, causes of action, damages, costs or charges whatsoever arising from any injury, loss, or damage to any third party, including personal injury, arising out of the third party’s use of the Sale Site in accordance with this paragraph 3.09.

**SECTION 4: MUTUAL AGREEMENTS**

**4.01 Timeliness** – Time is of the essence of this Contract.

**4.02 Waiver** – A waiver by either party of any breach of any of the provisions herein shall be limited to such particular instance and shall not operate as a waiver of, or be deemed to waive, any other or future breaches of the same or any other provisions hereof.

**4.03 Legal Costs** – Should either party be required to participate in any action or proceeding in respect of this Contract, the prevailing party shall be entitled to recover all costs, including attorney's fees, incurred as a result thereof.

**4.04 Prohibition of Pre-Sale** – Neither the Auctioneer nor the Owner shall sell or offer for sale any part of the Equipment prior to the auction without the written permission of the other.

**4.05 Default by Owner:**

If:

- (a) the Owner withdraws or fails to timely deliver the Equipment or any part thereof or any documents required hereunder, or if the auction sale does not occur as a result of the actions or inaction of the Owner; or
- (b) the Owner, directly or indirectly, bids or permits another to bid on Owner's behalf or for the Owner's benefit, by agency or otherwise, on the Equipment or any part thereof at the auction; or
- (c) the Owner's representations and warranties set out in Section 2 hereof are not true, complete and correct in all respects;

then:

- (d) the Auctioneer's guarantee of minimum gross proceeds from the sale of the Equipment shall be unenforceable at the option of the Auctioneer;
- (e) commissions shall be payable to the Auctioneer upon demand, based upon the fair market value of any withdrawn or undelivered parts of the Equipment as if they had been sold;
- (f) any advances made by the Auctioneer to the Owner together with accrued interest shall become due and repayable immediately; and
- (g) the Owner will upon demand, reimburse the Auctioneer for all out-of-pocket expenses incurred in preparation for the auction.

If, as a result of the actions or inactions of the Owner, the Auctioneer's guarantee of minimum gross proceeds from the sale of the Equipment is unenforceable, the commission rate to be paid by the Owner to the Auctioneer shall be fifteen percent (15%) of the gross proceeds on the Equipment sold at the auction or, in the case of the Equipment not sold at the auction, fifteen percent (15%) of the fair market value of such Equipment.

In the event the Owner is in violation of subparagraph 4.05 (b), in addition to any other rights or remedies the Auctioneer may have under this Contract, the Auctioneer shall, at its sole discretion, have the right to sell or re-sell the Equipment by public or private sale and the Owner shall pay to the Auctioneer as liquidated damages in addition to all other amounts due hereunder, an amount equal to twenty percent (20%) of the proceeds realized from such sale or resale.

**4.06 Auctioneer's Right to Withdraw From Contract / Rescind Sale** – Notwithstanding any other provisions of this Contract, the Auctioneer shall have the right, at its discretion, to withdraw from this Contract and its obligations hereunder shall be unenforceable by

the Trustee if the Trustee is in breach of any of its representations or warranties hereunder.

If, pursuant to this section, the Equipment or any part thereof is not sold at the auction, such equipment shall be deemed to have been withdrawn by the Trustee and the provisions of subparagraph 4.05(d), (e) and (f) shall apply.

- 4.07 Use of Equipment** – The Owner authorizes the Auctioneer to operate the Equipment for purpose of demonstrating it at the auction.
- 4.08 Lots** – The Auctioneer shall divide the Equipment into such lots as it may in its absolute discretion deem desirable for sale at the auction. The Auctioneer shall not be liable for any loss or damages claimed in respect of the manner in which the Equipment is divided into lots nor in respect of any failure to divide the Equipment into lots.
- 4.09 Administrative Fee** – The Owner acknowledges that the Auctioneer may charge purchasers an administrative fee based on the selling price of each lot.
- 4.10 Collection of Proceeds** – The Auctioneer shall collect the full proceeds from the sale of the Equipment and the Auctioneer shall:
- (a) withhold for its benefit all amounts payable to the Auctioneer hereunder, including commission, and any advances, together with interest thereon; and
  - (b) the Owner directs that all other funds realized from the sale of the Equipment be paid out in accordance with the terms of the Bankruptcy Court order approving the sale.
- 4.11 Auctioneer's Right of Set-Off** – The Auctioneer may, in its discretion, apply any proceeds from the sale of the Equipment towards any outstanding amounts otherwise due and owing to the Auctioneer in connection with any purchases, deficiencies or services rendered by the Auctioneer.
- 4.12 Uncollected Proceeds** – The Auctioneer may, as it deems necessary, re-auction any part of the Equipment not sold or paid for at the auction and the Owner acknowledges that no monies in excess of the guaranteed minimum gross proceeds, less all deductions permitted under this Contract, shall be payable by the Auctioneer for any part of the Equipment until it has been paid for in full by the purchaser thereof.
- 4.13 Other Consignments** – Equipment belonging to other owners may be sold at the auction.
- 4.14 Owner's Name** – The Owner authorizes the Auctioneer to use Owner's name, trademark and logo in advertising the auction.
- 4.15 Entire Agreement** – This Contract:
- (a) constitutes the entire agreement between the parties and supersedes and takes the place of all prior contracts, understandings, representations or warranties;
  - (b) may not be amended except in writing. There are no understandings, agreements, promises, terms, conditions, or warranties expressed or implied, whether orally or by law, statute or trade usage, other than as specifically stated herein; and

- (c) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**4.16 Internet Bidding and Timed Auction Lot System** – The Auctioneer may in its sole discretion offer certain lots for sale, in conjunction with its public unreserved auction, to registered bidders using its proprietary online bidding service or using its silent “timed auction lot” system. The Auctioneer shall use its best effort to ensure that such technologies and systems are available at all auctions for which they have been advertised, however at any given sale

- (a) only those lots which the Auctioneer deems appropriate shall be offered using such technologies and systems, and
- (b) certain circumstances concerning the Internet and the technology in use are beyond the Auctioneer’s control, and such systems may not be available at any given time or auction.

The Owner agrees that the Auctioneer shall be held harmless from any and all claims, demands, suits, actions costs or causes of action, damages, costs, or charges arising from the Auctioneer’s decision whether or not to use such technologies or systems or its failure to offer such systems at any time.

**4.17 Force Majeure** – Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Contract for failure or delay in fulfilling or performing any term of this Contract when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fires, strikes, floods, adverse weather that has the potential to injure persons or damage property, acts of war, terrorism, riot, or public disorder, acts of God, lawful acts of public authorities or electronic failures and internet service provider.

**4.18 Jurisdiction and Waiver of Jury Trial** – This Contract is subject to and governed by the laws of the State of Washington. Any legal action brought by the Owner arising from or relating to this Contract shall be litigated exclusively in the state or federal courts of King County, Washington, and the parties irrevocably attorn to the exclusive jurisdiction of such courts for the resolution of such disputes. Any legal action brought by Auctioneer arising from or relating to this Contract shall be litigated exclusively in the state or federal courts of King County, Washington, or any jurisdiction in which the Owner maintains a place of business, assets or an agent for the service of process, and the parties irrevocably attorn to the exclusive jurisdiction of such courts for the resolution of such disputes. The parties irrevocably waive the right to demand a trial by jury in any dispute arising from or relating to this Contract.

**4.19 Notice** – Any notice given hereunder shall be delivered by prepaid registered mail to the parties hereto at the address set out on page 1, with any notice to the Auctioneer sent to the attention of Legal Affairs.

**4.20 Headings** – All headings in this Contract are for reference purposes only and this Contract shall be interpreted without reference to such headings.

- 4.21 **Severability** - If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Contract will remain in full force and effect.
- 4.22 **Execution by Facsimile, Electronic Transmission and Counterpart** – This Contract may be executed by fax, PDF, or other electronic transmission and in counterpart, each of which when taken together shall be deemed to constitute an original and form part of the same document, and, upon acceptance by the Auctioneer, be effective and binding on both parties.
- 4.23 **Privacy** – Information provided in this Contract will be retained by the Auctioneer in accordance with its formal Privacy Statement, provided on the Auctioneer’s website at [www.rbauction.com](http://www.rbauction.com).
- 4.24 **Further Assurances** - The parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Contract.

IN WITNESS WHEREOF this Contract has been executed by the parties hereto as of the date first above written.

<p>_____ (in Chapter 11) (COMPANY – Name of Owner)</p>	
Per: _____ (Signature)	Cust. #: _____
_____	
(Print Name of person signing)	

**RITCHIE BROS. AUCTIONEERS (AMERICA) INC.**

Per: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

(Print Name)

Attached to and forming part of  
CONTRACT TO AUCTION

LIENHOLDER INFORMATION

OWNER NAME: \_\_\_\_\_  
SALE SITE: \_\_\_\_\_ SALE DATE: \_\_\_\_\_

Sch A #	Lienholder	Contact Person	Phone # & Fax #	Amount

**To Whom It May Concern:** The undersigned party hereby authorizes Ritchie Bros. Auctioneers (America) Inc. (the "Auctioneer") to conduct searches and contact creditors as required for the disclosure of liens, charges and encumbrances and to determine amounts claimed against the equipment (the "Equipment") described on the attached Schedule "A". The undersigned further consents to the release to the Auctioneer of any and all information pertaining to any such lien, charge or other encumbrance or security interest claimed in any assets of the undersigned.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Name of Owner

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory (if different from Owner)

\_\_\_\_\_  
Position

OWNER CODE: \_\_\_\_\_

1 Danial D. Pharris, WSBA #13617  
2 Lasher Holzappel Sperry &  
3 Ebberson, P.L.L.C.  
4 601 Union Street, Suite 2600  
5 Seattle, WA 98101-4000  
6 (206) 624-1230

7 UNITED STATES BANKRUPTCY COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 In re:

11 J L LEASING & TRANSPORTATION,  
12 INC.,

13 Debtor.

No. 15-13813-MLB

**DECLARATION OF FRANK LETOURNEAU  
IN SUPPORT OF MOTION FOR ORDER  
APPROVING AUCTION SALE OF ASSETS**

14  
15 Frank Letourneau declares as follows:

16 1. I am the President of J L Leasing & Transportation, Inc. ("J L Leasing"), the  
17 debtor-in-possession in the case captioned above. I make this declaration based on my personal  
18 knowledge and my review of the business records and files of J L Leasing and I am competent to  
19 testify to the same and in support of Debtor's Motion for Order Approving the Public Auction  
20 Sale of All of the Debtor's Truck and Trailer Assets Free and Clear of All Liens, Claims, Interests  
21 and Encumbrances.

22  
23  
24 2. On June 23, 2015, J L Leasing filed a voluntary petition for relief under Chapter 11  
25 of the U. S. Bankruptcy Code. J L Leasing is wholly owned by my mother, Jutta Letourneau.

26 3. The Debtor filed a voluntary petition under Chapter 11 of the United States

DECLARATION OF FRANK LETOURNEAU IN  
SUPPORT OF MOTION FOR ORDER APPROVING  
AUCTION SALE OF ASSETS- 1

{25538/U957612.DOCX}

LASHER  
HOLZAPFEL  
SPERRY &  
EBBERSON

ATTORNEYS AT LAW  
2600 TWO UNION SQUARE  
601 UNION STREET  
SEATTLE WA 98101-4000  
TELEPHONE 206 624-1230  
Fax 206 340-2563



1 Bankruptcy Code on June 23, 2015 (the "Petition Date"). The Debtor is operating its business and  
2 managing its affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy  
3 Code.

4  
5 4. J L Leasing is a trucking company, incorporated in Washington on December 13,  
6 2001 and it is headquartered in Enumclaw, Washington. Prior to that time the business was a sole  
7 proprietorship operated by Frank Letourneau's father and mother since approximately 1993. J L  
8 Leasing's primary trucking activities are in the state of Washington including container shipping  
9 for companies importing and exporting goods through the ports of Washington, Oregon and  
10 British Columbia, and transporting produce and other commodities in Washington, Oregon and  
11 British Columbia.

12  
13  
14 5. In 2013-2014 the Debtor expanded into long haul or over-the-road trucking in the  
15 continental United States and Canada. Also in 2014, the Debtor expanded into excavation/ dirt  
16 hauling. This comprised an investment of approximately \$1 million in equipment purchases and  
17 rentals. Additionally, the Debtor hired management employees and truck drivers at a cost of an  
18 estimated \$800,000 of additional salaries and other expenses. Unfortunately, neither of these lines  
19 of business were profitable. The Debtor has laid off the employees doing long haul or  
20 excavation/dirt hauling work and has sold off most of the equipment devoted to those unprofitable  
21 lines of business.  
22

23  
24 6. The Debtor also owns truck and trailer assets used in ongoing operations, many of  
25 which are subject to the claims of secured creditors ("Collateral"). The Debtor has determined  
26

1 that it is in the best interests of the bankruptcy estate to liquidate its assets and sell the Collateral  
2 and pay the secured obligations. Any sale proceeds in excess of payoffs of the Collateral will be  
3 held by the Chapter 11 Trustee for distribution pursuant to further order of the Court.  
4

5 7. Attached as Exhibit "1" to the Motion is the list of assets ("Assets") that the Debtor  
6 proposes to sell and the name of each secured creditor that is believed to claim a security interest  
7 against particular Assets. Attached as Exhibit "2" to the Motion are the proposed agreements with  
8 Ritchie Bros. Auctioneers (America) Inc. ("Ritchie Bros."). Ritchie Bros. proposed two options:  
9 (1) a straight commission sale for ten percent (10%) of the sale proceeds; or (2) a guarantee by  
10 Ritchie Bros. that it will pay the Debtor a minimum of \$1,100,000 for the assets notwithstanding  
11 the aggregate sale prices for the Assets and less equipment refurbishment costs of \$17,000. A  
12 guarantee would cost a thirteen percent (13%) commission rather than ten percent (10%). Under  
13 the guarantee option any sales proceeds over \$1.1 million would be divided 75% to the Debtor and  
14 25% to Ritchie Bros. If the guarantee is the option approved by the Court, then the guarantee  
15 amount would benefit all secured creditors on a pro rata basis to the extent of the guarantee  
16 amount over and above the actual sale price of any particular truck or trailer, provided, however,  
17 that payment to any particular secured creditor shall not exceed its allowed secured claim. Debtor  
18 and the Chapter 11 Trustee may enter into an agreement with James G. Murphy Co. ("Murphy")  
19 on substantially similar or better terms at any time prior to Court approval and in that event will  
20 submit a supplemental filing with Murphy's proposed terms.  
21  
22  
23  
24

25 8. The Debtor believes that the public auction sale is in the best interests of the estate  
26

1 and creditors and will provide the estate with no less than the liquidation value of the Assets.

2 9. Ritchie Bros. has a regularly scheduled auction on December 16, 2016. Ritchie  
3 Bros. or Murphy will provide notice and advertising of the Auction to all parties which they  
4 believe, in their reasonable judgment, have the interest and wherewithal to purchase the Assets.  
5

6  
7 I declare under penalty of perjury of the laws of the State of Washington that the foregoing  
8 is true and correct to the best of my knowledge and belief.  
9

10 EXECUTED this 8<sup>th</sup> day of November 2016, at Enumclaw, Washington.

11  
12 /s/ Frank Letourneau  
13 Frank Letourneau  
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